



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

Continuing education audit requirements

Rule Number(s): 4717-9-03

Date of Submission for CSI Review: 04-29-2021

Public Comment Period End Date: 05-14-2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 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Rescinded/___ rules (FYR?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

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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.

The proposed amendment to the administrative rule seeks to allow the Board to conduct its continuing education audit in a more effective manner and assure equality in the random selection of licensees to participate in the continuing education audit and the ability for a licensee to comply with terms of the audit.

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.**

Authorized By: 4717.04 (A)(6)

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Amplifies: 4717.09

- 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 and regulate the funeral profession and cremation services to ensure competency and ethical behavior.

- 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 confirming a licensee's compliance with continuing education requirements. A licensee's continued learning aids in maintaining, improving, or expanding their knowledge and skills to enhance their competency to practice in their 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

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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 and embalmers. 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, stakeholders agreed with the Board's 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 was used to develop these proposed amendments to the rule instead of scientific data. The Board identified that conducting a continuing education audit during a renewal period is nearly impracticable based on the concurrence of the renewal and compliance periods and results in unintentional consequences for non-compliance.

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?

The Board did not consider regulatory alternatives because the proposed amendments to the rule were considered to alter only the period in which the audit was to be conducted and posed a negligible effect on a licensee.

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.

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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 professional 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 only embalmers and funeral directors 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

The scope of impact does not affect the business community. The scope of impact is limited to embalmers and funeral directors licensed under Chapter 4717. The cost of compliance with the rule may include the licensee to pay a fine and pay a continuing education program provider to participate in a continuing education course.

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

The nature of adverse impact is consistent with other violations that constitute unprofessional conduct under Chapter 4717-8 of the Ohio Administrative Code (O.A.C.) According to O.A.C. Chapter 4717-12, the Board may impose a forfeiture (*fine*) upon a licensee if the licensee is found to be non-compliant after following all procedures under Chapter 119 of the Ohio Revised Code. In addition, the Board may require the licensee to obtain makeup continuing education hours, if a deficiency is found during the audit.

c. Quantify the expected adverse impact from the regulation.

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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.

The expected adverse impact may be minimal in that the Board may require a licensee to pay a minimum forfeiture amount or require the licensee to take corrective action courses to become compliant with the Board’s rule. In contrast, absence of effort from the licensee to come into compliance may result in suspension or revocation of a license.

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

The proposed amendments do not affect the regulated business community. The Board determined that its proposed amendments may have an adverse impact on embalmers and funeral directors 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 proposed amendments do not affect small businesses.

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 email correspondence due to working remotely.

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