



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. 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):

4765-10 (Complaints) Five-year Review

Rule Number(s): 4765-10-01, 4765-10-02, 4765-10-03, 4765-10-05, and 4765-10-06

Date of Submission for CSI Review: February 7, 2022

Public Comment Period End Date: March 2, 2022

Rule Type/Number of Rules:

New/ rules

No Change/ rules (FYR?)

Amended/ 5 rules (FYR? Yes)

Rescinded/ rules (FYR?)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.

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.

A summary of each of the rules and its proposed amendments, is provided below:

4765-10-01	Amend	Definitions for disciplinary actions.
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). The rule is amended to delete paragraph (B), which is a term not used in the chapter.		
4765-10-02	Amend	Investigations.
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. The rule is amended to reword paragraph (E), which deletes a regulatory restriction.		

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4765-10-03	Amend	Administrative actions.
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. The rule is amended to delete references to an adjudicatory hearing and to revise paragraph (B)(2)(a) to include the word “offense.” Paragraph (B)(7) and paragraphs (B)(2)(g) and (B)(2)(h) are added to include offences that may be sanctioned.		
4765-10-05	Amend	Report of administrative actions.
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. The rule is amended to delete a reference to the division of EMS newsletter, which is no longer published.		
4765-10-06	Amend	Medical director.
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 certificate to practice. 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 for a certificate to practice. The rule is amended to replace the terms “first responders and EMTs” with “EMS providers.”		

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 Number	Authorizing Statute(s)	Amplifying Statute(s)
4765-10-01	4765.11	4765.10, 4765.18, 4765.23, 4765.33
4765-10-02	4765.11	4765.10, 4765.101, 4765.102
4765-10-03	4765.11	4765.33
4765-10-05	4765.11	4765.18, 4765.23, 4765.33
4765-10-06	4765.11, 4765.38, 4765.39	4765.38, 476.39, 1547.11, 4506.17. 4511.19

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?
No, the regulations do not implement a federal requirement.
If yes, please briefly explain the source and substance of the federal requirement.
N/A
5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.
N/A
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)?

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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.

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

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

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, none of the proposed rules contained in this rule package are being submitted pursuant to RC 101.352, 101.353, 106.032, 121.93, or 121.931.

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 who participated in the initial review of OAC Chapter 4765-10 are members of the EMS staff, including members of the Investigations & Discipline section; members of the case review team; members of the Ohio State Board of EMFTS; and members of the Ohio Department of Public Safety's legal office. Initial review began in March 2020, based on earlier recommendations made by the case review team.

A case review team consists of two EMFTS Board members, a representative of the ODPS legal staff, and the Division of EMS director and deputy director. Upon completion of an investigation, the case is presented to a case review team. The team, which meets a minimum of six times each year, reviews the findings of all investigated cases and recommends findings to the EMFTS Board, which is responsible for issuing discipline.

The Ohio State Board of Emergency Medical, Fire, and Transportation Services (EMFTS), as set forth in section 4765.02 of the ORC, is a twenty-one member board. The director of the Ohio Department of Public Safety designates a member of the Ohio Department of Public Safety as a member of the Board. Other members are selected based on having a "background or experience in emergency medical services or trauma care" and are appointed by the Governor with the advice and consent of the Ohio Senate. The Governor attempts "to include members representing urban and rural areas, various geographical regions of the state, and various schools of training" in making appointments

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to the Ohio State Board of EMFTS.

EMFTS Board members received the proposed amendments to OAC Chapter 4765-10 prior to the August 18, 2021 meeting and as part of the board packets provided for the October and December 2021 meetings. The EMFTS Board approved filing the proposed amendments with CSI and JCARR during its December 15, 2021 meeting.

When the rules and BIA are filed with CSI, EMS will use the [govDelivery](#) service to notify approximately 3,200 EMS stakeholders in four subscriber groups of the filing and the public comment period.

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

Members of the case review team proposed amendments to rule 4765-23-02 (*Fire service administrative actions*), which will be filed with the Joint Committee on Agency Rule Review (JCARR) and to OAC rule 4765-10-03 (*Administrative actions*). Over several years, the case review team discussed and offered amendments to support their ability to recommend comparable administrative actions for cases involving EMS and fire certificate holders.

Ohio Department of Public Safety legal counsel to the Division of EMS recommended deleting the references to an adjudicatory hearing in rule 4765-10-03. Members of the EMS staff reviewed the rules in OAC Chapter 4765-10 and recommended the amendments to OAC rules 4765-10-01, 4765-10-05, and 4765-10-06 to correct or update the information in the rules. EMS staff also revised rule 4765-10-02 to delete a regulatory restriction.

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 was no scientific data to be considered.

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?

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.

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. 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.

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

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The Division of EMS and ODPS legal staff members reviewed OAC agency 4765 and RC 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](#) Web site, which includes links to the laws and rules associated with the Division of EMS. The Division of EMS uses the [govDelivery](#) service to notify stakeholders of the dates for public comment and when the rule review process is complete and the rules become effective. Division of EMS staff 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

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

EMS Accredited Training Institutions	91
EMS Approved Training Institutions (Continuing Education)	577
Active EMS Providers	41,385
Active EMS Instructors	5,741

**Information provided by Ohio Division of EMS, January 2022*

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

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. 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 limited number of EMS providers, accredited institutions, and approved institutions are disciplined for violations; therefore, the impact is minimal.

Recipient of Action Taken	Action/Fine	02/2021 - 12/2021 reports (12 mo. reporting period)	02/2019 -12/2020 reports (24 mo. reporting period)
EMS Certificate Holders/ Applicants	Disciplinary Actions	104	278
	Fines	6 @ \$100 19 @ \$250 3 @ \$1000	23 @ \$250 1 @ \$350 1 @ \$500 5 @ \$1000

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Accredited Institutions and Approved Organizations	Disciplinary Actions	5	4
	Fines	None	None

EMS Web site, *Disciplinary Actions January 2022*

(<https://www.ems.ohio.gov/enforcement-discipline.aspx#gsc.tab=0>).

17. 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

18. 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 Investigations & Discipline 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.

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?

Each case is submitted first to the EMFTS Board's assistant attorney general to ensure compliance with RC section 119.14 and other legal provisions. The EMFTS Board reviews each situation on a case-by-case basis and may consider all information relevant to the requirements of agency 4765 of the OAC and Chapter 4765. of the RC. 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?

The Division of EMS' Web site includes the "[Laws & Rules Overview](#)" Web page with links to RC Chapter 4765., agency 4765 of the OAC, the Register of Ohio, contact information for Division of EMS rules personnel, and rules scheduled for review. The Web page links to the Department of Public Safety "[Administrative Rules](#)" Web page, where information about rules open for public comment and public hearing notices are posted. The "[Administrative Rules](#)" Web page displays the email link for the ODPS Rules Administrator and links to the Joint Committee on Agency Rule Review (JCARR) and the Legislative Services Commission (LSC). The "[Investigations & Discipline](#)" Webpage includes an overview of the section, links to Chapter 4765. ORC, an explanation of the investigative process, and other information.

EMFTS Board and committee meetings are public meetings. The "[About Us](#)" section of the EMS Web

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site includes an agency directory with contact information for Division of EMS personnel and a meeting schedule and posted meeting minutes. A directory provides links to specific information about [Division of EMS certifications](#), and a [searchable directory of EMS and fire training facilities](#) is provided. The Web site includes information about EMS certificates to practice and certificates to teach, CE requirements, EMS scopes of practice, and frequently asked questions, in addition to other information.

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