

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Division of Public Safety-Divison of EMS

Regulation/Package Title:

Professional Standards and Disciplinary Actions

Rule Number(s): OAC Chapter 4765-22 and OAC Chapter 4765-23

Date: June 10, 2013

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Rescinded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.

Chapters 4765-22 and 4765-23 of the Ohio Administrative Code (OAC) are authorized to be established under sections 4765.04 and 4765.55 of the Revised Code (RC).

OAC Chapter 4765-22 sets forth the professional standards of conduct for firefighters, fire safety inspectors, and fire instructors that are certified by the Executive Director of the State Board of EMS (Executive Director) under Chapters 4765-20 and 4765-21 of the OAC.

OAC Chapter 4765-23 sets forth the investigative process utilized by the Division of EMS (Division) on behalf of the Executive Director, for handling complaints and conducting investigations. Additionally, this chapter sets forth that Chapter 119. of the RC shall be followed to ensure due process is afforded by the Executive Director, with advice and counsel of the Firefighter and Fire Safety Inspector (FFSI) Training Committee, when issuing discipline to firefighters, fire safety inspectors, instructors and chartered training programs and applicants for such.

Chapters 4765-22 and 4765-23 of the OAC are proposed for filing in response to a scheduled RC 119.032 five-year rule review. As the majority of rules in Chapters 4765-22 and 4765-23 were reorganized for clarity and consistency, updated to reflect changes in terminology, and revised to more effectively address availability of materials incorporated by reference, the majority of the rules are proposed as new, while simultaneously proposed for rescission. This is due to the fifty percent rule-formatting guideline, which provides for simultaneous adoption/rescission, if it is estimated that changes strike approximately fifty percent of the existing text while adding a comparable amount of new text.

OAC rule 4765-22-01 is being proposed as a rescinded/new rule. This rule sets forth the professional standards of conduct for both firefighters and fire safety inspectors. This rule was amended to prohibit a firefighter or fire safety inspector from submitting false or misleading information when applying or renewing a fire certificate and responding to audits conducted by the Division.

OAC rule 4765-22-02 is being proposed as a rescinded/new rule. This rule sets forth the professional standards of conduct for instructors and assistant fire instructors. This rule was amended to add language to prohibit an instructor or assistant fire instructor from providing aid to a student that creates an unfair advantage during the fire training course or during examinations.

OAC rule 4765-23-01 is being proposed as an amended rule. This rule sets forth the investigative process utilized by the Division to investigate complaints. This rule was

amended to allow the investigation of complaints pertaining to the written or practical examinations with or without a known complainant.

OAC rule 4765-23-02 is being proposed as an amended rule. This rule sets forth the administrative process utilized by the Executive Director to implement discipline affording individuals due process as set forth in RC Chapter 119. This rule was amended to provide that a certificate holder may be disciplined by the Executive Director for any violation of RC Chapter 4765., OAC Chapters 4765-11 and Chapters 4765-20 to 4765-23.

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

RC sections 4765.04 and 4765.55.

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.

The 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)?

Pursuant to RC section 4765.55, the Executive Director, with the advice and counsel of the FFSI Training Committee, is statutorily required to promulgate rules in regard to issuing disciplinary sanctions to firefighters, fire safety inspectors, chartered training institutions and instructors. Chapter 4765-22 of the OAC sets forth the professional standards of conduct firefighters, fire safety inspector and fire instructors are expected to uphold in order to maintain the integrity of the profession. Chapter 4765-23 of the OAC sets forth the process for disciplinary proceedings in accordance with Chapter 119. of the RC.

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 and every complaint lodged and afford each person his or her due process rights. The number of investigations resulting in discipline is a means

to measure success. Increased compliance will result in less disciplinary sanctions issued. A decrease in complaints lodged for standards of conduct may also be used as a measure of 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.

The FFSI Training Committee held meetings to discuss the draft rules and requested stakeholder participation in this process from a wide range of representation of the Ohio fire service. On September 20, 2012, an invitation to participate in a rule review forum was e-mailed to a specific list of stakeholders comprised of membership from Ohio fire service organizations. Each organization was invited to send representation to the public forum. Stakeholders invited included, but were not limited to, fire chiefs, firefighters, fire instructors, fire safety inspector instructors, fire safety inspectors, program directors, and other personnel. A forum was held at the Ohio Department of Public Safety on November 1, 2012. The stakeholders were provided copies of all draft rules and asked to provide their expertise and opinions regarding the content of these rules. After the forum, the Executive Director and the FFSI Training Committee met on November 13, 2012 and reviewed all of the stakeholder input. Advice and counsel was given to the Executive Director for his consideration on the rules. The FFSI Training Committee reviewed the comments from the stakeholders and the revised rules containing the solicited input were emailed to the stakeholders on December 12, 2012.

The following organizations were represented on the rule forum on November 1, 2012:

*Ohio State Firefighters' Association
Columbus Fire Department
Ohio Association of Professional Fire Fighters
Ohio Fire Chiefs' Association
Ohio Fire Official Association
Violet Township Fire Department/Ohio Society of Fire Service Instructors
Clark State Community College/Ohio Society of Fire Service Instructors
Ohio Fire Charter Collaborative / Ohio Fire Training Academy
State Board of EMS Members
State Fire Marshal /Ohio Fire Academy
Ohio Fire Charter Collaborative*

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

OAC chapters 4765-22 and 4765-23 were presented to the stakeholders at the November 1, 2012 forum for comments, suggestion, or revisions. The stakeholders raised concerns that rule 4765-22-01 of the OAC was being amended to allow for anonymous complaints to be investigated. Stakeholders felt the rule should not be changed. A compromise was met and only complaints involving a potential examination compromise can be investigated without a known complainant. No other concerns or issues were raised.

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 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?

No alternatives were considered since the Executive Director is obligated by Chapter 119. of the Revised Code to afford individuals their due process rights when violations of the RC Chapter 4765. and Chapters 4765-11 and 4765-20 to 4765-23 of the OAC. Disciplinary sanctions are set forth in Chapter 4765-23 of the OAC. Additionally, RC section 4765.55 sets forth extremely limiting grounds that the Executive Director may suspend, revoke, restrict, refuse to issue, or renew a fire certificate or charter. These grounds are set forth as standards of conduct the Chapter 4765-22 of the OAC.

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 Chapters 4765-22 and 4765-23 sets forth the professional standards of conduct, the procedures and parameters for handling complaints, conducting investigations, and issuing discipline related to firefighters, fire safety inspectors, fire instructors, and fire charters. These regulations do 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 Executive Director, with advice and counsel of the FFSI Training Committee, is statutorily directed to promulgate rules pertaining to standards of conduct and disciplinary sanctions

for fire certificate holders. The division conducted a thorough a review of RC Chapter 4765. and OAC Chapter 4765. was performed to ensure regulations were not duplicated.

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 fire training and education conferences. The Division will also use publications such as the Division’s newsletter, “The Siren,” the Ohio Fire Chiefs’ “In Command” magazine, and the Ohio State Firefighters’ Association’s “Ohio Firefighters” magazines to notify Ohio’s fire service of the rule changes. Status reports will be presented to the FFSI Training Committee. Additionally, a formal report of the rule changes and status are reported during each of the regularly scheduled EMS board meetings. Additionally, annual reports will be compiled and distributed yearly.

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 for conducting investigations that is followed on each and every investigation. Also, every case investigation is vetted through an internal review process for enforcement and compliance issues to include suggested discipline for those warranting discipline. The case review process consists of reviewing discipline previously issued in similar type of cases.

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 41,463 firefighters, 10,068 fire safety inspectors, 8,442 instructors, and 64 fire charters throughout Ohio.*

- b. The Division estimates that these rules will not result in any cost of compliance or adverse impact unless the firefighter, fire safety inspector, fire instructor or fire charter becomes subject to disciplinary action. Disciplinary action, if invoked, may include fines up to \$1000 and/or limited authority to practice up to and including revocation.*
- c. There are a limited number of firefighters, fire safety inspectors, instructors and fire charters that are in violation, and therefore, the impact is minimal.*

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

Pursuant to RC section 4765.55, the Executive Director is statutorily required to promulgate rules in regard to issuing disciplinary sanctions to firefighters, fire safety inspectors, fire instructors, and training institutions. This requirement, in addition to the Executive Director's intent to ensure high standards in a provider's professional conduct and delivery of fire services, 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.

Although discipline is mandated if a violation is substantiated, such discipline is imposed at the discretion of the Executive Director, with advice and counsel of the FFSI Training Committee. The Executive Director, with advice and counsel of the FFSI Training Committee, carefully weighs each case that is presented.

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 will be reviewed by the Executive Director to ensure compliance with section 119.14 of the Revised Code.

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

The Division of EMS' website contains an enforcement section that provides the background and summarizes the details of its investigative policies and procedures. Additionally, all disciplinary actions are posted to the website as a reference for providers and consumers.