

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Public Safety – Division of EMS

Regulation/Package Title: Emergency Medical Services Continuing Education

Rule Number(s): O.A.C. rules 4765-19-01 through OAC 4765-19-04

Date: February 20, 2014

Rule Type:

New

5-Year Review

Amended

Rescinded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 4765-19 of the Ohio Administrative Code (OAC) is authorized by sections 4765.11 and 4765.16 of the Revised Code (RC). This chapter sets forth the following:

- *The conditions under which the Emergency Medical, Fire, and Transportation Services Board (EMFTS Board) will accept continuing education training as meeting the requirements to renew an EMS provider certificate to practice as an Emergency Medical*

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Responder (EMR), Emergency Medical Technician (EMT,) Advanced EMT (AEMT,) or Paramedic.

- *The criteria to complete an examination in lieu of continuing education as an option to meet the requirements to renew a certificate to practice.*
- *The criteria to obtain an extension beyond the expiration date of a certificate to practice to complete continuing education required for renewal of the certificate.*
- *The criteria to obtain an exemption from the continuing education requirement for renewal of a certificate to practice.*

Pursuant to a scheduled RC 119.032 five- year rule review, the following amendments or new rules are proposed to OAC Chapter 4765-19:

OAC rule 4765-19-01 sets forth the conditions under which the EMFTS Board will accept continuing education training as meeting the requirements to renew an EMS provider certificate to practice. This rule has been amended to clarify that only courses approved by an entity that has been approved by the EMFTS Board will count for continuing education credit to renew a certificate to practice. In addition, the rule has been amended to update the titles of the certificates to teach issued by the EMFTS Board. The rule was also amended to expand the reference to military personnel to align with the language in R.C. 5903.121 and added language regarding acceptance of relevant education, training, or service completed while on active service.

OAC rule 4765-19-02 provides an examination alternative to completion of continuing education for renewal of a certificate to practice and establishes the parameters for taking the examination. This rule has been amended to expand the time frame in which an EMS provider may complete the examination alternative to continuing education. In addition, language has been added to this rule which allows an EMS provider, with an approved extension in accordance O.A.C. 4765-19-03, to complete the examination alternative to continuing education.

OAC rule 4765-19-03 is being proposed as a rescinded/new rule. This rule allows the EMFTS Board to grant an extension time to the holder of a certificate to practice to comply with the continuing education requirements.

Changes to the rule require an applicant seeking an ninety-day extension of time to complete the required continuing education requirements to submit a “Request for Extension of EMS Certificates,” “EMS 0084,” (December, 2013) available at http://ems.ohio.gov/ems_forms.stm, to the EMFTS Board prior to the certificate’s expiration date. In addition, an applicant requesting an extension of more than ninety-day, or due to military service, a medical hardship or an unusual hardship must submit a written request

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with justification and documentation of such. This rule also identifies materials, incorporated by reference which will be filed with 4765-19-03 and advises members of the armed forces or a reserve component of the armed forces of the United States, or the national guard of this or any other state with expired Ohio certificates to practice of their rights in accordance with 5903.12 of the RC.

OAC 4765-19-04 is being proposed as a rescinded/new rule. This rule allows the EMFTS Board to grant an exemption from compliance with the continuing requirements to the holder of a certificate to practice.

Changes to the rule require an applicant seeking exemption from continuing education requirements due to military service, a medical hardship or an unusual hardship to submit an "Exemption Request for Continuing Education for EMS Certificates," "EMS 5933," (December, 2013), available at http://ems.ohio.gov.ems_forms.stm. The request must be submitted to the EMFTS Board with proof of active military service during the certification period for which the exemption is requested or justification documentation of the medical hardship or unusual hardship. The requirement to request an exemption one hundred eighty days prior to the expiration date of the certificate to practice has been removed. The rule requires military personnel to request an exemption within six months of discharge.

Additionally, if an exemption request is received prior to the expiration of a certificate, this rule authorizes the division, as delegated by the EMFTS Board, to grant a ninety-day functioning extension to allow the certificate holder to continue to function as an EMS provider during the administrative review process. Language requiring the EMFTS Board to provide written notification to the requestor within 60 days of receipt or, if unable to respond within 60 days, to notify the requestor as to the extent to which the requestor may continue to function, has been removed.

This rule also identifies materials, incorporated by reference which will be filed with 4765-19-03.

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

RC sections 4765.11 and 4765.16.

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.

No, the regulation does not implement a federal requirement.

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

This regulation does not implement a federal requirement.

- 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)?**

EMS providers respond to medical and traumatic emergencies in the pre-hospital setting and function without direct oversight. It is critical that the EMS workforce maintain an acceptable knowledge and skill level to provide quality care before and during transport to a medical facility. In some areas of the state, the time and distance to a medical facility can be significant. EMS agencies utilizing EMS providers depend upon the EMFTS Board and the Division of EMS to ensure individuals issued a certificate to practice have met a recognized standard.

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

Success will be measured by the number of extensions and exemptions issued. In 2012, the Division of EMS issued 594 extensions and the EMFST Board approved 61 requests for exemptions. The Division of EMS also audits ten percent of all certificate to practice renewals processed each month to ensure certificate holders have completed the required continuing education requirements through acceptable sources.

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.**

The Education Committee of the EMFTS Board held meetings on May 22, 2013 and July 17, 2013 to discuss the draft rules. The proposed rules were also emailed to the committee members on December 11, 2013 for final review and comment. The committee members include EMS Providers, EMS instructors and program coordinators representing EMS training organizations and fire service organizations.

On November 29, 2013, notification that OAC 4765-19 was up for a five year review and a request for comments, suggestions or concerns, was sent out to 2,244 addresses through the Division of EMS listservs. A link to the rules was included in the notification. Comments from the Education Committee and those received from the listserv notification were reviewed by Division of EMS staff for applicability to the Chapter 19 rules.

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

Stakeholders provided professional expertise, professional experiences and feedback to the rule development process. The stakeholders' input ensures that regulations are both reasonable and designed to protect the public being served by the certificate holders.

4765-19-01 *Continuing education for EMS providers.*

Stakeholder Input: The Education Committee voiced concern that a single entity was included in the rule as an acceptable provider of an emergency vehicle operations (driver training) course when comparable courses are available from other sources.

Results: The entity was removed from the rule.

Stakeholder Input: The Education Committee recommended Special Topic Instructor be removed from the rule and be replaced with EMS Assistant Instructor and Continuing Education Instructor to reflect the current certificates to teach issued by the Division of EMS.

Results: The specific instructor titles were removed and replaced with the umbrella designation of "holder of a certificate to teach."

4765-19-03 *Extension of continuing education requirement for EMS providers,*

Stakeholder Input: The Education Committee asked if the term "90-day functioning" was defined or should it be.

Results: It was determined this did not need to be defined as RC 4765.31 authorizes the EMFTS Board to determine the extent to which a certificate holder can practice while on an extension.

Stakeholder Input: The Education Committee asked if the authority for the Division of EMS to determine the length of time for an extension, not to exceed 120 days should be included in (A). It was also asked if this extension would be a functioning extension.

Results: It was determined any request for an extension greater than 90 days should be presented to the EMFTS Board for consideration and approval. Revisions were made to the rule to incorporate a form for requesting a 90-day extension to be approved by the Division of EMS, as directed by the Board, and to establish the information to be submitted for consideration by the Board for extensions in excess of 90 days. The rule also states the Board will determine the length of extension to be granted and the extent to which the certificate holder may function during the extension.

4765-19-04 *Exemption from continuing education for EMS providers.*

Stakeholder Input: The Education Committee felt the timelines for requesting an extension for special hardship or unusual circumstances in advance of the expiration of a certificate to practice were unreasonable. The committee also felt the term special hardship should be changed to medical hardship.

Results: The rule was revised to remove the requirement to request an exemption 180 days, prior to expiration. The rule now allows a request for medical hardship or unusual circumstances to be submitted up to the expiration date of the certificate to practice. A request received after the expiration date of a certificate to practice may also be considered if there are extenuating circumstances affecting the submission of the request prior to the expiration date. The proposed rule adds language to allow the division, as delegated by the EMFTS board, to grant a functioning extension, not to exceed ninety days, to an applicant that submits a request for an exemption prior to the expiration date of the certificate to practice.

Stakeholder Input: The Education Committee felt the language and parameters for exemptions for EMS providers should mirror the language in OAC 4765-20-17 which establishes the requirements for issuance of an exemption issued by the Executive Director of the Division of EMS for fire service certificates.

Results: The rule was changed to align with OAC 4765-20-17 and language added to include provisions for an extension as provided for in RC 4765.31.

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 was no scientific data available to be considered.

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?

Each of the rules in OAC Chapter 4765-19 is proposed as amended or rescind/new in an effort to provide alternative regulations to maintain an EMS certificate to practice. OAC rule 4765-19-01 has been amended to clarify that courses approved by an entity that has been approved by the EMFTS Board will count for continuing education credit to renew a certificate to practice. Language has also been added to require consideration of relevant education, training, or service when determining whether the holder of a certificate to practice has fulfilled required continuing education.

OAC rule 4765-19-02 provides an examination alternative to the completion of continuing education course for renewal of a certificate to practice. This rule has been amended to expand the time frame in which the EMS provider may attempt the examination.

OAC rule 4765-19-03 is proposed as rescind/new and provides for the issuance of a ninety-day functioning extension to an EMS provider who requested an extension prior to the certificate's expiration date. The rule also includes a provision for requesting an extension of greater than ninety days under extenuating circumstances.

OAC 4765-19-04 is being proposed as a rescinded/new rule and allows the EMFTS Board to grant a request for an exemption from continuing education requirements, due to military service, up to six months from certificate holder's discharge. In addition, this rule also eliminates the requirement that an exemption, due to special hardships or unusual circumstances, must be requested at least 180 days prior to the expiration of a certificate to practice. This rule also allows the division, as delegated by the EMFTS board, to grant a functioning extension of up to ninety days to the requestor of an exemption if the request is received prior to the expiration date of the certificate to practice.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

No, the proposed rules do not offer the flexibility of performance-based regulations. Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

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 is the only authority for EMS training, instruction and certification; therefore, a review of section 4765 of the Revised Code and chapter 4765 of the Administrative Code was completed. The Division of Emergency Medical Services staff reviewed section 4729 of the Revised Code and chapter 4729 of the Administrative Code to avoid duplication and/or conflict with Board of Pharmacy authority. In addition, the Division of Emergency Medical Services staff reviewed section 4731 of the Revised Code and chapter 4731 of the Administrative Code to avoid duplication and/or conflict with Medical Board authority.

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.

Using the Division's website and EMS listserv, the Division will provide stakeholders with notice of the final filed rules and the effective date. The Division will draft and post summaries of the rule content and changes on both the Division's website and the EMS listserv. Division staff will make presentations regarding the rule changes at both state and local EMS conferences. The Division will also use publications such as the Division's newsletter, "The Siren", to notify Ohio's EMS providers of the rule changes. Status reports will be presented to the EMFTS Board. Additionally, a formal report of the rule changes and

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status are reported during each of the regularly scheduled EMFTS Board meetings. The members of the Board will ensure the organizations they represent are aware of the regulations.

Division staff is notified and kept up-to-date of all rule changes and the impact involving enforcement of the amended or newly promulgated rules. The Division has policy and procedures that are followed when reviewing continuing education submitted through an audit at renewal, and when reviewing a request for an extension or an exemption. Notification of the rule changes to Division staff will be delivered internally through staff meetings, as well as cross-training of staff on co-workers' job responsibilities that will increase the overall knowledge and efficiency of the Division.

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;

The scope of the impacted business community includes approximately 42,000 EMS providers with active certificates to practice, with approximately 12,000 renewing each year. Annually, less than 100 providers request an exemption from completing the required continuing education. Approximately 750 certificate holders request an extension to meet continuing education requirements for renewal each year.

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

The holder of a certificate to practice is required to complete emergency medical services continuing education as set forth in chapters 4765-12, 4765-15, 4765-16, and 4765-17 of the OAC. This chapter provides alternative provisions for compliance however the certificate holder must submit written requests to obtain these options. Failure to submit the appropriate documents in a timely manner may result in denial of the request for an alternative provision and ultimately result in the loss of the certificate to practice.

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.

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An EMS provider typically incurs continuing education course fees of \$0 to \$750 in order to meet the rule requirements to renew an EMS provider certificate to practice. The variance in costs is dependent upon whether or not an individual's department provides in-service training, the cost of the selected courses, instructors' pay rate, whether or not an affiliation agreement is utilized, the institution's choice of instructional materials and the number of students enrolled in the course. It is not expected that this regulation will result in any additional costs of compliance.

An EMS provider who elects to complete an examination in lieu of continuing education courses typically incurs examination fees of \$65 to \$110. The variance in costs is dependent upon the EMS level of the examination. It is not expected that this regulation will result in any additional costs of compliance.

The time required to complete paperwork associated with a request for an alternative provision will be dependent on the reason for the request and the support documentation needed to substantiate the request. The time required to complete the paperwork is expected to be minimal.

Source: The estimated cost of compliance was determined by the Education Committee. The committee members include EMS Providers, EMS instructors and program coordinators representing EMS training organizations and fire service organizations. Examination fees are posted on the National Registry of Emergency Medical Technicians website located at www.nremt.org.

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

EMS providers respond to medical and traumatic emergencies in the pre-hospital setting and function without direct oversight. It is critical that the EMS workforce maintain an acceptable knowledge and skill level to provide quality care before and during transport to a medical facility. EMS agencies utilizing EMS providers depend upon the EMFTS Board and the Division of EMS to ensure individuals issued a certificate to practice have met a recognized standard.

Additionally, EMS agencies can apply to the EMFTS Board each year for grant money to offset the cost of continuing education renewal requirements for their personnel. EMS agencies can also apply for a Certificate of Approval to offer continuing education in-house, at no cost, to their providers sufficient to meet the requirements to renew.

Regulatory Flexibility

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

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OAC Chapter 4765-19 provides for an extension of time to certificate holders to meet continuing education requirements if they are unable to meet the requirements prior to the expiration of their certificate. A provision for an exemption from continuing education requirements for military service, medical hardships, and unusual circumstances also is provided. For those with limited free time, the completion of the exam in lieu of attending continuing education courses would be an alternative. The ability for an EMS agency to obtain a Certificate of Approval to provide continuing education in-house to its personnel provides an alternative to attending continuing educations at outside venues.

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?

OAC Chapter 4765-19 rules provide alternatives to assist certificate holders to meet the requirements for renewal. The rules also provide an avenue for certificate holders to request an exemption from continuing education requirements if extenuating circumstances exist. Violations of renewal requirements are reviewed on a case-by-case basis and in order to ensure compliance with RC section 119.14.

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

Approximately 90 days prior to the expiration date of a certificate to practice, each certificate holder is mailed a notification of the need to renew and provides information on finding information on continuing education requirements and forms to request extensions or exemptions. Certificate holders also are sent weekly reminders, via their provided email address beginning at the same time as the mail notification. A certificate holder has the option of providing a secondary email address, generally their EMS employer, to also receive the email notifications. The Division of EMS also provides a limited number of online continuing education offering through its website. The Division of EMS website also includes links to forms to request an extension or exemption and to the continuing education requirements. The Division of EMS provides staff assistance via a toll free telephone number and correspondence via email, including an ASK EMS section of the website. The Division of EMS also staffs booths at state conferences to provide information and staff members are available to provide presentations upon request. Certificate holders may also utilize the EMS online renewal system at no cost.