

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: [Department of Public Safety \(DPS\) - Division of Emergency Medical Services \(EMS\), State Board of Emergency Medical, Fire, and Transportation Services](#)

Regulation/Package Title: [Complaints](#)

Rule Number(s): [O.A.C. Rules 4765-10-01, 4765-10-02, 4765-10-03, 4765-10-05, and 4765-10-06](#)

Date: [June 27, 2017](#)

Rule Type:

☐ New

☒ Amended

☒ No Change

☒ 5-Year Review

☐ Rescinded

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 4765-10 of the Ohio Administrative Code \(OAC\) is authorized by section 4765.11 of the Revised Code \(RC\) and sets forth the procedures and parameters for handling complaints, conducting investigations, and issuing discipline related to EMS providers, EMS training institutions, and EMS instructors. Pursuant to a scheduled RC 106.03 five-year rule review, EMS](#)

proposes to file four of the five rules in Chapter 4765-10 as "no change." Rule 4765-10-05 of the OAC is proposed as an amended rule to correct a spelling error.

Rule 4765-10-01 sets forth definitions that pertain to discipline or sanctions issued to an EMS provider, an EMS instructor, or an EMS training institution by the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS).

Rule 4765-10-02 sets forth the procedures for handling complaints lodged with the Division of EMS and conducting investigations involving EMS providers, EMS instructors, or EMS training institutions. The rule states that all complaints filed with the Board shall be investigated, and all investigations shall be conducted to maintain confidentiality. This rule also provides that any member of the State Board of Emergency Medical, Fire, and Transportation Services involved in the investigation at the state level or locally shall not participate in the adjudication of the case.

Rule 4765-10-03 sets forth the sanctions the EMFTS Board may levy against an EMS provider, EMS instructor, or EMS training institution for violating Chapter 4765. of the Revised Code or chapters 4765-1 to 4765-19 of the Administrative Codes. Sanctions include issuance of a written reprimand, limiting of a certificate, denial of issuance of a certificate, denial of renewal of a certificate, suspension of a certificate, revocation of a certificate, and the imposition of a fine not to exceed one thousand dollars.

Rule 4765-10-05 sets forth the parameters for notification of disciplinary actions taken by the EMFTS Board. Notification must be provided to a person against whom a disciplinary action is levied and to any EMS organization(s) with which the person is affiliated, if known.

Rule 4765-10-06 authorizes a medical director to limit the scope of practice of the EMS providers providing emergency medical services or withdrawing blood for evidence collection under the auspices of a medical director's license. Furthermore, the rule states that a medical director may not authorize an EMS provider to provide services beyond the scope of practice as set forth by the EMFTS Board.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**
Sections 4765.11, 4765.38, and 4765.39 of the Revised Code.
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)?

Pursuant to RC sections 4765.11, 4765.18, and 4765.33, the EMFTS Board is statutorily required to promulgate rules in regard to issuing disciplinary sanctions to EMS providers, instructors, and training institutions. Specifically, Chapter 4765-10 of the OAC sets forth the standards, procedures, and controls that may be utilized by the EMFTS Board. This chapter ensures EMS providers, instructors, and training institutions are held to high standards of professionalism by the EMFTS Board. This chapter mandates that each person regulated by this chapter meets or exceeds the minimal qualifications to be certified and affords accountability to those receiving the services provided.

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

The Division of EMS will investigate each complaint lodged and afford each person due process rights. The number of investigations resulting in proven misconduct and subsequent discipline is a means to measure success.

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.

Between November 1, 2016 and March 17, 2017, members of the EMS Compliance and Enforcement section and administrative staff received copies of the five rules in OAC Chapter 4765-10 and were asked to review the rules and suggest revisions. Between March 28, 2017 and April 25, 2017, the EMS administrative staff discussed OAC Chapter 4765-10 rules with the ODPS attorney assigned to EMS and with the ODPS rules administrator. Before their April 19, 2017 meeting, EMFTS Board members received copies of the rules in OAC 4765-10 and a proposed filing schedule.

In mid-January 2017, information about all EMS rules due for review in 2017, including OAC Chapter 4765-10, was posted to the Division of EMS "Rules Scheduled for Review" Web site (http://www.publicsafety.ohio.gov/ems_rules_review.stm).

A decision was made to propose filing four of the rules as "no change" and amend rule OAC 4765-10-05 to correct the spelling of the word "practice" and to solicit stakeholder comment before filing the rules with the Common Sense Initiative (CSI) office. On April 27, 2017, a request for stakeholder comments was delivered to 3,323 addresses via the EMS gov.delivery.com system. Subscribers to the "EMS Agency" and "General Bulletins" lists were notified about the proposed filing and asked to comment using the EMS Rules email address by 5:00 p.m. on May 15, 2017. No comments were received.

On May 10, 2017, the assistant attorney general assigned to work with the Division of EMS and the EMFTS Board received a copy of the OAC Chapter 4765-10 rules, including the four "no

change” rules and rule 4765-10-05 amended to correct the spelling error. The AAG responded and did not suggest any changes to the rules as proposed.

The proposed rules were provided to members of the EMFTS Board prior to their May and June meetings, and on June 21, 2017, members of the EMFTS Board voted to approve filing the *Complaints* rules package with the CSI office.

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

On April 27, 2017, a request for stakeholder comments was delivered to 3,323 subscribers to the “EMS Agency” and EMS “General Bulletins” lists using the gov.delivery.com system. No comments were received from outside of the ODPS agency. Discussion among EMS staff and ODPS legal staff led to the decision to file the rules as “no change,” other than the correction of a spelling error in rule 4765-10-05 of the OAC.

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?

No alternatives were considered. The EMFTS Board is obligated by Chapter 119. of the RC to afford individuals their due process rights when violations of the referenced Revised and Administrative Codes occur.

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.

No. OAC Chapter 4765-10 sets forth the procedures and parameters for handling complaints, conducting investigations, and issuing discipline related to EMS providers, EMS instructors, and EMS training institutions and does not offer the flexibility for performance based regulations.

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

The Division of EMS and ODPS legal staff members reviewed OAC Chapter 4765 and RC 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). The laws and rules associated with the Division of EMS are provided at the *Laws and Rules Overview* Web site (<http://www.ems.ohio.gov/laws.aspx>). The Division of EMS will use govdelivery.com to notify stakeholders when the rule review process is complete and the rules become effective. Division of EMS staff will receive email notification when the new rules become effective and attend briefings regarding the implementation policy and procedures. During their meetings, usually held once every two months, EMFTS Board members 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. In 2016, the scope of the impacted business community included 84 accredited institutions offering EMS training for initial certification and more that 560 approved organizations that offer EMS continuing education courses and approximately 41,424 active EMS-certified providers and 4,703 active EMS instructors. (*Ohio Department of Public Safety 2016 Annual Report*, (<http://publicsafety.ohio.gov/links/2016AnnualReport.pdf>). These numbers remain similar from year-to-year.
- b. These rules will not result in any cost of compliance or adverse impact for the EMS providers, instructors, accredited institutions, and approved CE organizations in compliance. Disciplinary action, if invoked against providers and entities found to be out of compliance, may include fines up to \$1000 and/or limiting authority to practice, up to revocation.
- c. A limited number of EMS providers, accredited institutions, and approved institutions are disciplined for violations; therefore, the impact is minimal.

		2015	2016
EMS Certificate-holders	Disciplinary Actions	121	115
	Fines	27 @ \$250	40 @ \$250; 3 @ \$1000
Accredited Institutions/ Approved Organizations	Disciplinary Actions	1	0
	Fines	0	0

EMS Web site, *Disciplinary Actions* (<http://www.ems.ohio.gov/enforcement-discipline.aspx>).

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

Pursuant to RC sections 4765.11, 4765.18 and 4765.33, the EMFTS Board is statutorily required to promulgate rules in regard to issuing disciplinary sanctions to EMS providers, EMS instructors, and training institutions. This requirement, in addition to EMS' intent to ensure high standards in a provider's professional conduct and delivery of emergency medical services, justifies the minimal adverse impact to the business community. The adverse impacts are levied against certificate-holders and institutions found to be in violation of OAC Chapter 4765 and/or section 4765. of the RC.

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. Discipline is mandated if a violation is substantiated and is imposed at the discretion of the EMFTS Board after the facts of each case are presented by the EMS Compliance and Enforcement section, members of the ODPS legal office, an Ohio assistant attorney general assigned by the Ohio Attorney General's office, and members of the case review team.

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?

Each case is submitted first to the EMFTS Board's assistant attorney general to ensure compliance with RC section 119.14. The EMFTS Board reviews each situation on a case-by-case basis and may consider all information relevant to the requirements of OAC. Chapter 4765. and RC section 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 Web site contains a "Small Business Regulatory Impact" section (http://www.publicsafety.ohio.gov/ems_rules.stm) with links to RC 4765. and OAC 4765, the Common Sense Initiative (CSI) office, and the Joint Committee on Agency Rule Review (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 includes links to the laws and rules associated with that topic, along with an overview section, and a *Frequently Asked Questions* section. The *Agency Directory* at the EMS Web site (<http://www.ems.ohio.gov/about-directory.aspx>) includes the email addresses, telephone numbers, including a toll free number (1-800-233-0875), and the names of EMS staff. EMS staff members are available by phone and by email and can be reached via the *Ask EMS* (ASKEMS@dps.ohio.gov) email address available at the EMS Web site. Forms required by the Division of EMS are available via the Division of EMS Web site located at <http://www.ems.ohio.gov/forms.aspx>.

The State Board of EMFTS holds public meetings, generally scheduled every other month, and its subcommittees hold public meetings. The meeting schedules are available at several locations at the EMS Web site, including the “Meeting Schedule” link
(http://www.publicsafety.ohio.gov/links/2017_ems_board_committee_meetings.pdf).

The Division of EMS Web site includes the *Investigations and Compliance* section
(<http://www.ems.ohio.gov/enforcement.aspx>), which provides background information and summarizes the details of its investigative policies and procedures. Additionally, summaries of disciplinary actions are posted to the Web site as a reference for providers
(<http://www.ems.ohio.gov/enforcement-discipline.aspx>).