



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Dept. of Commerce, Division of Real Estate and Professional Licensing

Rule Contact Name and Contact Information:

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

OAC 1301:5

Rule Number(s): 1301-5-1-12 (Amendment); 1301-5-1-19 (Amendment); 1301-5-1-20 (Amendment); 1301-5-5-01 (Amendment); 1301-5-7-03 (Amendment); 1301-5-7-04 (Amendment); 1301-5-7-09 (Amendment)

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/_X_ 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Rescinded/___ rules (FYR?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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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.**

1301:5-1-12 - Open public meetings

INTENT: This rule sets forth the procedure for providing notice of public meetings.

CHANGES PROPOSED: Removed the ability to receive notice by fax in (B) and changed “mailing” in (C) to “notification”; removed (D).

1301:5-1-19 - License reactivation

INTENT: This rule sets forth the process for reactivating a suspended or inactive license.

CHANGES PROPOSED: Added notice could be sent by electronic mail in (D).

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1301:5-1-20 - Annual brokerage assessment

INTENT: This rule sets forth the Division's procedure in calculating and mailing annual brokerage assessments. The fees are set by statute.

CHANGES PROPOSED: Allows for brokerage assessments to be sent by mail or electronic mail in (C).

1301:5-5-01 - Statement to be displayed in broker's office and included in information pamphlets

INTENT: This rule contains required language that must be displayed in every real estate broker's office.

CHANGES PROPOSED: Added that the notice may be electronically displayed in (B) and clarified rest to sentence regarding printed in (B).

1301:5-7-03 - Criteria for course approvals

INTENT: This rule sets forth the criteria for the application and approval of continuing education courses.

CHANGES PROPOSED: States that an electronic mail address and website address (if applicable) should be included a continuing education course approval request application.

1301:5-7-04 - Continuing Education Course Completion and Certificates

INTENT: The rule clarifies what providers are to do at the completion of a continuing education course.

CHANGES PROPOSED: Removed word “physically” in (A). The removal of the word takes into consideration that students may be taking classes virtually.

1301:5-7-09 Post-licensing education

INTENT: This rule defines post-licensure education and provides the process for approving post-licensure courses.

CHANGES PROPOSED: Removed word “classroom”. The removal of this term also takes into consideration that the course may be taught remotely.

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.

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ORC 4735.10, 4735.19, 4735.06, 4735.14. 4735.13, 4735.09, 4735.15,
4735.03,4735.159(E) 4735.16, 4735.141,

- 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.

1301:5-5-01 and 1301:5-1-6-04 uses the definition of blockbusting from 24 C.F.R. 100.85.

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

This does not apply.

- 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)?**

The requirements of Revised Code 4735 and the rules promulgated pursuant to that chapter. provide for the protection of the public by permitting the licensing and regulation of real estate professionals. Real estate brokers and salespersons assist members of the public with transactions that involve one the biggest financial investments most people experience in their lifetime. The consumer places trust in the real estate licensee and during the course of the transaction, licensees routinely handle consumers' moneys such as earnest money deposits, rents, and security deposits. The rules provide for minimum guidelines of professional responsibility for the licensees. Further, the rules permit increased efficiency in Division processing applications and investigating enforcement actions while keeping operating costs to a minimum.

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

The success of the rules can be measured in the efficient manner in which the Division conducts business. When the Division conducts business efficiently, it permits applicants and licensees

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to opportunity to conduct or continue to conduct business. Additionally, rules are successful when licensees have clear, professional guidelines for interacting with consumers and other licensees.

Compliance audits and investigations are ways that help ensure that licensees are in compliance with the rules and regulations. The Division regularly communicates with members of the real estate profession and encourages candid input from the industry to ascertain the effect of a regulation and whether or not improvements or amendments to the regulations are necessary to be considered.

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.

The Ohio Real Estate Commission reviewed proposed rules at a special public meeting that was held on August 4, 2021. The Commission voted to file these rules as provided in this packet.

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.

N/A

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

N/A

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?

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N/A

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?

Real estate brokers and salespeople in Ohio are licensed through Revised Code Chapter 4735. The Revised Code mandates that the agency adopt rules necessary for implementing the provisions of Chapter 4735 relating to but not limited to licensing activities, enforcement activities, and education guidelines.

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.*

The rules are regulatory in nature and are required by provisions in Revised Code Chapter 4735. The rules are a product of thorough industry and division review. They are intended to protect consumers provide minimum guidelines of professional responsibility and increase Division efficiency while minimizing operating costs.

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

The Division is the only agency that regulates real estate licensees.

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.

The Division will publish a newsletter article outlining the rule changes.

Licensees and community members may easily access the Division by email and telephone for questions. Division counsel and staff attorneys review investigatory actions to help ensure consistency in the application of the rules and regulations. The Superintendent reviews all final recommendations on enforcement actions which also helps to ensure that the laws are being consistently applied. In addition, the Division publishes summaries of

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the disciplinary actions on the Division website and routinely provides copies of adjudication orders and commission meeting minutes.

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

The stakeholders affected by these proposed changes are identified below:

1301:5-1-12 – Any person who wishes to ascertain the time and place of regularly scheduled and purpose of any special commission meetings

1301:5-1-19 – Any licensee who seeks to reactivate or renew his license or file any other application with the Division of Real Estate

1301:5-1-20- Any broker filing an annual brokerage assessment

1301:5-5-01 -All brokers and brokerage offices

1301:5-7-03 -Any person seeking approval for a continuing education course and a licensee seeking to take a continuing education course

1301:5-7-04 -Any continuing education provider and any licensee taking a continuing education course

1301:5-7-09- Post-licensing education providers and licensees taking the post-licensing education courses.

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

1301:5-1-12- A stakeholder will have no adverse impact from this rule

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1301:5-1-19- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. A licensee would have to spend time to complete a form and pay the corresponding fees that were already part of this rule absent the recommend change.

1301:5-1-20- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. A licensee would have to spend time to complete a form and pay the corresponding fees that were already part of this rule absent the recommend change.

1301:5-5-01- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. A licensee must display the fair housing statement as required by law.

1301:5-7-03—A stakeholder will have no additional adverse impact from the change recommended to be made to (would have to provide email address and, if applicable, the web address of brokerage). An applicant would have to file a form and pay the fee that was already part of this rule absent the recommended change.

1301:5-7-04- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. The continuing education provider maintains records, issues certificates and submits rosters to the Division per the rule prior to the recommended change.

1301:5-7-09-A stakeholder will have no additional adverse impact from the change recommended to be made to the rule. The rule, prior to the recommended change, states that the post licensing provider must apply for approval to offer the course, have approved instructors, maintain records and certify attendance.

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

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“representative business.” Please include the source for your information/estimated impact.

1301:5-1-12- A stakeholder will have no adverse impact from this rule

1301:5-1-19- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. A licensee would have to spend time to complete a form and pay the corresponding fees that were already part of this rule absent the recommend change. The transfer/reactivation fee is found in RC 4735.15 and is \$34.00 and the Division estimates the amount of time for completion of the transfer/reactivation form to be approximately 15 minutes.

1301:5-1-20- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. A licensee would have to spend time to complete a form and pay the corresponding fees that were already part of this rule absent the recommend change. The Division estimates that it would take less than 30 minutes to complete the brokerage assessment form and the fees vary based upon the number of affiliated licensees pursuant to RC 4735.15 (B)(2).

1301:5-5-01- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. A licensee must display the fair housing statement as required by law. Other than costs associated with printing and hanging the form, there is no adverse impact related to this rule or any proposed change.

1301:5-7-03—A stakeholder will have no additional adverse impact from the change recommended to be made to (would have to provide email address and, if applicable, the web address of brokerage). An applicant would have to file a form and pay the fee that was already part of this rule absent the recommended change. The Division estimates less than an hour to complete the forms and attachments for filing. The initial application fee is \$50.00 pursuant to 1301:5-7-06

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1301:5-7-04- A stakeholder will have no additional adverse impact from the change recommended to be made to this rule. The continuing education provider maintains records, issues certificates and submits rosters to the Division per the rule prior to the recommended change. The estimated cost is that of issuing a certificate to the attendees and certifying, to the Division, the attendance of licensees- done electronically.

1301:5-7-09-A stakeholder will have no additional adverse impact from the change recommended to be made to the rule. The rule, prior to the recommended change, states that the post licensing provider must apply for approval to offer the course, have approved instructors, maintain records and certify attendance. The estimated cost is the cost of providing the certificate to attendees and completion of the application form for approval. The Division estimates that it would take less than 30 minutes to complete the application.

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

The proposed rules allow for flexibility with respect to notifying licensees of pending revocations, allows for the recognition of remote continuing education and post license education. Any impact on business is minimal with respect to the proposed changes.

Regulatory Flexibility

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

There are no exemptions or alternative means of compliance for small businesses. The division follows the same investigative procedure for all complainants and the application process is no different for small or big businesses.

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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?

Often mistakes on applications and forms filed with the division are discovered by division employees prior to the licensee's filing deadline and the licensee is notified in order to correct the paperwork without any detriment to the licensee or applicant.

The Superintendent has been granted the authority to issue an advisory letter in lieu of disciplinary action. The issuance of an advisory letter will notify the licensee of the violation and will help them come into compliance with license law. Additionally, the Superintendent and the Commission may initiate a compliance audit if necessary, to help bring a brokerage into compliance with license law.

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

The Division is easily accessible by email and telephone for questions from the public. The division's website contains links to educational videos, disciplinary summaries, newsletters, links to sample forms, links to sample letters and to the laws and rules involving the licensing of salespersons and brokers. All the division's forms are accessible on the website and division staff are available to assist with questions related to the completion of the forms or general inquiries.

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