



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Industrialized Unit Rules

Rule Number(s): Adopt new rules 4101:10-1-01 through 4101:10-9-01

Date of Submission for CSI Review: March 8, 2024

Public Comment Period End Date: April 5, 2024

Rule Type/Number of Rules:

New/ 9 rules

No Change/ rules (FYR?)

Amended/ rules (FYR?)

Rescinded/ rules (FYR?)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.

Proposed new rules to address the design, manufacture, and regulation of industrialized units proposed to be placed in Ohio. The proposed new rules clarify requirements, codify policy, coordinate enforcement authority and align expectations for manufacturers, owners, code enforcement authorities and the board of building standards. Previously, minimal provisions addressing industrialized units were included in Ohio Building Code (OBC) Chapter 1 (OAC 4101:1-1-01). With the adoption of the 2024 OBC, these provisions were removed in preference for proposed new rules dedicated specifically for the construction and placement of industrialized units.

The Board of Building Standards proposed adopt the following new rules of the administrative code:

OAC 4101:10-1-01: Administrative provisions.

OAC 4101:10-2-01: Definitions.

OAC 4101:10-3-01: Lays out the procedures for manufacturer participation in Ohio's program.

OAC 4101:10-4-01: Lays out the procedure for obtaining an authorization (approval for unit design for placement in Ohio.)

OAC 4101:10-5-01: Describes the content to be included construction documents.

OAC 4101:10-6-01: Lays out the procedures for transportation of approved industrialized unit to intended site installation.

OAC 4101:10-7-01: Describes procedures for relocation/reauthorization of previously approved units.

OAC 4101:10-8-01: Application and plan review fee schedule

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OAC 4101:10-9-01: Certification requirements for industrialized unit inspector certification (relocated from OAC 4101:7-3-01).

The following summarizes the significant changes included in the rules:

Exempt structures - Identifies more types of structures that are exempt from compliance including floating structures with a hull identification number, vehicles with a vehicle identification number, and mobile computing units that comply with Revised Code 3781.06(C)(3) (4101:10-1-01(B)(1))

Work without approval - Clarifies that closed construction, delivered to a site of intended use without an authorization or approval from the board of building standards, is not an industrialized unit (4101:10-1-01(B)(3)(c))

Equipment units - Creates a new category of industrialized unit (4101:10-2-01(A)(4)(i))

Manufacturing plant evaluation - Clarifies the minimum content to evaluate, frequency of evaluations and records to be maintained and shared regarding the manufacturer's facility and quality assurance program (4101:10-3-01(A)(5))

Expiration of authorization - Codifies an overlap of one (1) year between the effective date of a new referenced building code and the last day an industrialized unit can be constructed using the authorization issued under the previous building code (4101:10-3-01(B)(5))

Inspections required - Clarifies the third-party inspection process and expands it to include a manufacturer's option to self-perform day to day inspections under the audit of the third-party inspection entity. This section also allows for remote inspections (4101:10-3-01(C))

Scope of work - Codifies the communication of what portion of the industrialized unit design and assembly is under the board of building standards authority and authorization and what portion is under the authority having jurisdiction at the site of intended use (4101:10-4-01(C)(1)(a)(ii))

Replacement modules - Creates an alternative path to allow the manufacturer the opportunity to assist the owner of a building to repair the portion of their building that was constructed using an industrialized unit (4101:10-7-01(A)(2))

Reauthorization - Creates an alternative path, for manufacturers of leased or other short-term placement of industrialized units, to rejuvenate, remodel or change the occupancy of their units at the manufacturing plant and have them reauthorized as an industrialized unit instead of regulating them as a moved existing structure (4101:10-7-01(B))

Fees - Codifies the fee structure, specifies who is responsible for the fees and limits exception for fee waiver to only Ohio career technical schools or community colleges that manufacture industrialized units as part of curriculum (4101:10-8-01)

Certifications - Updates the requirements to become certified to perform inspections of industrialized units at the manufacturing plant (4101:10-9-01)

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- 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/3781.11>

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

- 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 implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not 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... the construction of industrialized units...” Additionally, Revised Code 3781.11 lists conditions that rules of the Board must address, including:

(1) For nonresidential buildings, provide uniform minimum standards and requirements, and for residential buildings, provide standards and requirements that are uniform throughout the state, for construction and construction materials, including construction of industrialized units, to make residential and nonresidential buildings safe and sanitary as defined in section 3781.06 of the Revised Code;

(2) Formulate such standards and requirements, so far as may be practicable, in terms of performance objectives, so as to make adequate performance for the use intended the test of acceptability;

(3) Permit, to the fullest extent feasible, the use of materials and technical methods, devices, and improvements, including the use of industrialized units which tend to reduce the cost of construction and erection without affecting minimum requirements for the health, safety, and security of the occupants or users of buildings or industrialized units and without preferential treatment of types or classes of materials or products or methods of construction;

(4) Encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material, and techniques, including methods employed to produce industrialized units;

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

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The Board tracks shelf time for plan submissions. This time increases/decreases depending on level of construction activity. The goal is always to process review of submissions as quickly as possible. Providing regulations in more transparent manner in the proposed rules will help owners better understand compliance expectations. This should be reflected in quality of plan submission and number of correction letters issued per project helping to reduce number of resubmissions thereby reducing overall average shelf time.

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.

Yes. See April 7, 2023, RC 121.93 Report to JCARR attached as Exhibit A.

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 including building department personnel, contractors, designers and professional associations. The stakeholder list is available upon request.

On September 1, 2023, the Board sent an email to all agency stakeholders, including industrialized unit manufacturers, informing them of initial stakeholder input opportunity on the proposed rules. The notice summarized the proposed rules and requested comments on the proposed rules be submitted by September 15, 2023: [Proposed Industrialized Units Rules | Ohio Department of Commerce](#)

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

No comments were received.

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?

- The Board's construction standards are based on model codes developed by the International Code Council (ICC). ICC recently developed offsite construction standards - [ICC 1200](#), [ICC 1205](#) and [ICC 1210](#). These standards as well as other states' rules, [Modular Building Institute Research and Reports](#), [Interstate Industrialized Building Commission \(IIBC\) Guidelines](#), reports from [American Institute of Architects \(AIA\)](#) and [National Institute of Building Sciences \(NIBS\)](#) and [ICC and MBI Guideline for the Safe Use of ISO Internodal Shipping Containers](#) were used in the development of these rules.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

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See Question 11. Additionally, continuing law 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.

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

Revised Code § 3781.10 gives the Board sole authority to adopt rules to regulate the construction of industrialized units. Additionally, the rules coordinate with provisions in the building codes enforced by local certified building departments for the placement of approved units on site.

14. 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.

In compliance RC 121.93 the rules codify policies which increase transparency in regulation provide clearer expectation in how to achieve compliance. Additionally, these proposed rules will be administered centrally by Board staff. Upon adoption, Board Staff will host online information sessions regarding the new rules and provide recommended best practices in preparing construction documents to help reduce correction letters.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

a. Identify the scope of the impacted business community, and

- Design Professionals
- Manufacturers

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

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.

- Becoming familiar with the new rules through research and training

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

Yes:

- Identifies more types of structures that are exempt from compliance including floating structures with a hull identification number, vehicles with a vehicle identification number, and mobile computing units that comply with Revised Code 3781.06(C)(3) (4101:10-1-01(B)(1))

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- Codifies an overlap of one (1) year between the effective date of a new referenced building code and the last day an industrialized unit can be constructed using the authorization issued under the previous building code (4101:10-3-01(B)(5)). This is an increase from 6 months for previous code cycles.
- Clarifies the third-party inspection process and expands it to include a manufacturer's option to self-perform day to day inspections under the audit of the third-party inspection entity. This section also allows for remote inspections (4101:10-3-01(C)).
- Updates the requirements to become certified to perform inspections of industrialized units at the manufacturing plant (4101:10-9-01) and eliminates a certification category.

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

While these are proposed new rules, many substantive existing provisions addressing industrialized units have been relocated from 4101:1-1-01 and remain unchanged. Additionally, in compliance RC 121.93 the rules codify policies which increase transparency in regulation.

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 proposed rules require the issuance of an adjudication order when the design does not comply with referenced construction standards. 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 the Ohio Board of Building Appeals.

Also, continuing law 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?

The proposed rules do not include paperwork violations or fines.

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

In addition to the proposed changes listed in response to Question 16, the rules codify policies which increase transparency in regulation and provide clearer expectation in how to achieve compliance. The Board maintains a website with pages dedicate to the industrialized unit program and frequently asked questions. Board Staff is available via phone, email and "contact us" options to address issues as they arise. The Board provides training and seminar opportunities for interested parties, and makes available, online, any digitally recorded training sessions.

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R.C. 121.93 Required Report

- 1) **Date: April 7, 2023**
- 2) **Agency: Ohio Board of Building Standards**
- 3) **Agency Contact**
 - a) Name: Regina Hanshaw
 - b) Email: Regina.Hanshaw@com.ohio.gov
 - c) Phone: 614-644-2613
- 4) Provide the number of operations reviews that your agency completed during the governor's recently expired term. One
- 5) List any principles of law or policies described in [R.C. 121.93\(A\)](#) that your agency identified in your operations review(s).
 - Administration of the Industrialized Unit program (registration, authorization, fees and auditing)
- 6) Describe your agency's considerations regarding the identified principles of law or policies under [R.C. 121.93\(B\)](#).
 - a) Scope of authority (RC 3781.10)
 - b) Time frames (RC 3791.04)
 - c) Cost (RC 3781.11)
 - d) Safety (RC 3781.10)
 - e) Sanitation (RC 3781.10)
 - f) Energy conservation (3781.10)
 - g) Accessibility (RC 3781.111)
 - h) Standardization (RC 3781.11)
- 7) List any principles of law or policies for which your agency determined rulemaking is indicated or for which your agency has commenced the rulemaking process under [R.C. 121.93\(C\)](#).
 - a) Registration of manufacturer (new rule from policy)
 - b) In-plant evaluation of manufacturing facility (clarify rule with requirements)
 - c) Definitions (expand rule with industry advancements)

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- d) Application for authorization (new rule from policy)
- e) Construction document submittal (clarify rule with requirements)
- f) Compliance reviews against standards/codes (clarify rule with requirements)
- g) Verification of construction/compliance – inspections - 3rd party or state (clarify rule with requirements from policy)
- h) Insignias – deliverables (clarify rule with requirements from policy)
- i) Fees
- j) Third party inspector qualifications (clarify rule with requirements from policy)