



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

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

Rule Contact Name and Contact Information:

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

[Medical Transportation - HB195 and other corrections – 2019](#)

Rule Number(s): [OAC Rules 4766-2-08, 4766-3-13, and 4766-4-09](#)

Date of Submission for CSI Review: [October 30, 2019](#) (amended 11/19/2019, 1.a.)

Public Comment Period End Date: [November 22, 2019](#)

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/___ 3 rules (FYR? No)

Rescinded/___ rules (FYR?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.

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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 amended rules are from OAC chapters that set forth 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) or ambulette service and set license and permit fees and operating standards. OAC 4766-2, 4766-3, and 4766-4 set forth the rules for ambulances, ambulettes, and mobile intensive care units (MoICUs) respectively.

A summary of each of the medical transportation rules being amended is provided below:

| 4766-2-08 | Amend | Vehicle inspections and equipment requirements. |
|--|-------|---|
| Rule 4766-2-08 sets forth the requirement for MTOs to annually demonstrate proof of compliance with the specifications set forth in Chapter 4766.07, which require the inspection of the medical equipment, communication system, and interior of medical transportation vehicles (ambulances and non-transport vehicles) to determine the operational condition and safety of the equipment and interior of the vehicle. An amendment is made to eliminate a division reference related to section 4766.01 of the RC, because the amendments made to RC 4766.01 re-ordered the division designations. | | |

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|--|--------------|--|
| 4766-3-13 | Amend | Driver training and qualifications. |
| Rule 4766-3-13 sets forth driver training and qualifications for ambulette services and the documentation that shall be maintained and provided. The rule includes the elements of the required passenger assistance training, and is amended to specify that the training is to be completed once every three years, which was omitted when the rule was filed with JCARR in May 2017. | | |
| 4766-4-09 | Amend | Maintenance documentation. |
| Rule 4764-4-09 sets forth the documentation that licensed MTOs are required to maintain related to the inspection conducted at least annually on each of their Mobile Intensive Care Units (MoICUs) and non-transport vehicles, which includes: date and description of service/repairs performed; "out of service" signs on permitted vehicles that have been removed from service; and documentation about the biomedical equipment carried by vehicles. Revisions of rule 4766-4-09 filed with JCARR in May of 2017 were intended to set forth a schedule for periodic mechanical safety inspections at every 25,000 miles for each permitted vehicle with an odometer reading of 150,000 miles or more. The 2017 filing included 20,000 miles instead of 25,000 miles, and that is corrected with this proposed amendment. | | |

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.

| Rule | 4766-2-08 | 4766-3-13 | 4766-4-09 |
|-----------|-------------------------|-------------------------|-------------------------|
| Authorize | ORC 4766.03 | ORC 4766.03 | ORC 4766.03 |
| Amplify | ORC 4766.04, 4766.07 | ORC 4766.04, 4766.15 | ORC 4766.04, 4766.07 |

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.

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

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)?

Pursuant to section 4766.03 of the Revised Code, the State Board of Emergency Medical, Fire, and Transportation Services (EMFTS) is directed to adopt rules that establish the standards for the operation and performance of medical transportation services using ambulances, ambulettes, and MoICUs. These regulations assure that ambulance services operate with the required medical equipment and vehicles, that ambulette services employ

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drivers with appropriate training, and that MoICU services maintain vehicles and inspection documentation.

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

MTOs, ambulette services, 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) or mechanics with appropriate training and certification. The success of these regulations will be measured by fewer violations and an increase in compliance with the requirements set forth in OAC chapters 4766-2, 4766-3, and 4766-4. In addition, the Division of Emergency Medical Services (EMS) will track complaints made about MTOs and ambulette services and complaints regarding MTOs and ambulette services that lead to investigations.

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.

ODPS legal staff worked with EMS staff to draft rule revisions required following the passage of HB 195 and the revisions made to ORC 4766.01, which became effective in August 2018. EMS staff drafted revisions to correct the mileage requirements in rule 4766-4-09 and amend rule 4766-3-13 to include the three-year period for renewal of the passenger assistance training course, which is the renewal period approved by training programs including DRIVE and PASS.

Members of the Critical Care Subcommittee and Medical Transportation Committee reviewed the proposed amendments and approved presenting them to the State Board of Emergency Medical, Fire, and Transportation Services. Members of the EMFTS Board approved filing the amendments with CSI during the October 16, 2019 meeting.

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

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The three-year period for renewal of the passenger assistance training course is the standard for DRIVE and PASS programs. Stakeholders approved a schedule for periodic mechanical safety inspections at every 25,000 miles for each permitted MoICU vehicle with an odometer reading of 150,000 miles or more when the rule was filed in 2017. Rule 4766-4-09 was filed with the number “20,000 miles” at that time, which is being corrected with this filing.

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?

There is no scientific data available for the proposed regulations.

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

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.*

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 or ambulette service.

14. 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 RC Chapter 4766., OAC Chapter 4766, RC. Chapter 4765., and OAC Chapter 4765 to assure there was no duplication or conflict among Ohio EMS regulations.

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 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 *Laws & Rules Overview* Web site (<https://www.ems.ohio.gov/laws.aspx>). The laws and rules associated with Medical Transportation are provided as links at the *Medical Transportation* Web site

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(<http://www.ems.ohio.gov/medical-transportation.aspx>). The Division of EMS will use the EMS gov.delivery.com general bulletins subscriber list and the email addresses of the licensed ambulance and MoICU providers and ambulette services to notify stakeholders when the revised rules become effective. Division of EMS staff and 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

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 the impacted business community fluctuates but includes approximately:

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| 4766-2 Rules | 118 licensed MTOs that operate a combined total of 1,378 ambulances and non-transport vehicles |
| 4766-3 Rules | 339 licensed ambulette services that operate a combined total of 1,687 ambulettes |
| 4766-4 Rules | 33 licensed MTOs that operate a combined total of 145 MoICUs |

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.

OAC 4766-2-08 and 4766-4-09 require MTOs to comply with inspection requirements for vehicles and equipment in order to obtain and maintain an ambulance or MoICU permit. The vehicle inspection fee for ambulances, non-transport vehicles, and MoICUs is \$100, which is not changed by the proposed revisions to the rules.

The EMFTS Board may, pursuant to an adjudicatory hearing under Chapter 119. Of the RC and section 4766.08 of the RC, and a vote of the majority of all members, suspend, revoke, or refuse to renew any license or permit or issue a fine not to exceed more than fifteen hundred dollars, for any violation of RC Chapter 4766. or the rules adopted thereunder. Failure to comply, when it results in an MTO operating a vehicle without a permit, may result in the MTO being sanctioned and/or fined.

OAC 4766-2-08 does not require specific expenditures, however it requires MTOs that receive a seventy-two hour violation notification to provide documentation to the Division of EM that the violation has been corrected before the cited vehicle can be placed back into service.

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OAC 4766-3-13 requires ambulette services to maintain and obtain documentation of driver operator requirements. Ambulette services are required to obtain a valid driver/operator abstract at the time of application and annually thereafter, driver/operator license, criminal background checks, pre-employment health statements, and alcohol and controlled substance tests. Driver/operators are required to hold current and valid certifications in first aid (or equivalent) and CPR and passenger assistance.

Ambulette services may incur costs including:

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|---|--|
| Driver/operator abstract (driving record) | \$5.00 [Record Request (form BMV 1173)] |
| Criminal background checks | \$22/\$24 plus additional fees of approximately \$13 - \$23 for a BCI check or \$13 - \$40 for an FBI check, depending on the provider (https://www.ocjs.ohio.gov/background_check.stm) |
| Health statements | The CostHelper Web site states, "For patients without health insurance, an annual physical typically costs \$50-\$200 or more. (https://health.costhelper.com/physical-exam.html) Administrative physicals available at clinics operated by national pharmacy chains were priced at \$69 and \$89. |
| Alcohol and controlled substance tests | "The Society for Human Resource Management (SHRM) advises that you can expect to pay between \$10 and \$30 for a single basic drug test. However, this can increase depending on the number of substances you test for or the kind of test you use. Costs may decrease with volume discounts." (https://fitsmallbusiness.com/employee-drug-screening/) |
| First aid | American Red Cross and American Heart Association classes were priced at \$60, \$76, and \$96 |
| CPR | American Red Cross and American Heart Association classes were priced at \$40, \$76, and \$96 |
| First aid and CPR | American Red Cross and American Heart Association classes were priced at \$85-\$125, \$90, \$100, and \$103 |

The required periodic mechanical safety inspections included in rule **OAC 4766-4-09** require employer time and/or expense. The costs vary depending the structure and size of each business. Some MTOs employ mechanics who are qualified to complete the periodic mechanical safety inspections. Some MTOs choose to have vehicles inspected by mechanics at auto service facilities, chain repair stores, dealerships, or independent garages. The revision to rule 4766-4-09 filed with this package is made to correct an error. Revisions of rule 4766-4-09 filed with JCARR in May of 2017 were intended to set forth a schedule for periodic mechanical safety inspections at every 25,000 miles for each permitted vehicle

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with an odometer reading of 150,000 miles or more. The 2017 filing included 20,000 miles instead of 25,000 miles, and that is corrected with this proposed amendment.

The proposed amendments to the three rules do not directly reduce revenues or increase expenses.

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

Pursuant to RC 4766, the Board is statutorily required to adopt rules that establish the standards and procedures under which the Board may approve, renew, or deny an application to operate an MTO, MoICU, or ambulette service and standards for MTOs, MoICUs, and ambulette service 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, MoICU, or ambulette service and its vehicles justifies the minimal adverse impact to the business community.

Regulatory Flexibility

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

Ambulette services may, with EMFTS Board approval, accept first aid and CPR training that is equivalent to the training provided by American Red Cross, American Heart Association, or American Safety and Health Institute. Ambulette services may, with EMFTS Board approval, develop their own passenger assistance training course. Ambulette services may employ an applicant on a temporary provisional basis pending completion of the requirements of rule OAC 4766-3-13.

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?

If disciplinary action is considered, the MTO or ambulette service will be afforded seventy-two hours to correct violation(s) cited or provide the Board sufficient documentation that the MTO or ambulette service 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 RC section 119.14. The Board reviews each situation on a case-by-case and may consider all information relevant to the requirements of OAC Chapter 4766, and RC Chapter 4766 and OAC Chapter 4765, and RC Chapter 4765. Depending on the nature and severity of the violation the board may issue a lesser penalty.

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

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The Division of EMS Web site contains a “Laws & Rules” Web site (<https://www.ems.ohio.gov/laws.aspx>) with links to RC 4766. and RC 4765. and OAC 4766 and OAC 4765. Rules scheduled for review and recently adopted are posted at the Web site. The Web site includes a link to the DPS administrative rules Web site (<https://publicsafety.ohio.gov/wps/portal/gov/odps/what-we-do/administrative-rules-reviews/>), where public comment and public hearing information and the email link for the ODPS Rules Coordinator are posted. The DPS administrative rules Web site also includes links to the Joint Committee on Agency Rule Review (JCARR), the Legislative Services Commission (LSC), and the Register of Ohio. Proposed rules filed with the Common Sense Initiative (CSI) office and open for public comment are posted at the DPS administrative rules Web site.

Each unit of the EMS Web page, including the *Medical Transportation* Web page (<https://www.ems.ohio.gov/medical-transportation.aspx>), 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 (<https://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, 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) 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 MTOs and ambulette services, their satellite locations, and all permitted vehicles. Approximately seventeen inspectors work in specified regions covering all of Ohio and its bordering states. Inspectors are available by phone and by email to all MTOs and ambulette services 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 Association of Critical Care Transport (OACCT).

All forms required of MTOs and ambulette services by the Division of EMS are available via the Division of EMS Web site located at <http://www.ems.ohio.gov/forms.aspx> or <https://www.ems.ohio.gov/medical-transportation-forms.aspx>.

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