



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Division of Real Estate & Professional Licensing

Rule Contact Name and Contact Information:

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

Rules Regarding Ohio Cemeteries and Ohio Cemetery Dispute Resolution Commission

Rule Number(s): 1301:13-1-01 (No Change); 1301:13-1-02 (No Change); 1301:13-1-03 (No Change); 1301:13-3-01 (No Change); 1301:13-3-03 (No Change); 1301:13-5-01 (No Change); 1301:13-5-02 (No Change); 1301:13-5-03 (No Change); 1301:13-7-01 (Amendment); 1301:13-7-02 (No Change); 1301:13-7-03 (No Change); 1301:13-7-04 (Amendment); 1301:13-7-05 (Amendment); 1301:13-7-06 (Amendment)

Date of Submission for CSI Review: X/X/XX

Public Comment Period End Date: X/X/XX

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 10 rules (FYR? Yes )

Amended/ 4 rules (FYR? Yes )

Rescinded/ 0 rules (FYR?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

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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.

### **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.*

**1301:13-1-01** – Proposed no change - The rule provides the procedure in giving public notice, as required by law, of the intention to consider adopting, amending or rescinding a rule or regulation.

**1301:13-1-02** – Proposed no change - This rule sets forth the procedure for providing notice of public meetings.

**1301:13-1-03** – Proposed no change - This rule provides the definitions for OAC Chapter 1301:13.

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**1301:13-3-01** – **Proposed no change** - This rule provides the procedure for the division to follow when a complaint is received.

**1301:13-3-03** – **Proposed no change** - This rule provides for the division's report to the commission on division activities related to the administration of ORC Chapter 4767.

**1301:13-5-01** – **Proposed no change** - This rule provides the procedure for a cemetery owner or operator to register with the state when cemetery assets are purchased from another cemetery owner or operator.

**1301:13-5-02** – **Proposed no change** - This rule provides that if a cemetery owner or operator is found in violation of R.C. 1721.21 or R.C. 1721.211 by a court of law that the registration will be immediately revoked and provides the procedure to re-apply for registration.

**1301:13-5-03** – **Proposed no change** - R.C. 4767.08 permits the Superintendent of the Division of Real Estate or the Ohio Cemetery Dispute Resolution Commission to review a cemetery's financial records to ensure compliance with R.C. 1721.21 and R.C. 1721.211. This rule provides the procedure for the audit of the financial records.

**1301:13-7-01** – **Proposed amendment** - The rule provides the eligibility requirements for the cemetery grant program. The changes proposed would change the amount eligible applicants may apply for during a grant cycle from \$1,000 to \$2,500 and removes the requirement of proof of one-to-one matching funds if an applicant requested more than \$1,000. This will allow cemeteries with limited matching funds to apply for more funds and is based on information from the first three grant cycles.

**1301:13-7-02** – **Proposed no change** - The rule provides the basic policies and procedures for the cemetery grant program.

**1301:13-7-03** – **Proposed no change** - The rule provides the basic grant application requirements for the grant program.

**1301:13-7-04** – **Proposed amendment** - The rule provides the restrictions and requirements for when a cemetery receives a grant, including how funds may be expended and a final report. The change proposed would allow grantees to begin their projects once the Division receives the original, signed grant agreement instead of waiting for the issuance of grant funds. This will provide grantees a minimum of 2 additional weeks to begin their project.

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**1301:13-7-05** – **Proposed amendment** - The 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. The amendment proposed would change the appointment of a chair and vice chair from a shall to may, remove the term limits and changes the advertising requirement to the Division instead of the committee.

**1301:13-7-06** – **Proposed amendment** - The rule provides for the process of granting an award and distributing the funds. The change proposed would extend the time for awardees to return a signed grant award agreement.

**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.**

**1301:13-1-01** is authorized by Ohio Revised Code (ORC) Section 4767.06 and amplified by ORC Section 4767.06

**1301:13-1-02** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.05

**1301:13-1-03** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.06

**1301:13-3-01** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.07

**1301:13-3-03** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.06

**1301:13-5-01** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.02

**1301:13-5-02** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.02

**1301:13-5-03** is authorized by ORC Section 4767.06 and amplified by ORC Section 4767.08

**1301:13-7-01** is authorized by ORC Section 4767.10 and amplified by ORC Section 4767.10

**1301:13-7-02** is authorized by ORC Section 4767.10 and amplified by ORC Section 4767.10

**1301:13-7-03** is authorized by ORC Section 4767.10 and amplified by ORC Section 4767.10

**1301:13-7-04** is authorized by ORC Section 4767.10 and amplified by ORC Section 4767.10

**1301:13-7-05** is authorized by ORC Section 4767.10 and amplified by ORC Section 4767.10

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**1301:13-7-06** is authorized by ORC Section 4767.10 and amplified by ORC Section 4767.10

- 4. Does the regulation implement a federal requirement? No. 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? No**  
*If yes, please briefly explain the source and substance of the federal requirement.*
- 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 rules are promulgated pursuant to the requirements of Revised Code Chapter 4767. The work of the Ohio Cemetery Dispute Resolution Commission (OCDRC) has significantly reduced theft and fraud in the Ohio cemetery industry related to endowment care trusts and preneed cemetery merchandise and services trusts. The OCDRC provides a forum for the public and cemetery operators to resolve their differences 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. In addition, the grant program helps registered cemeteries run by non-profit operators with exceptional maintenance and training of cemetery staff.

- 7. 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.

Success for the grant program is 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.

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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? No.

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

### **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.*

On November 11, 2021, during the five-year rule review process the Division reached out to the Ohio Cemetery Association, the Ohio Catholic Conference, the Ohio Township Association, the Ohio Municipal League and the cemetery grant advisory committee.

On December 9, 2021, the Division also consulted with the Ohio Cemetery Dispute Resolution Commission regarding the rules. Seven of the nine current board members are cemetery operators in the State. The Commission considered and unanimously voted to move forward with filing the rules as proposed with an update of 1301:13-7-05 that the appointment of a chair and vice chair be amended from a shall to a may.

**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. The Ohio Township Association expressed specific approval of the proposed change to the grant award amounts.

10. **What scientific data was used to develop the rule or the measurable outcomes of the rule?** Not Applicable. **How does this data support the regulation being proposed?** Not applicable.

**What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate?** None. **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

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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 Ohio regulation?** The Division is the only agency in this state that registers and regulates 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 during the five-year rule review process and will continue to do so during the JCARR process. Once the rules are final filed updates are available on the Division's website and through constant contact email. 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; and**

The stakeholders affected by these proposed changes are identified below:

**1301:13-1-01** Any person interested when the Commission reviews a rule.

**1301:13-1-02** Any person interested in a Commission meeting.

**1301:13-1-03** This does not apply as this rule provides definitions for OAC chapter 1301:13.

**1301:13-3-01** Any person that wants to file a complaint or a cemetery a complaint is filed against.

**1301:13-3-03** This does not apply as the rule sets out the division's report to the commission on division activities related to the administration of O.R.C. Chapter 4767.

**1301:13-5-01** Any cemetery owner or operator intending to purchase cemetery assets from another with the intent to register those assets with the division.

**1301:13-5-02** Any cemetery owner or operator

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**1301:13-5-03** Any cemetery owner or operator that maintains trusts pursuant to ORC 1721.21 and/or 1721.211.

**1301:13-7-01** All registered cemetery owners or operators, except for-profit owners or operators.

**1301:13-7-02** All registered cemetery owners or operators, except for-profit owners or operators.

**1301:13-7-03** All registered cemetery owners or operators, except for-profit owners or operators.

**1301:13-7-04** All registered cemetery owners or operators, except for-profit owners or operators.

**1301:13-7-05** All registered cemetery owners or operators, except for-profit owners or operators.

**1301:13-7-06** All registered cemetery owners or operators, except for-profit owners or operators.

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

**1301:13-1-01** A stakeholder will have no adverse impact from this rule.

**1301:13-1-02** A stakeholder will have no adverse impact from this rule.

**1301:13-1-03** A stakeholder will have no adverse impact from this rule.

**1301:13-3-01** A stakeholder will have no adverse impact from this rule.

**1301:13-3-03** A stakeholder will have no adverse impact from this rule.

**1301:13-5-01** There is no new or additional adverse impact. The existing rule provides that a failure to file the required audited financial statements will result in the denial of a registration.



**1301:13-5-02** There is no new or additional adverse impact. The existing 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 the registration will be immediately revoked.

**1301:13-5-03** There is no new or additional adverse impact. The existing rule provides that 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.

**1301:13-7-01** A stakeholder will have no adverse impact from this rule.

**1301:13-7-02** A stakeholder will have no adverse impact from this rule.

**1301:13-7-03** A stakeholder will have no adverse impact from this rule.

**1301:13-7-04** There is no new or additional adverse impact. The existing 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.

**1301:13-7-05** A stakeholder will have no adverse impact from this rule.

**1301:13-7-06** A stakeholder will have no adverse impact from this rule.

**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.*

**1301:13-1-01** A stakeholder will have no adverse impact from this rule.

**1301:13-1-02** 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** A stakeholder will have no adverse impact from this rule.

**1301:13-3-01** 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

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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** A stakeholder will have no adverse impact from this rule.

**1301:13-5-01** T 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. The cost will vary depending on the CPA chosen but the cemetery owner or operator may choose which CPA to use for the outside audit.

**1301:13-5-02** 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. The fee to register one cemetery is \$25, to register two cemeteries is \$40 and to register three or more cemeteries is \$50.

**1301:13-5-03** The commission may refer results of the audit to the local county prosecutor and/or the attorney general. Cemeteries are required to keep records for the sale of cemetery lots; merchandise and services; and deposits into trust accounts. Under ORC 4767.09 a cemetery may maintain electronic or paper cemetery records. Depending on the size of the trusts, the Division conducts five year audits as either mail-in audits which will require the cemetery to copy and mail-in or provide electronically requested documentation regarding the trust account. The remaining cemeteries will be audited via an in-person audit.

**1301:13-7-01** A stakeholder will have no adverse impact from this rule.

**1301:13-7-02** A stakeholder will have no adverse impact from this rule.

**1301:13-7-03** Any registered cemetery that qualifies for a grant and wants to apply will need to complete the online application.

**1301:13-7-04** 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** A stakeholder will have no adverse impact from this rule.

**1301:13-7-06** A stakeholder will have no adverse impact from this rule.

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**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 and a grant program that helps non-profit cemeteries with exceptional cemetery maintenance and training for cemetery personnel.

**Regulatory Flexibility**

**15. 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.

**16. 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?**

Division staff regularly works with applicants to ensure they have all the necessary paperwork for their application. If an applicant omits any required documentation, Division staff notifies the applicant of the deficiency; discusses with the applicant options for compliance; and the Division allows the application to remain in a pending status for a reasonable time to avoid forfeiture of any application fee.

**17. 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 guidance documents.

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

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