

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

**Agency Name:** [Department of Public Safety \(DPS\) - Division of Emergency Medical Services \(EMS\)](#)

**Regulation/Package Title:** [Ambulances](#)

**Rule Number(s):** [O.A.C. Rules 4766-2-01 to 4766-2-18](#)

**Date:** [June 29, 2016](#)

**Rule Type:**

☒ New

☒ 5-Year Review

☒ Amended

☒ Rescinded

☐ No Change

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.**

[Chapter 4766-2 of the Ohio Administrative Code \(O.A.C.\) sets forth the conditions under which the State Board of Emergency Medical, Fire, and Transportation Services \(EMFTS\) may approve, renew, or deny an application to operate a medical transportation organization \(MTO\) and sets license and permit fees. In addition, this chapter sets forth standards for MTO organizations, including record-keeping, health and safety requirements, communications, vehicle maintenance, inspections, investigations, and disciplinary grounds.](#)

[O.A.C. rules 4766-2-01 to 4766-2-18 are proposed for filing pursuant to a completed Revised Code \(R.C.\) 119.032 five-year rule review. Proposed revisions include:](#)

- Replacing “Ohio medical transportation board” with “state board of emergency medical, fire, and transportation services” (multiple locations);
- Additions and revisions to the definitions (O.A.C. 4766-2-01);
- Added language requiring submission of proof that a service’s medical director is in compliance with the requirements of O.A.C. 4765-5-03 (O.A.C. 4766-2-02);
- Added language defining an incomplete application and permitting such applications to be returned to the applicant (O.A.C. 4766-2-02);
- Added language initiating a \$5.00 fee to re-print vehicle decals (O.A.C. 4766-2-03);
- Added language requiring ambulance facilities be in compliance with state and local building codes and state and local fire codes (O.A.C. 4766-2-04);
- Updated communications requirements (OAC 4766-2-06);
- Removal of the roadworthiness requirements (O.A.C. 4766-2-08) and ambulance equipment list and non-transport vehicle equipment list (O.A.C. 4766-2-10) from the rules and referring to Board-approved lists (inspection forms) available at the Medical Transportation page of the EMS Web site;
- Added requirements for:
  - \*periodic mechanical safety inspections conducted by certified mechanics (O.A.C. 4766-2-09) and;
  - \*documentation of compliance to be maintained by licensed services (4766-2-05);
- Revised staffing compliance language to include current provider titles (O.A.C. 4766-2-13);
- Including the previously rescinded rule, *Regulations for out of state providers* (O.A.C. 4766-2-14);
- Revisions regarding “investigations of alleged offenses” (O.A.C.) 4766-2-16) and “suspension, revocation, or denial of license or permit” (O.A.C. 476-2-17); and
- Addition of an *Incorporated by Reference* rule (O.A.C. 4766-2-18).

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

R.C. 4766.03

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

The regulations do not implement federal requirements nor are they being adopted to participate in a federal program.

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

N/A

**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)?**

These regulations assure ambulances, with the required medical equipment, qualified medical staff, and effective delivery of EMS care to patients who must use a medical transportation organization (MTO) and its vehicles.

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

MTOs, their satellite locations, and all permitted vehicles are inspected annually and as needed to determine compliance with applicable statutes and rules. These inspections are conducted by qualified Medical Transportation Field Inspectors contracted by the Department of Public Safety (DPS). The success of these regulations will be measured by fewer violations and an increase in compliance with the requirements set forth in O.A.C. Chapter 4766-2. In addition, the Division of Emergency Medical Services (EMS) will track complaints made by MTOs and complaints regarding MTOs that lead to investigations.

**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.**

Stakeholders include members of the Medical Transportation Committee and members of EMFTS Board; members of the Division of EMS staff and DPS legal staff; the Medical Transportation Field Inspectors contracted by DPS; the 126 licensed MTOs and their owners and employees; and two industry associations.

EMS staff initially worked with members of the Medical Transportation Committee, who reviewed and revised O.A.C. Chapter 4766-2 during their regularly scheduled meetings on:

- February 17, 2015
- June 16, 2015
- August 18, 2015
- December 15, 2015
- February 16, 2016
- April 19, 2016

R.C. 4765.04 requires the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) to create the Medical Transportation Committee and appoint committee members to advise and assist the EMFTS board in matters related to the licensing of emergency and nonemergency medical service organizations. The Medical Transportation Committee members have experience transporting patients and are appointed as representatives of the emergency medical transportation community. The committee has members representing EMS providers, owners and administrators for medical transportation agencies, and full-time and volunteer fire departments.

The Medical Transportation Committee's strategic goals include creating effective and enforceable rules written to meet standards that do not "put undue financial burden on all providers" and developed by groups including "providers within the public and private sector."

The draft rules provided by the Medical Transportation Committee after its February 2016 meeting were reviewed and revised by EMS and DPS legal staff during five meetings in March and April of 2016. A second draft was returned to the Medical Transportation Committee for discussion and review at its April 2016 meeting and revised by EMS and DPS legal staff members during three meetings held in late April 2016. This third draft was emailed to members of the Medical Transportation Committee on May 3, 2016 requesting comments by May 11, 2016.

On May 13, 2016, the proposed revisions to O.A.C. Chapter 4766-2 were emailed with a request for stakeholder comments to be submitted by May 22, 2016 to the 123 addresses available on the "Licensed Ambulance Providers Email List." Deleting the undeliverable emails from that count, a total of 110 requests for stakeholder comment were delivered. Also on May 13, 2016, the proposed revisions to O.A.C. 4766-2 and a request for stakeholder comments to be submitted by May 22, 2016 were emailed to the Ohio Ambulance and Medical Transportation Association (OAMTA) and the Ohio Association of Critical Care Transport (OACCT), along with a request to forward the information to their members.

On May 16, 2016, the proposed revisions to O.A.C. Chapter 4766-2 were emailed with a request for stakeholder comments to be submitted by May 22, 2016 to the EMS-General ListServ—a total of 2,137 recipients.

EMS and DPS legal staff met on June 2, 2016 and made additional revisions to O.A.C. Chapter 4766-2 based on stakeholder comments. The June 3, 2016 draft of proposed revisions to O.A.C. Chapter 4766-2 was reviewed with the Medical Transportation Field Inspectors during their regularly scheduled meeting on June 8, 2016. The June 3, 2016 draft of the proposed revisions to O.A.C. Chapter 4766-2 was discussed during the OAMTA Annual Conference in Columbus on June 24, 2016. Attendees were informed that the rules would be filed with CSI in late-June or early-July 2016, which will trigger a two-week public comment period. Notice of the CSI filing will be emailed to stakeholders.

Members of the EMFTS Board received a copy of the proposed changes to O.A.C. Chapter 4766-2 as part of the Board's May 18, 2016 meeting packet and were advised that a motion to approve filing the rules and required documents with the CSI office would be requested at the June 15, 2016 meeting. Before the June 15, 2016 EMFTS meeting, Board members received a copy of the revised rules proposed for filing and the draft Business Impact Analysis (BIA) form to

be filed with CSI and, at the June 15, 2016 EMFTS meeting, passed a motion to approve the CSI filing.

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

On May 11, 2016, a member of the Medical Transportation Committee who serves as the vice-president of operations for a private ambulance company emailed a suggestion regarding paragraph (H) of rule O.A.C. 4766-2-08, which addresses the signage requirements for ambulances and non-transport vehicles. In order to address all of the owner/operator circumstances that may be encountered, his suggestion has been incorporated into the proposed revisions. Paragraph (H) of rule O.A.C. 4766-2-08 is proposed to be revised to:

If a MTO is under contract which requires other signage or if the MTO is operating under another name, each vehicle shall have permanently affixed lettering with a minimum height of one and one half inches on the rear and both sides of the vehicle that states:

- (1) Owned and operated by [MTO's name]; or
- (2) Operated by [MTO's name]; or
- (3) Owned by [MTO's name].

On June 6, 2016 at 11:32 a.m., the Medical Transportation Section Chief received a suggestion from a member of the Medical Transportation Committee who serves as Director of Operations for a private licensed ambulance company. She referenced the requirement found in paragraph (A)(2)(b) of proposed rule O.A.C. 4766-2-09 for a periodic mechanical safety inspection to be conducted by a mechanic. She noted the multiple modules available for the "National Institute for Automotive Service Excellence" (ASE) certification and asked if the rule should specify the ASE module(s) an inspecting mechanic should hold. Three options are proposed for the mechanic conducting vehicle inspections in the proposed rule O.A.C. 4766-2-09. The mechanic may have (1) factory training and certification from the original (motor vehicle) equipment manufacturer; (2) equivalent certification for "Emergency Vehicle Technicians" (EVT); or (3) certification from the "National Institute for Automotive Service Excellence." Discussions among the EMS staff and Medical Transportation Committee members included consideration of listing specific ASE module certifications. It was decided that the choice of the mechanic to conduct the inspection would be best left to the MTOs and the companies they will engage to conduct the periodic mechanical safety inspections. The "Periodic Mechanical Safety Report" form, which is proposed to be implemented when the revised rule becomes effective, will be signed by the inspecting mechanic and will include the mechanic's title and certifications/qualifications.

Two comments were received as a result of the emailed requests for stakeholder comments.

In an email received on May 17, 2016 at 10:51 a.m., the CEO of an ambulance company expressed concern about revisions to O.A.C. rule 4766-2-02 regarding the qualifications for an

MTO's medical director. The Medical Transportation Section Chief contacted him by phone on May 24, 2016 and explained that O.A.C. 4766-2-02 sets forth the information to be maintained and submitted by an MTO to apply for an initial or renewal license. The proposed revision to the rule rewords the existing requirement that the name, contact information, and medical license number of an MTO's medical director be submitted and adds a requirement that the medical director's proof of compliance with existing O.A.C. rule 4765-3-05 be submitted. The proposed revisions to O.A.C. rule 4766-2-02 do not change the qualifications for an MTO's medical director.

The comment from the CEO questioned the proposed revisions to rule O.A.C. 4766-2-09 requiring periodic inspection by a mechanic certified by the "National Institute for Automotive Service Excellence" (ASE) of all in-service ambulances and non-transport vehicles. His specific concern related to the fact that he hired employees with ASE-certification who did not maintain the certification but had expertise "gained in the focused areas" and "specific vehicle types" used by the company. This concern was addressed during the May 24, 2016 telephone conversation with the Medical Transportation Section Chief. The proposed revision to rule O.A.C. 4766-2-09 does require periodic vehicle inspections, which can be conducted by a mechanic (1) with factory training and certification from the original (motor vehicle) equipment manufacturer; (2) with equivalent certification for "Emergency Vehicle Technicians" (EVT); or (3) from the "National Institute for Automotive Service Excellence."

The Medical Transportation Section Chief called the CEO on June 8, 2016 for a follow-up conversation. The CEO sent an email at 4:15 p.m. on June 8, 2016 thanking the Medical Transportation Section Chief for his clarification about the Medical Director rules and stating that, after further review, he found the ASE requirement to be a good benchmark "so long as the form is not overly burdensome." He cautioned against forcing inspectors to "assume ALL liability," which was considered in the development of the inspector's attestation on the form to be used for periodic mechanical safety inspections. The inspectors can choose one of two options after completing the inspection: (1) This vehicle passed inspection and is safe and roadworthy at the time of inspection; or (2) The vehicle has failed inspection. I have made the service aware of all failed items identified during the inspection that require correction.

At 4:40 p.m. on May 17, 2017, the Division of EMS received a comment from the president of an ambulance company regarding rule O.A.C. 4766-2-09. He expressed his concern about the cost of the periodic safety inspections, which he estimated to be \$75-to-\$100 per hour. In response to the comment, additional revisions were made to rule O.A.C. 4766-2-09 to reduce the number of periodic mechanical safety inspections required for each vehicle. For vehicles with an odometer reading of 150,000 miles or more, the requirement to conduct an inspection every twenty thousand miles was changed to every twenty-five thousand miles. The requirement that, prior to a vehicle's initial permit being issued, a vehicle with an odometer reading of five thousand miles or more required a mechanical safety inspection was changed to an odometer reading of twelve thousand miles or more.

- 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?**

There is no scientific data available for the proposed regulations.

- 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?**

The stakeholders determined that alternative regulations would not meet the purpose of the rules to assure safe and roadworthy medical ambulances and effective delivery of EMS care to patients who must use an MTO and its vehicles.

- 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 Board has proposed performance-based regulations, as the proposed rules have limited flexibility under which the Board may deny, suspend, or revoke a license or permit to operate an MTO.

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

The Division of Emergency Medical Services and legal staffs reviewed R.C. Chapter 4766., O.A.C. Chapter 4766, R.C. Chapter 4765., and O.A.C. Chapter 4765 to assure there was no duplication or conflict among Ohio EMS regulations.

- 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 of EMS posts information about the rule review process, including those rules scheduled for review, drafts open for public comment, proposed rules and public hearing notices, and recently adopted rules, at its *Small Business Regulatory Impact* Web site ( [http://www.publicsafety.ohio.gov/ems\\_rules.stm](http://www.publicsafety.ohio.gov/ems_rules.stm) ). The laws and rules associated with Medical Transportation are provided as links at the *Medical Transportation* Web site ( <http://www.ems.ohio.gov/medical-transportation.aspx> ), and the amended rules, when they become effective, will be available at that link. The Division of EMS will use the EMS ListServ and the email addresses on the "Licensed Ambulance Providers Email List" to notify stakeholders when the revised rules become effective. Division of EMS staff and the Medical Transportation Field Inspectors will receive email notification of the rule changes and attend briefings regarding the implementation policy and procedures. During their meetings, usually

held once every two months, the EMFTS Board and Medical Transportation Committee receive regular updates about EMS rules.

### **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.**

- a. The scope of the impacted business community includes 116 licensed MTOs that operate a combined total of 1590 ambulances and non-transport vehicles.
- b. The existing license and permit fees associated with O.A.C. Chapter 4765-2 rules include the following fees for MTOs:

Initial or Renewal License Fee	\$100.00
Ambulance Permit Fee per vehicle	\$100.00
Mobile Intensive Care Unit (MOICU) Fee per vehicle	\$100.00
Non-transport Vehicle Fee per vehicle	\$100.00

The license and permit fees are set pursuant to section 4766.05 of the R.C. Vehicle inspection fees of \$100 per inspection were set by the Ohio Medical Transportation Board prior to its merger with the EMFTS Board in June 2013, pursuant to section 4766.03 of the R.C., and based on actual costs. The proposed rule revisions do not change the license and permit fees or the vehicle inspection fee.

One additional fee is proposed as part of this rule review—a \$5.00 fee to cover the actual costs associated with re-printing and mailing each vehicle decal. This fee would only be charged to the services that provide incorrect information to the Division of EMS or lose or destroy the decals they receive from the Division of EMS, requiring that the decal be re-printed. The \$5.00 fee represents actual costs to the agency to re-print and mail a decal. Expenses include \$1.88 per decal, \$0.47 for postage, and no more than \$2.65 for the salary costs of the Medical Transportation and information technology (IT) staff members whose time is required to re-print and mail a decal.

Rule O.A.C. 4766-2-17 *Disciplinary Grounds* is a new proposed rule that permits the EMFTS Board, pursuant to Chapter 119. of the R.C., to conduct an adjudicatory hearing



and, by a majority vote of all Board members, to suspend, revoke, or refuse to renew any MTO license or permit or to issue a fine not to exceed more than fifteen hundred dollars. The rule is proposed to replace O.A.C. 4766-2-17 *Grounds for suspension, revocation, or denial of license or permit* as part of the continuing transition required due to the merger of the Ohio Medical Transportation Board with the State Board of EMFTS and its compliance and enforcement section. The sanctions and fine described in the new rule are set forth in section 4766.08 of the revised code and are not a change for MTOs.

The addition of required periodic mechanical safety inspections included in the proposed rule O.A.C. 4766-2-09 will result in employer time and/or expense. The costs will vary depending the structure and size of each business. Some MTOs employ mechanics who will be qualified to complete the periodic mechanical safety inspections, or MTOs may choose to have vehicles inspected by mechanics at auto service facilities, chain repair stores, dealerships, or independent garages.

An August 15, 2015 article posted by Edmunds.com ( <http://www.edmunds.com/car-buying/inspect-that-used-car-before-buying.html> ) states that the cost of a pre-purchase inspection for a personal vehicle “is about \$100, roughly the costs of an hour’s labor for a mechanic.” A February 2012 J.D. Powers’ article ( <http://www.jdpower.com/cars/articles/tips-advice/used-car-pre-purchase-inspection> ) reports that a basic pre-purchase inspection, including a test drive, will cost \$100-to-\$200. The president of an ambulance company--a stakeholder who submitted a comment about the O.A.C. Chapter 4766-2 rules--estimated an average cost of \$75-to-\$100 per hour for a vehicle inspection at his local garage. It is likely that MTOs can negotiate the fees for periodic mechanical safety inspections with the auto service facilities, chain repair stores, dealerships, or independent garages that service their vehicles.

Members of the Medical Transportation Committee, who are owners and administrators for medical transportation agencies as well as representatives of the industry, report that they routinely conduct periodic mechanical safety inspections and believe it to be essential for maintaining and operating a medical transportation service.

- c. The Division of EMS estimates that these rules will not result in any undue cost of compliance or adverse impact. Additional costs resulting from these rules include \$5.00 per each decal that is reprinted and mailed. This fee is minimal and can be avoided if MTOs provide the correct information to the Division of EMS and do not lose or destroy the decals they receive.

The Medical Transportation Committee proposed rules requiring periodic mechanical safety inspections for MTO vehicles with consideration of its goal to avoid putting “undue financial burden on all providers.” MTOs that are already performing periodic inspections to assure the mechanical safety and roadworthiness of their vehicles will not see a significant change in the cost. MTOs that begin performing mechanical safety

inspections will have an added expense, but one that is essential to medical transportation organizations and the public who rely on their services.

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

Pursuant to R.C. 4766, the Board is statutorily required to adopt rules that establish the standards and procedure under which the Board may approve, renew, or deny an application to operate an MTO and standards for MTO organizations including health and safety, vehicle maintenance, and inspection requirements. Assuring the safety and effective delivery of EMS care to patients who must use an MTO and its vehicles justifies the minimal adverse impact to the business community.

**Regulatory Flexibility**

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

The regulation does not provide any exemptions or alternative means for compliance.

**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?**

If disciplinary action is considered, the MTO will be afforded seventy-two hours to correct violation(s) cited or provide the Board sufficient documentation that the MTO is correcting the violation(s). Should the Board need to proceed with a sanction, each case is submitted first to the Board's Assistant Attorney General to ensure compliance with R.C. section 119.04. The Board reviews each situation on a case-by-case and may consider all information relevant to the requirements of O.A.C. Chapter 4766, and R.C. Chapter 4766 and O.A.C. Chapter 4765, and R.C. Chapter 4765. Depending on the nature and severity of the violation the board may issue a lesser penalty.

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

The Division of EMS's Web site contains a "Small Business Regulatory Impact" section ( [http://www.publicsafety.ohio.gov/ems\\_rules.stm](http://www.publicsafety.ohio.gov/ems_rules.stm) ) with links to R.C. 4766, and R.C. 4765., O.A.C. 4766 and O.A.C. 4765, CSIO, and JCARR. Rules scheduled for review, open for public comment, proposed, and recently adopted are posted at the Web site, along with public comment and public hearing information and email links for the ODPS Rules Administrator and Division of EMS rules personnel.

Each unit of the EMS Web page, including the *Medical Transportation* Web pages ( <http://www.ems.ohio.gov/medical-transportation.aspx> ), includes links to the laws and rules

associated with that topic, along with an overview section, a *Frequently Asked Questions* section and email and phone numbers to contact EMS staff. The *Agency Directory* at the EMS Web site includes the email addresses; telephone numbers, including a toll free number (1-800-233-0875); and the names of EMS staff, including the Medical Transportation staff. The Medical Transportation staff members are available by phone and by email and can be reached via the *Ask EMS* ( [ASKEMS@dps.ohio.gov](mailto:ASKEMS@dps.ohio.gov) ) email address available at the EMS Web site.

The Division of EMS, through DPS, contracts with Medical Transportation Field Inspectors who conduct annual compliance inspections of each MTO, their satellite locations, and all permitted vehicles. Approximately twenty inspectors work in specified regions covering all of Ohio and its bordering states. Inspectors are available by phone and by email to all MTOs licensed in Ohio and the five states contiguous to Ohio.

Medical Transportation staff members attend and present information at conferences including those conducted by the Ohio Ambulance and Medical Transportation Association (OAMTA) and the Ohio Association of Critical Care Transport (OACCT).

All forms required of MTOs by the Division of EMS are available via the Division of EMS Web site located at <http://www.ems.ohio.gov/forms.aspx>.