

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 HB 168 updates

Rule Number(s): 1301:13-1-03 (Amendment); 1301:13-3-01 (Amendment); \1301:13-5-01 (Amendment); 1301:13-5-03 (Amendment); 1301:13-7-1 (New); 1301:13-7-2 (New); 1301:13-7-3 (New); 1301:13-7-4 (New); 1301:13-7-5 (New); 1301:13-7-6 (New)

Date: December 24, 2018

Rule Type:

☒ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

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

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?

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. Sub. HB 168 also added a cemetery grant program, the structure of which is being created by the new proposed rules. The grant program will help with exceptional maintenance and training of cemetery staff for registered cemeteries run by non-profit operators.

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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Success for the grant program will be measured by granting out the full amount available by statute each fiscal year and seeing the outcome of the grant money being spent by the cemeteries awarded grants.

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 this process the Division reached out to the Ohio Cemetery Association, the Catholic Conference of Ohio, the Ohio Township Association and the Ohio Municipal League. Two stakeholder meetings were held specifically to craft the cemetery grant program rules with their input. The stakeholders were also provided the amendments to the existing rules.

The OCDRC reviewed the proposed rules at their December 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 had a significant say in crafting the proposed cemetery grant rules. The original proposed rules were amended to reflect stakeholder input. There were no additional comments on the amendments to the existing 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. The cemetery grant rules were crafted to ensure the funds are properly utilized by the cemeteries granted awards.

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.

The Division has worked directly with industry stakeholders to craft the cemetery grant program rules and will continue to do so during the JCARR process and once the rules are final filed. Updates for the cemetery grant program are available on the Division's website and through constant contact email. The Division has conducted outreach with Health Registrars and is scheduled to speak at the 2019 Ohio Township Association annual conference. 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 to existing rules are clean-up based upon statutory language updates from Sub. HB 168. The main group of stakeholders provided no comments on the proposed changes.

The new rules provide the policy and procedures for the cemetery grant program created in Sub. HB 168. The main group of stakeholders were included in the creation of those rules. The program will help non-profit cemeteries with exceptional cemetery maintenance and training for cemetery personnel.

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. The cemetery grant program will have the same process for all applicants.

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 within any statutory timeframes.

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. Cemetery grant program information and forms will also be available on the division's website and can be emailed or sent by regular mail when requested.

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BIA Attachment A

1301:13-1-03 – Definitions.

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

CHANGES PROPOSED: The definition of “complaint” needed to be updated based upon new statutory language from Sub. HB 168.

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 amendment revises the Division’s procedure to include circumstances when the Division receives a complaint against a cemetery that is not registered based upon new statutory language from Sub. HB 168.

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 based upon new statutory language from Sub. HB 168.

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 amends the rule to include five-year compliance audits based upon new statutory language from Sub. HB 168.

1301:13-7-01 – Criteria for eligibility

INTENT: Sub. HB 168 created a cemetery grant fund in R.C. 4767.10 and authorized the Division to grant funds in accordance with rules adopted by the Ohio Cemetery Dispute Resolution Commission.

NEW: This rule provides the eligibility requirements for the cemetery grant program.

1301:13-7-02 – General provisions

INTENT: Sub. HB 168 created a cemetery grant fund in R.C. 4767.10 and authorized the Division to grant funds in accordance with rules adopted by the Ohio Cemetery Dispute Resolution Commission.

NEW: This rule provides the basic policies and procedures for the grant program.

1301:13-7-03 – Grant applications

INTENT: Sub. HB 168 created a cemetery grant fund in R.C. 4767.10 and authorized the Division to grant funds in accordance with rules adopted by the Ohio Cemetery Dispute Resolution Commission.

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NEW: This rule provides the basic grant application requirements for the grant program.

1301:13-7-04 – Grant restrictions and requirements

INTENT: Sub. IIB 168 created a cemetery grant fund in R.C. 4767.10 and authorized the Division to grant funds in accordance with rules adopted by the Ohio Cemetery Dispute Resolution Commission.

NEW: This rule provides the restrictions and requirements for when a cemetery receives a grant, including how funds may be expended and a final report.

1301:13-7-05 – Cemetery grant advisory committee

INTENT: Sub. HB 168 created a cemetery grant fund in R.C. 4767.10 and authorized the Division to grant funds in accordance with rules adopted by the Ohio Cemetery Dispute Resolution Commission.

NEW: This rule provides that the Ohio Cemetery Dispute Resolution Commission may appoint a seven-voting member grant advisory committee to assist in the administration of the cemetery grant fund.

1301:13-7-06 – Distribution of grant funds

INTENT: Sub. HB 168 created a cemetery grant fund in R.C. 4767.10 and authorized the Division to grant funds in accordance with rules adopted by the Ohio Cemetery Dispute Resolution Commission.

NEW: The rule provides for the process of granting an award and distributing the funds.

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<i>Rule</i>	<i>Scope of the impacted business community</i>	<i>Nature of adverse impact</i>	<i>Quantify the expected adverse impact</i>
1301:13-1-03 – 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.
1301:13-5-01 – 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.
1301:13-5-03 – Compliance	All cemetery owners or operators	If an audit shows a violation of O.R.C. 1721.21 or 1721.211, the commission may refer results of the audit to the local county prosecutor and/or the attorney general.	The commission may refer results of the audit to the local county prosecutor 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. For the new five-year audit requirement in ORC 4767.02 The Division will conduct approximately half as mail-in audits which will require the cemetery to copy and mail-in requested documentation regarding the trust account. The remaining cemeteries will be audited via an in-person audit.

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1301:13-7-01 – Criteria for eligibility	All registered cemetery owners or operators, except for-profit owners or operators	This does not apply as the rule sets the eligibility for the cemetery grant program.	There is no estimated cost of compliance as this rule merely sets forth the criteria for eligibility.
1301:13-7-02 – General provisions	All registered cemetery owners or operators, except for-profit owners or operators	This does not apply as the rule provides the basic policies and procedures for the grant program.	There is no estimated cost of compliance as this rule merely sets forth the basic policies and procedures for the grant program.
1301:13-7-03 – Grant applications	All registered cemetery owners or operators, except for-profit owners or operators	This does not apply as the rule provides the basic grant application requirements for the grant program.	Any registered cemetery that qualifies for a grant and wants to apply will need to complete the application and mail it into the Division.
1301:13-7-04 – Grant restrictions and requirements	All registered cemetery owners or operators, except for-profit owners or operators	This rule sets forth what actions may be considered a misappropriation of funds and may result in the forfeiture of grant funds. If the superintendent believes a grantee committed a criminal violation the superintendent shall report the findings to the appropriate authorities.	A failure to comply with this rule may be considered a misappropriation of funds and may result in the forfeiture of grant funds. If the superintendent believes a grantee committed a criminal violation the superintendent shall report the findings to the appropriate authorities.
1301:13-7-05 – Cemetery grant advisory committee	All registered cemetery owners or operators, except for-profit owners or operators	This does not apply as the rule sets forth the creation of a cemetery grant advisory committee and outlines the committee's duties.	
1301:13-7-06 – Distribution of grant funds	All registered cemetery owners or operators, except for-profit owners or operators	This does not apply as the rule sets forth the process of granting an award and distributing the funds.	