Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Board of Embalmers and Funeral Directors

Rule Contact Name and Contact Information:

Jarrod Williams
jwilliams@funeral.ohio.gov

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

Proposed amendments in response to COVID-19 pandemic

Rule Number(s): 4717-1-01; 4717-5-02; 4717-9-01; 4717-12-01; 4717-15-02

Date of Submission for CSI Review: 06/26/2020

Public Comment Period End Date: July 10, 2020

Rule Type/Number of Rules:

New/___ rules **No Change/____ rules (FYR? ___)**

Amended/ 5 rules (FYR? Y) **Rescinded/____ rules (FYR?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.

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.

   Proposed amendments to rules 4717-1-01, 4717-5-02, 4717-9-01 and 4717-15-02 will confer the board, in the event the governor has declared a state of emergency, to extend the validity of credentials or exempt requirements to satisfy compliance standards for a specific period.

   Proposed amendments to rule 4717-12-01 will reduce minimum fines imposed for a second or subsequent offense for violation of sections 4717.01 to 4717.15 of Chapter 4717. of the Revised Code or a rule adopted under any of those sections.

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.**

   4717-1-01: Statutory Authority: 4717.04(A)(1), 4717.04(B); Rule Amplifies: 4717.06(D)

   4717-5-02: Statutory Authority: 4717.04; Rule Amplifies: 4717.05

   4717-9-01: Statutory Authority: 4717.04(A)(6); Rule Amplifies: 4717.09

   4717-12-01: Statutory Authority: 4717.04; Rule Amplifies: 4717.04

4717-15-02: Statutory Authority: 4717.04, 4717.051; Rule Amplifies: 4717.051

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.

   No.

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

   Not applicable.

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 public purpose for these proposed amendments is to protect consumers. The mission of the Board is to protect consumers while regulating the funeral service profession by establishing a standard of competency through the licensing of embalmers, funeral directors, crematory facilities, embalming facilities, and funeral homes.

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

   The Board may measure the success of these proposed amendments by retention of licensees. The Board recognizes that individuals licensed under Chapter 4717 may face adversity to comply with regulations in the event the governor has declared a state of emergency, and its efforts to adjust some regulations and compliance standards in response will aid in maintaining adequate licensed individuals in the funeral service profession.

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.
   No.

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.

   Stakeholders in the development and drafting of these proposed amendments include licensed funeral directors, embalmers, and crematory operators. Additionally, there are three

active Associations which represent nearly 100% of funeral service professionals in the state of Ohio: Ohio Funeral Directors Association (OFDA), Buckeye State Funeral Directors and Embalmers Association (BSFDEA), and the Ohio Embalmers Association (OEA).

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

    Through attendance and participation in the Board's committee meetings and board meetings, OFDA provided its recommendations during the drafting of these proposed amendments.

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?**

    A common-sense approach to develop proposed amendments to the rules was used instead of scientific data. The Board recognized potential difficulties licensees may face to comply with regulations during a declared state of emergency and sought ways to provide accommodations as deemed appropriate.

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?**

    In late March 2020, the Board considered filing its proposed amendments to at least one rule (4717-9-01) first through filing an emergency rule under the COVID-19 Emergency Declaration. The Board was unable to file.

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.***

    No.

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

    Duplication of existing Ohio regulations is unlikely, as the Board is the only authority to regulate licensed funeral service professionals in the state.

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 Board's implementation of its proposed amendments will be applicable to individuals and businesses licensed under Chapter 4717.

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

b. Identify the nature of all adverse impact (e.g., 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.

Overall, the Board's proposed amendments may or may not create an adverse impact to the business community. In fact, proposed amendments to the following rules reduces or defers a financial impact to individuals and businesses licensed under Chapter 4717. For example:

4717-5-02 – The inclusion of "…or in a virtual classroom or on-demand setting…" provides an opportunity for savings in the cost of the training. Participating in an online course may cost less than a classroom setting, face to face course.

And inclusion of "…the (Board) may extend the validity of a funeral directors and embalmer's masters training course up to one year from the end of the declared emergency…" provides an opportunity for deferral of the cost of the training course.

4717-9-01 – The inclusion of "… if the (Board) determines that it is a hardship to obtain in-person hours, it may exempt the in-person, face to face requirement (to obtain a minimum of six hours of continuing education)…" provides an opportunity for savings in the cost of the programs. Participating in online courses may cost less than programs conducted in person, face to face.

4717-12-01 – The reduction of the uniform minimum fine of seven thousand five hundred dollars for a second or subsequent offense provides an opportunity for the Board to minimize the disproportionate forfeiture amount to a befitting minimum sanction for violation of sections 4717.01 to 4717.15 of Chapter 4717. of the Revised Code or a rule adopted under any of those sections.

4717-15-02 – The inclusion of "…the (Board) may extend the validity of a crematory operation certification program through the period of the declared emergency, and up to one year from the end of the declared emergency…" provides an opportunity for deferral of the cost of the certification course.

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

The Board determined that some of its proposed amendments may have an adverse impact on individuals and businesses licensed under Chapter 4717 by imposing a sanction or creating a cause of action for failure to comply with its terms.

Regulatory Flexibility

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

The Board provides exemptions to active-duty military service members in compliance with Chapter 5903 (Veterans' Rights) of the Ohio Revised Code as appropriate.

In 2020, Ohio Governor Mike DeWine signed Senate Bill 7 into law providing opportunity for qualifying members of the military and their spouses with professional licensure or certification in another state to obtain immediate licensure in Ohio.

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?

The Board will comply with Section 119.14 of the Ohio Revised Code as appropriate.

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

The Board's website, www.funeral.ohio.gov is the main resource for information and guidance on its regulations. The board office staff is also available to assist by telephone, and email correspondence.