

CSI - Ohio

The Common Sense Initiative

Business Regulation Impact Analysis

Agency Name: Ohio Dept. of Commerce, Division of Real Estate & Professional Licensing

Regulation/Package Title: OAC 1301:13 5 Year Rule Review

Rule Number(s): 1301:13-1-01 (Amendment); 1301:13-1-02 (Amendment); 1301:13-1-03 (No Change); 1301:13-3-01 (Amendment); 1301:13-3-03 (Amendment); 1301:13-5-01 (Amendment); 1301:13-5-02 (No Change); 1301:13-5-03 (Amendment)

Date: February 6, 2017

Rule Type:

<input type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input type="checkbox"/> Rescinded

Is this rule required to meet a deadline? (Yes or No): Yes

If yes, what is the nature of the deadline and by what date does the rule need to be filed with JCARR to meet the deadline?

Five year rule review, June 30, 2017

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.*

SEE ATTACHMENT A

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

ORC 119.03; 4767.02; 4767.06

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 environmental law or to participate in a federal environmental program? If yes, please briefly explain the source and substance of the federal requirement.

No

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

This does not apply.

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)?

The rules are promulgated pursuant to the requirements of Revised Code Chapter 4767. The Ohio Cemetery Dispute Resolution Commission (OCDRC) provides a forum for the public and cemetery operators to resolve grievances before a panel of cemetery experts. Subjects of complaints sometimes include decoration policies, monument/marker policies, sales, poor maintenance of the cemetery, transfers of interment spaces and more. The dispute resolution process has also become a valuable resource for Ohio cemetery operators to receive advice from the OCDRC regarding standard industry practices and procedures. Additionally, the work of the OCDRC has significantly reduced theft and fraud in the Ohio cemetery industry related to endowment care trusts and preneed cemetery merchandise and services trusts.

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

The rules are successful when consumers have an outlet for resolving disputes with cemeteries, cemeteries have a resource to obtain advice regarding standard industry procedures and when consumer money is not lost or misused by cemeteries. The rules are also successful when cemeteries have procedures for interacting with the division which in turn enables the division to conduct business in the most efficient manner possible while keeping costs to a minimum.

The division has the ability to investigate consumer complaints and conduct compliance audits to ensure that cemeteries are in compliance with O.R.C. 1721.21 and 1721.211. In addition, the division has open lines of communication with the industry and encourages input from the industry on how well a regulation is working and whether or not improvements in the law can be made.

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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.

During the five-year rule review process the Division reached out to the Ohio Cemetery Association, the Ohio Catholic Conference, the Ohio Township Association and the Ohio Municipal League.

The OCDRC reviewed the proposed rules at their March meeting and unanimously voted to move forward with filing the rules as proposed.

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

The stakeholders raised no concerns with the proposed 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?**

N/A

- 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?**

Cemeteries in Ohio are registered through Revised Code Chapter 4767. The Revised Code mandates that the agency adopt rules necessary for implementing the provisions of Chapter 4767.

- 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.

The rules are regulatory in nature and are required by provisions in Revised Code Chapter 4767. The rules are a product of thorough industry and division review. They are intended to protect consumer money in accounts required by O.R.C. 1721.21 and 1721.211, to provide consumers an outlet to resolve disputes with cemeteries and to increase Division efficiency while keeping operating costs to a minimum.

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

The Division is the only agency that registers cemeteries.

- 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.**

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The Division intends to reach out to industry stakeholders during the JCARR process and once the rules are final filed. The Division is also easily accessible by email and telephone for questions from the community.

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

SEE ATTACHMENT B

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

The proposed changes are clean-up and clarification. The main group of stakeholders provided no comments on the proposed changes.

Cemeteries routinely handle consumers' moneys deposited into endowment care trusts and preneed cemetery merchandise and services trusts required by R.C. 1721.21 and 1721.211. The rules hold cemeteries accountable for the money they hold in a fiduciary capacity. The rules also provide for an informal dispute resolution forum to provide consumers an outlet to resolve disputes with cemeteries.

Regulatory Flexibility

16. 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 dispute resolution procedure for all complainants. The registration process is no different for small or big cemeteries. O.R.C. 4767.03 does provide a fee structure based on the number of cemeteries an operator is registering: \$25 for one cemetery; \$40 for two cemeteries; and \$50 for three or more cemeteries.

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?

Paperwork mistakes on applications and forms filed with the division are often caught by division employees and the cemetery has the opportunity to correct the mistakes. The division also frequently works with un-registered cemeteries to bring them into compliance with registration requirements without any detriment to the cemetery.

If the Division received a complaint against a registered cemetery, the OCDRC uses informal techniques of mediation, conciliation, and persuasion to resolve complaints.

18. 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 community. The division's website provides additional information including a copy of the suggested maintenance guidelines adopted by the OCDRC, registration forms, and samples of documents.

Ohio Department of Commerce, Division of Real Estate & Professional Licensing
BIA Attachment A

1301:13-1-01 – Public notice of intention to consider adopting, amending or rescinding rules.

INTENT: This rule provides the procedure in giving public notice, as required by law, of intention to consider adopting, amending or rescinding a rule or regulation.

CHANGES PROPOSED: The proposed changes are clean-up.

1301:13-1-02 – Public meetings.

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

CHANGES PROPOSED: The proposed changes update pronouns, clarify when and if a fee will be assessed for notification of public meetings and also create consistency with other public meeting rules regulated by the Division.

1301:13-1-03 – Definitions.

INTENT: The rule provides the definitions of O.A.C. Chapter 1301:13.

NO CHANGE

1301:13-3-01 – Complaint procedure

INTENT: This rule provides the procedure for the division to follow when a complaint is received.

CHANGES PROPOSED: The proposed changes update pronouns and clarify the commission's authority as set forth in ORC 4767.08.

1301:13-3-03 – Reports

INTENT: This rule provides for the division's report to the commission on division activities related to the administration of O.R.C. Chapter 4767.

CHANGES PROPOSED: The proposed changes update the information to be submitted to the commission as complaint forms are available to the public online.

1301:13-5-01 – Sale or transfer of cemetery assets

INTENT: This rule provides the procedure for a cemetery owner or operator intending to purchase cemetery assets to obtain an audit of financial statements in order to meet registration requirements.

CHANGES PROPOSED: The proposed change makes a clarification.

1301:13-5-02 – Revocation of registration

INTENT: This rule provides that if a cemetery owner or operator is found in violation of O.R.C. 1721.21 or 1721.211 by a court of law that that the registration will be immediately revoked and provides the procedure to re-apply for registration.

NO CHANGE

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BIA Attachment A

1301:13-5-03 – Compliance

INTENT: As provided in R.C. 4767.08, this rule creates the procedure for the division to complete an audit of cemetery financial records to ensure compliance with O.R.C. 1721.21 and 1721.211 and submission of results to the commission.

CHANGES PROPOSED: The proposed change is clean-up.

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BIA Attachment B

<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:13-1-01 – Public notice of intention to consider adopting, amending or rescinding rules.	This does not apply as 1301:13-1-01 provides procedure for the division.		
1301:13-1-02 –Public meetings	This does not apply as 1301:13-1-02 provides procedure for the division.		Any person requesting notices of meetings may be assessed a fee in conformity with R.C. 149.43 unless notice is to be done through electronic means.
1301:13-1-03 – Definitions	This does not apply as 1301:13-1-03 provides definitions for OAC chapter 1301:13.		
1301:13-3-01 – Complaint procedure	Complainants and Respondents. 1301:13-3-01 provides the procedure for the division to follow when a complaint is received.	This does not apply as 1301:13-3-01 provides the procedure for the division to follow when a complaint is received.	There are no fees associated with filing a complaint but a complainant will need to fill out a complaint form and file it with the division. When a hearing is held by the Ohio cemetery dispute resolution commission, the parties to a complaint have the opportunity to travel to Columbus to attend the hearing.
1301:13-3-03 – Reports	This does not apply as 1301:13-3-03 provides for the division's report to the commission on division activities related to the administration of O.R.C. Chapter 4767.		
1301:13-5-01 – Sale or transfer of cemetery assets	Any cemetery owner or operator intending to purchase cemetery assets from another with the intent to register those assets with the division.	A failure to provide the required audited financial statements will result in the denial of a registration.	Any cemetery owner or operator intending to purchase cemetery assets from another with the intent to register those assets with the division is required by O.R.C. 4767.02(B)(8) to obtain an audit of the financial statements by a certified public accountant.
1301:13-5-02 – Revocation of registration	All cemetery owners or operators	If a cemetery owner or operator is found in violation of O.R.C. 1721.21 or 1721.211 by a court of law the registration will be immediately revoked.	Any registration revoked is allowed to re-apply for registration and requires a new application, an audited financial statement and proof that the owner or operator is honest, truthful, and of good reputation.
1301:13-5-03 – Compliance	All cemetery owners or operators	If an audit shows a violation of O.R.C. 1721.21 or 1721.211, the	The commission may refer results of the audit to the local county prosecutor

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		commission may refer results of the audit to the local county prosecutor and/or the attorney general.	and/or the attorney general. Cemeteries are also required to keep records for the sale of cemetery lots; merchandise and services; and deposits into trust accounts.
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