



Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: 4101:13 /Ohio Board of Building Appeals

Rule Number(s): 4101:13-1-01, 4101:13-1-02, 4101:13-1-03, 4101:13-1-04,
4101:13-1-05, 4101:13-1-06, 4101:13-1-07, 4101:13-1-08; 4101:13-1-09, 4101:13-1-10
4101:13-1-11, 4101:13-1-12, and 4101:13-1-13.

Date: 9/11/2014

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Rescinded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 3781.19, the rules set forth in Chapter 4101:13-1 et seq. of the Ohio Administrative Code establish the process for the Ohio Board of Building Appeals (“Board” or “BBA”) to hear appeals from adjudication orders issued by the Department of Commerce, Division of Industrial Compliance or any certified local/county enforcement agency and also to hear appeals from fire citations issued by the State Fire Marshal or any local fire department with a certified fire safety inspector.

This rule package rescinds the majority of the existing BBA administrative rules because they address day-to-day procedural matters (continuances, stipulations, exhibits, etc.) which are unnecessary and inappropriate for the administrative code, and which duplicate the administrative appeal process in R.C. Chapter 119. Instead, these procedural matters will be more informally contained in a “rules of procedure” handbook that will be published on the Board’s website. In addition, the proposed package eliminates the \$15.00 fee in section 4101:13-13-1-12(C). A few other minor amendments are also proposed to simplify the appeal process before the BBA.

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

R.C. 3781.19

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.

The regulation does not implement a federal requirement.

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

The regulation does not include a provision that is not specifically required by the federal government.

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 Sections 3781.19 and 3737.43, the purpose of this regulation is to provide aggrieved parties with procedural due process in a responsive forum that promotes neutral, fair and consistent application of the applicable standards and regulations.

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CSIOhio@governor.ohio.gov

The BBA represents the last step in the administrative process by providing an avenue for aggrieved parties to present their arguments and positions to a neutral Board promoting easy, transparent and inexpensive compliance with applicable standards and regulations.

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

The rules are successful when aggrieved parties are afforded an opportunity to present their arguments and positions to a fair, neutral and responsive Board 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.

Stakeholders were contacted via e-mail on September 11, 2014. A list of stakeholders may be found in “Attachment A” of this document. The Board thereafter considered and approved filing of the proposed rules at a public hearing that took place on September 29, 2014.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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

The stakeholders offered minor feedback to the Division, suggesting certain wording, which was then incorporated into 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?

Scientific data was not used to develop the rule package or to measure outcomes.

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?

Stakeholders have no objections to this rule package so no alternatives were necessary. The rule rescissions will provide flexibility while simplifying and clarifying the appeals process.

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.

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

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

This rule package specifically rescinds a number of existing BBA administrative rules because day-to-day procedural matters (continuances, stipulations, exhibits, etc.) are unnecessary and inappropriate for inclusion within the administrative code, and because they often duplicate the administrative appeal process in R.C. Chapter 119. In addition, other agencies (Board of Building Standards and State Fire Marshal) that regulate the statutes and rules impacted by the BBA were included within the list of stakeholders from which input was sought.

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 stakeholders and industry about this rule package. Given the simplifying nature of this rule package, and the fact that all rescinded rules are relocated to the new Rules of Procedure handbook, there will be little to no impact on stakeholders and aggrieved parties seeking to file an appeal.

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;

Aggrieved parties seeking to appeal an adverse decision from a state or local building or fire department.

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

There will be little to no impact on the business community. To ensure fairness, consistency and responsiveness, the day-to-day procedural matters (continuances, stipulations, exhibits, etc.) will be more informally placed on the Board’s website in a handbook.

No changes are contemplated for filing fees or other costs related to appeals to private interests.

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.

The potential adverse impact described above is minimal and cannot be quantified.

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

These rules are required to implement section 3781.19 of the Ohio Revised Code by establishing processes and procedures to ensure aggrieved parties are afforded an opportunity appeal in a fair, neutral and responsive manner while keeping costs to a minimum. It is noteworthy that stakeholders had no objections to the rule package.

Regulatory Flexibility

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

These rules apply equally to any aggrieved party (individual or a business entity) by establishing processes and procedures to afford an appeal right in a fair, neutral and responsive manner while keeping costs to a minimum.

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 has authority under Section 4101:13-1-13(B) of the Administrative Code to waive the administrative appeal fee. Consideration of such requests from appellants will be considered on a case-by-case basis according to the equities involved.

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

Commerce and the BBA are easily accessible for questions and guidance through the internet, phone and e-mail. The former is available for substantive corrections and negotiations with design professionals to settle appeals and the latter for process guidance. Commerce strives to assist small businesses with achieving and maintaining compliance with requirements of Section 3781.19 of the Revised Code and Chapter 4101:13-1 et seq. of the Ohio Administrative Code.