

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Board of Cosmetology

Regulation/Package Title: Sanitation

Rule Number(s): 4713-15-01, 4713-15-02, 4713-15-03, 4713-15-04; 4713-15-05; 4713-15-06;
4713-15-07; 4713-15-08; 4713-15-09; 4713-15-10, 4713-15-11, 4713-15-12, 4713-15-13,
4713-15-14, 4713-15-15, 4713-15-16, 4713-15-17

Date: first submission November 14, 2012; edited for resubmission January 15, 2013,
edited in response to CSI questions on March 29, 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☐ Rescinded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.

Chapter 4713-15. Sanitation, Communicable Diseases

Probably this chapter should be titled "Infection Control", because that is its purpose. The General Assembly mandated the Board to ensure salons, schools and tanning facilities were safe

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

and practiced infection control. See, e.g., R.C. 4713.08(A)(14), R.C. 4713.08(A)(16), and R.C. 4713.41. To protect those members of the public using salons and sunlamp products or training in schools, the Board has always required that implements and equipment be both cleaned and disinfected/sanitized. The rules set forth in this chapter are designed to protect the health of those who work in salons (and tanning facilities), and the general public constituting the customers of the salons (and tanning facilities).

As a general overview, local and national cosmetology experts in sanitation, infection control and safety measures very carefully reviewed this section. One such person, Leslie Roste, a registered nurse, is the Director of Education for King Research. She is heading a national coalition consisting of major cosmetology salons and national school associations and product manufacturers dedicated to improving the infection control and safety practices nationwide. In addition, the rule committee, consisting of stakeholders and staff consulted national and state expert documents and best practice materials to modernize these rules. The stakeholders and staff worked on the rules, with an eye to assuring that every degree of regulation was necessary for the protection of the licensees and the general public. After exhaustive research, practical knowledge, input from outside of the Board professionals and many revisions, these rules can safely be said to incorporate the latest in technology and knowledge of infection control, while replacing a few obsolete standards. By definition, these rules are fairly rigid, and have not been dramatically relaxed so as to best protect the public. However, where the rules had provisions that caused a burden to business, but did not necessarily increase infection control or safety necessary to protect licensees and the general public, the provisions were eliminated.

The word “disinfect” has been substituted for “sanitize” throughout this chapter to clarify that after cleaning, an appropriate disinfectant should be used. The standard in the profession is to disinfect an item after first cleaning hairs etc. from it. When R.C. 4713.41 became law, the term “sanitize” meant more than just to clean, it connoted disinfection, after a thorough cleaning, of course. Over the years, the word “sanitize” as commonly used became closer in meaning to the word “clean.” Some textbooks used in today’s cosmetology schools now use the word “disinfect” where, ten years ago, they would have had the word “sanitize.” Other textbooks maintain the definition of “sanitize” as “disinfect.” R.C. 4713.41 retains the original wording of “sanitize” that carries the meaning “disinfect”. Best practices in 2013 for protecting those who use cosmetology services or tanning facilities call for the instruments of the Cosmetology profession -the equipment or implement (non-porous) be first cleaned of any dirt or hairs or other debris and then be soaked or must be with the proper disinfectant designed to destroy dangerous microbes that might remain on the item, whether the latter treatment is called “sanitize” or “disinfect.” By cleaning the item first and then disinfecting it, the chance that dangerous microbes remain on the item and will be passed to the next person upon whom it is used would be lessened. The Board needed to change the word “sanitation” to “disinfect.” The words were

interchangeable several years ago. Without changing to the term “disinfect”, the public could be endangered by licensees failing to sufficiently clean equipment or implements, while believing they were following the intent of the Board’s laws and rules.

The proposed changes to this chapter also stress that those items that cannot be disinfected need to be discarded after one use. Believe it or not, one inspector found a licensee washing and hanging to dry the cotton neck strips that are used to protect necks from diseases that might be on washing basins or elsewhere. The rules will stress that cotton and other similar items are to be used once and then discarded. The other major proposed change is a reorganization of many of the rules, consolidating some, and adding a few new provisions to others. The goal in making these changes has been to clarify what needs to be cleaned and disinfected and what should be discarded in order to better protect cosmetology customers’ health and safety. A third goal was to clarify what a salon should do if a customer or an employee has what looks to be an infectious disease.

Ohio Adm. Code 4713-15-01. This rule was rescinded and is rewritten. The Board is mandated under R.C. 4713.41 to keep salons and equipment and implements in salons sanitary, and is required to have sanitation rules for salons, schools and tanning facilities under R.C. 4713.08(A)(14), and under R.C. 4713.08(A)(16). The current rule requires someone, presumably the holder of the salon license, to make sure that the entire facility, which one presumes is the salon, and the equipment, implements and employees, is constantly maintained in a sanitary manner satisfactory to the Board. The current rule’s wording is vague and could be interpreted to require that as part of the sanitation effort, the employees should be washed, cleaned and disinfected for ten minutes along with the implements and equipment. For that reason, the proposed rule rewrites the entire rule.

Sanitation/disinfection/infection control and cleanliness are basic to the cosmetology industry, both locally and nationally. In paragraph (A)(14) of R.C. 4713.08, the General Assembly required the Board to write rules to “establish sanitary standards for the practice of the branches of cosmetology, salons, and schools of cosmetology.” R.C. 4713.08(A)(16) states the Board shall “[e]stablish standards for * * * operating a tanning facility in a manner that ensures the health and safety of consumers * * *”. These laws indicate the Board should create rules schools and tanning facility rules should ensure sanitary conditions. The Board is mandated to only issue licenses to salons “kept in a clean and sanitary condition and properly ventilated.” R.C. 4713.41(D). Another requirement for a salon to receive a license is that the salon sanitizes “all instruments and supplies used in the branch of cosmetology provided in the salon.” Thus, R.C. 4713.41(B)(2) and R.C. 4713.41(D) mandate the salon be kept clean and sanitary and the implements and supplies be sanitized. The rule requests the facility be kept sanitary at all times,

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

with the exception of the immediate time period during which a licensee is performing a service that might be messy. The rule also indicates that the Board will be the arbitrator, able to determine whether the salon is sanitary or an employee is clean. In a sense, this is like the famous definition of pornography--I know it when I see it. When the inspectors go to a salon and find unsanitary conditions, not just a hair or two on the ground or on the wall, but really dirty brushes, old disinfectant, etc. the inspectors take pictures of the items and explain why the items are in violation of a rule in Chapter 15. As the goal of Chapter 15 is to protect the general public, having licensees understand that they must disinfect and keep everything sanitary is a good way to try to reach the goal. By allowing the Board to determine what is appropriately “sanitary”, the rule assists the Board’s goal of enforcing sanitary conditions in salons, schools and tanning facilities.

Ohio Adm. Code 4713-15-02. This rule is a rescind/new rule because more than fifty percent of the rule has been changed. The rule basically requires disinfection with an effective, commercially prepared disinfectant of any implement before using the implement on the next patron. The current rule uses the word “sanitize” instead of “disinfect.” The proposed rule changes the wording of the current rule to reflect the level of clean that implements should have before being used on another individual. The rule sets forth a theme that appears throughout the chapter – the importance of infection control.

Ohio Adm. Code 4713-15-03. This rule is a rescind/new rule designed to protect the general public as well as the licensee. The current rule has created some confusion as to what can be sanitized, what disinfected and what thrown out after one use. The proposed rule changes the rule radically so that licensees can more easily understand how to treat a used implement or piece of equipment or how to clean a blood or body spill. After comments from the Common Sense Initiative (CSI) Office, the rule was reedited with the help of key stakeholders and several national infection control experts in the Cosmetology profession to better state the current infection control requirements for implements and nonelectric equipment. The word “disinfect” replaces the word “sanitize,” to stress the importance of following current standard procedures for protecting the general public from diseases carried on implements and equipment. The proposed rule sets forth clearly what should be disinfected, what discarded and how to handle a blood or other bodily fluid contamination of equipment, the floor, a rug or what have you. In other words, discard porous implements and disinfect non-porous implements after the implements have been thoroughly cleaned.

As to the blood and bodily fluid problem, the current rule requires double bagging in a plastic “baggy” of anything used to clean the spills and the logging of information on a disposable log sheet. The proposed rule removes the logging requirement, the double baggie requirement and consolidates current paragraphs (C) and (F) in one paragraph, adding up-to-date requirements for

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

blood and body spill clean-up. Former paragraph (C) was first just edited and then became (A)(1)(c) in an earlier version of the proposed rules. When reediting the rule, (A)(1)(c) was removed, because the process of cleaning blood spills is now extensively explained in proposed paragraph (D), following guidelines developed by national cosmetology sanitation/disinfection experts and local stakeholders and board members. The proposed rule would require the wearing of non-porous, disposable gloves when cleaning bodily fluid or blood spills. Both the current and the proposed rule require first a cleaning of the item or surface with warm water with soap or a detergent, then an appropriate disinfectant to ensure that any HIV or other problem microbe on the item is destroyed.

The proposed rule requires that disinfectants are prepared at least daily. The proposed rule removes the record keeping requirement that currently requires a notation every time a new disinfectant is prepared. The proposed rule adds a requirement to store unused porous items in a closed, dustproof cabinet, drawer or container. The proposed rule retains the requirement that directions on the environmentally approved disinfectants must be followed closely.

The consistency of the bleach solution is based upon recommendations for the various uses. Because of the dangers of a blood or bodily fluids spill, the recommended ratio of bleach to water calls for more bleach.

A paragraph indicating the manner in which medical equipment was to be disinfected was removed as it did not belong in this chapter. Board licensees should not be using medical devices (unless the licensee holds a medical license as well). Any implication that a Board licensee could use medical devices or perform medical procedures was incorrectly added in these rules at an earlier time. Further, all equipment and implements should be disinfected in following the same procedures. Other cleaning methods are necessary for electronic equipment and metal equipment. As Board member/stakeholder Clara Osterhage pointed out, electronic equipment that is metal or is part plastic and part metal, like a clipper guard must be disinfected in a manner different from an all plastic item to keep it from being ruined. For that reason, any device that is electric and/or has metal or both metal and plastic components should be disinfected by following the procedure in proposed OAC 4713-15-15.

Ohio Adm. Code 4713-15-04. The current rule calls for shampoo bowls to be sanitized after each use. The proposed rule mandates the shampoo bowls be first cleaned and then disinfected before being used by another client. Again, the rule clarifies what should have been done under the current rule – a disinfecting of the shampoo bowl rather than merely running water to wash off the hairs in it, or, worse, just washing the next client's hair without doing anything to clean or disinfect the shampoo bowl.

Ohio Adm. Code 4713-15-05. The rule requires protection of the customer's neck from possibly irritating or contaminated materials. The proposed rule changes are minor, mandating the use of a paper neck strip or clean towel under a cape or similar article. Towels and neck strips can be used only once before being laundered. The current rule indicates the towel should be "properly laundered." The proposed rule points to another rule in this chapter, Ohio Adm. Code 4713-15-11, to explain what "properly laundered" means and how to fulfill the required laundering of the towel.

Ohio Adm. Code 4713-15-06. This rule was edited. This rule addresses how to remove creams from containers. The major change in the proposed rule is a substitution of the word "disinfected" for the word "sanitized." Containers holding an often-used substance should not be contaminated by the hands of the licensee, something that could easily happen. By removing the substance with a spatula that can either be discarded or cleaned, sanitized and disinfected after use, the licensee is attempting to prevent the contamination of the substance in the container. The rule does not prevent the stylist from using a spatula to put the shampoo or other substance on his/her hands and then applying it with the hands to the hair or face, wherever it belongs. The rule also would not prevent a licensee from using a squeeze bottle or a container with a pump to dispense a product onto her/his hands and then using the product, as such an action would not result in possible contamination of the rest of the product.

Ohio Adm. Code 4713-15-07. This rule was edited. The current rule sets forth a method to stop bleeding. The proposed change adds the word "disposable" before the word gauze. The change is to clarify that gauze used to stop blood should be discarded after use, not washed and disinfected. The term "disposable" is added throughout the rule to make certain people understand cotton etc. cannot be used again and to make it clear to all readers there is not disposable and washable cotton or gauze. The change should better protect the general public as well as the licensees in a salon.

Ohio Adm. Code 4713-15-08. This rule is a rescind/new rule because it has been heavily edited. The current rule requires the use of containers to prevent the contamination of unused solution. The proposed changes to this rule would require products be kept in a closed or covered disposable container except when the product is being used in the provision of a service in order to prevent contamination of the product.

Ohio Adm. Code 4713-15-09. The rule is a rescind/new rule, because it has been heavily edited. The current rule says powders should be applied with disposable puffs or cotton pledges or other disposable applicators. The proposed change would just say applicators or a clean, disinfected towel. Again, the change is to clarify what should happen. It is to add the option of using a towel as well as any type of applicator that can be thrown away after use.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Ohio Adm. Code 4713-15-10. The rule is rescind and rewritten to accomplish the same purpose, to encourage licensees to keep clean the facilities of a salon or school. Clean walls, floors, fixtures and floor coverings should be common sense for any business dealing directly with the public, especially one dedicated to making individuals look better. Unfortunately, that isn't always the case. Therefore, this rule was promulgated many years ago. The current rule parallels rules in other state cosmetology regulations and in the Ohio Barber Board. (Even with the rule, the Board's inspectors have reported insects and dirt on walls, floors, in equipment in disinfecting solution, etc.). The proposed changes in this rule are as follows: the substitution of the word "disinfect" for "sanitize"; the addition of pedicure units to the areas under which floor coverings are required, and the disinfection of a floor covering after each client if the client stands or walks without any shoes or socks on that covering. Because a cosmetologist performing a service may dirty the area immediately in her/his vicinity, the exception for the duration of such an activity was added to this rule, as it was added to proposed rule 4713-15-01 of this chapter. The rule also recommends, but does not mandate, the use of disposable socks or sandals during those services where feet might be bare in order to limit the need to disinfect the floor. Disinfecting a floor kills microbes that cause diseases. A foot with some kind of fungus, perhaps slightly wet after being in a pedicure spa, could leave the fungus on the floor. If the floor is not disinfected, the next person to put bare feet on the floor in search of beautiful toes may pick-up the fungus from the previous client. Foot infections are very virulent and, once on a foot, foot infections are very difficult to cure. The floor disinfectants available promise to kill influenza and fungi when used as directed. Using a floor disinfectant is like sweeping up hair after providing a haircut to a client, even though hair on the floor is more visible than fungi. does take a few minutes of time away from actually providing a money-generating service to a client. However, the Board believes that the possible dangers of not requiring cleaning are so high that it is worth requiring the loss of a few minutes between clients to the disinfection process. Plus, the Board allows licensees to allow clients to use disposable shoes as an alternative to having clients walk bare-footed on the floor. Finally, the rule has been modified from its current requirement to keep all floors sanitary at all times to include an exception for a work station during the time period when a licensee is performing a service.

Ohio Adm. Code 4713-15-11. This rule was edited. Proper laundering methods are set forth in this rule. The current rule is designed to have towels, robes, linens and other similar items laundered in a substance strong enough to kill any HIV virus or other dangerous bacteria or viruses on the items. The need to use bleach to kill certain pathogens was thoroughly researched by the Board, following a plea by a stakeholder to allow the use of a gentler cleaning agent in order to better preserve towel color. The research indicated that the bleach killed the pathogens, but other solutions did not. Once cleaned, the items are to be stored so that they will not be contaminated by anything in the salon's air. Dirty items are also to be sealed off, to prevent

them from contaminating anything or anyone. The proposed rule clarifies the need to seal off the clean towels and linens and stresses that the containers must have solid sides and tops. The proposed rule also provides that only substances warranted to kill blood pathogens are to be used to launder items. The rule was reworded at the suggestion of the CSI Office.

Ohio Adm. Code 4713-15-12. The rule was edited. Not every licensee intuitively understands that an individual in a profession designed to beautify others should at least wear clean clothing and not have a body odor. While being clean and wearing clean clothes is important in any profession, it is critical in this one. However, while one might argue that the look and smell of an employee or renter of space might be just the concern of the employer, the potential for disease spread makes licensee cleanliness a Board concern. For example, some bacteria, like staphylococci, are transferred from person to person; personal cleanliness is one way to try to prevent the spread of bacteria and viruses. The rule to wash hands immediately before providing a service to a client and the requirement that a licensee wears a clean, washable outer garment have been part of the Board's rules since at least 1985. Another long-standing part of this rule, important to protect the cleanliness of equipment and items, is that licensees should not carry allegedly clean implements or equipment in their belts or aprons. R.C. 4713.41(B)(2) mandates the salon sanitize all equipment. However, if the equipment after being sanitized and disinfected is then carried in an apron, the equipment will pick up airborne particles and will swiftly become contaminated. The proposed change to the rule reflects a change in the practice of cosmetology profession that has been going on during the last few years – licensees prefer to wear street clothes rather than white smocks. The change in the current rule would allow a licensee to wear street clothing, as long as the clothing is kept clean and free from hair. The proposed rule also allows the use of an anti-bacterial hand sanitizer, which some people believe is easier on the hands than repeated use of soap and water.

Governor Kasich personally asked the Board to establish high standards of professionalism. The Board believes the promotion of professionalism and cleanliness to be in the best interest of the licensed community and the general public.

Ohio Adm. Code 4713-15-13. This rule is rescinded and rewritten, making it a new rule. At the suggestion of the CSI Office, the wording in all paragraphs of this rule was harmonized. A salon is required under R.C. 4713.41 to be sanitary and safe for those who use it and work in it. This rule is designed to amplify the law by requiring protection from ill clients or licensees for the licensee and other customers. It also protects a client, whose illness might worsen if someone performs a cosmetology service on the client. This rule has been modified in the proposed rules to make it easier to follow. The Board retains the statutory authority to punish an individual who continues to work in a salon when contagious.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Current rule 4713-15-13 would prohibit service to a patron when the patron seems to have an infection or open sores or a parasitic infestation unless the patron brings written permission from a doctor. The current rule just says that such an individual is not to be served without a doctor indicating the individual will not infect other individuals. However, the current rule gives no guidance as to what happens when the individual comes to a salon for an appointment or if a licensee began performing services before observing the individual's problem. The current rule gives the Board the right to require a physical examination for any employee suspected of having a contagious problem. The current rule also requires the Board to force a licensee to see a doctor if the licensee might have a contagious disease. This portion of the current rule amplifies section 4713.64(A)(2) of the Ohio Revised Code, which allows the Board to revoke, suspend, or deny a license or fine a licensee for continuing to practice the profession while knowingly having a contagious disease.

The proposed rules would require a salon or an independent contractor to have a written policy describing precisely what a licensee working in the salon should do if a patron or client shows up with what looks to be a parasitic disease or with something contagious or with open sores. As to an ill licensee or other employees, the salon owner or a manager or an individual assigned to be responsible by the owner is to have that individual provide a doctor's statement that the individual can work without infecting anyone else.

The holder of a salon license has a requirement to maintain infection control in a salon. An individual who is ill may spread a disease to other licensees or to members of the general public in the salon. The possibility of disease spread could create an infection control problem that would violate R.C. 4713.41 and the rules in Chapter 4713-15 of the Administrative Code. To prevent an infection control problem in a licensed (or permitted) facility, the Board may mandate certain precautions be taken when any employee in the salon, licensed or not, has a contagious disease.

Ohio Adm. Code 4713-15-14. The current rule is rescinded. Currently the rule excludes all animals except dogs providing service to physically handicapped people and fish in an aquarium. This rule has been consolidated with a similar rule from other chapters in proposed Ohio Adm. Code rule 4713-1-09.

Ohio Adm. Code 4713-15-15. This rule was addressed in Board Resolution 2011-0012, which removed the requirement to keep records of cleaning the equipment in current paragraph (A) of this rule, but did not change the rest of the rule. The current rule repeats the requirement to maintain equipment in a sanitary manner and adds the requirement that the salon keep handy the manufacturer's/owner's manual for all equipment the salon uses when it provides services to customers. The current rule reminds licensees to clean before disinfecting items. The proposed

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

changes in the rule, besides those the Board voted for in the above-mentioned Resolution, are designed to make the rule easier to understand and follow. Especially important is the requirement to clean equipment before disinfecting it. The proposed rule stresses the cleaning and disinfection of equipment and says that after removing dirt, hair, etc., electric equipment should be cleaned with heat as suggested by the manufacturer or by following the other requirements. While the record-keeping requirement in this rule has been useful during inspections, record keeping was removed for three reasons. Even though the records have been useful, the inspectors can tell whether equipment is being cleaned properly by looking at the equipment. Sometimes the inspectors have found perfectly filled out records, but then see equipment clearly in need of cleaning and disinfection. This leads to the conclusion that it is very easy to just write a date and time on a record without properly disinfecting the equipment. Removing the record-keeping requirement takes one burden off of the business owner and the licensee. One of the goals of rewriting the rules was to remove unnecessary requirements to save time and effort for licensees. Balancing everything mentioned above, the Board decided that the burden of the record keeping requirement in this rule on licensees outweighed its benefit. Some of the equipment discussed in this rule cannot be immersed in a solution for a time period without being ruined. The equipment can, however, be sprayed with a disinfectant like Clippicide, a product advertised as cleaning, disinfecting without rusting the equipment. The term appropriate disinfectant is appropriate for this paragraph, and, when the paragraph was rewritten under the supervision of a stakeholder/Board member to stress how to clean clipper guards that are both plastic and metal, the term “appropriate disinfectant” was substituted for the current description of a disinfectant.

Ohio Adm. Code 4713-15-16. R.C. 4713.41(E) begs for a rule setting forth the manner in which food can be sold in a salon. R.C. 4713.08(A)(10) requires the Board to write such a rule. This rule, in response to two statutory requirements, says provide any food in a salon in a manner consistent with the requirements of the Health Department, which sets general requirements in R.C. 3717.01, R.C. 3717.21, R.C. 3717.22 and R.C. 3717.42. This rule allows salons to offer food as long as they do so in compliance with the local health care board; no changes to the rule were suggested.

Ohio Adm. Code 4713-15-17. This rule, authorizing use of rooms for massage services for other compatible services as long as no sanitary problems result, has one proposed change. The word “sanitize” is replaced with the word “disinfect.”

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

R.C. 119.03, R.C. 4713.08

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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 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.

Federal requirements do not apply to these rules.

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)?

The General Assembly, in R.C. 4713.08(A)(14) mandated the Board to develop standards that would protect the general public and individuals who use any branch of cosmetology, the schools and the salons. The importance of safety and infection control in salons is emphasized by R.C. 4713.08(E) when it requires the Board to focus rules on precautions to be employed to prevent infectious or contagious diseases from being created or spread and is reinforced in R.C. 4713.41(B)(2) and R.C. 4713.41(D). The rules in this chapter are designed to amplify laws passed by Ohio's General Assembly to keep the members of the general public as well as the licensees themselves healthy.

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

There are no measurements in place at this time. The Board has installed a new program for the inspectors that will be able to track the number of violations of the rules of this chapter. It will then be possible to determine the impact of the rules as rewritten based upon the number and type of infection control violations.

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 Board members, who, with the exception of two of the members, by statute must be involved in the profession of cosmetology, studied the rules and gave opinions on them. In particular, Board member Clara Osterhage devoted many hours to researching the rules and making suggestions as to how to improve them. Steve Thompson, a former Board President, current Board member and one of the founders of the Ohio Independent Cosmetologists and Barbers Association commented on the rules and helped craft those rules that specifically impact independent contractors. As part of the search for the best policy for both businesses and the consumers of cosmetology services, representatives of all of Ohio's career technical schools and proprietary schools, salon owners and the Ohio Salon Association were consulted about the rules and the policies behind them. The school leaders consulted included Don Yearwood, President, CEO and Owner of the Dayton school, Carousel Beauty College, President of the Private School Association, and Treasurer and team leader of business affairs of the American Association of Business Schools. Tim Hornsby, an owner of the Cincinnati-based Hornsby Group, Director of the American Association of Cosmetology Schools and an owner-evaluator of the National Accrediting Commission of Career Arts & Sciences ("NACCAS") also participated. The administrative leadership of the Columbus-based Salon Schools Group not only responded to the e-mails but also called a meeting to speak with key staff involved with the rewriting of the rules to discuss proposed changes. The Salon Schools Group individuals involved in the October 11, 2012 meeting were James Rogers, Chairman, Sue Carter Moore, President, Bobby Lott, Vice President and a Commissioner of NACCAS and Luke Hanks, General Manager. Salons were also consulted about this rule. Elizabeth Murch, Executive Director of the Ohio Salon Association commented extensively both in writing and in person. Lisa Wilkins Doran, the Vice President of Operations for Salon Lofts, e-mailed suggestions. Ms Wilkins-Doran, along with William Fitzgibbon, a partner in Larr Policy Consulting LLC, and Robert J. Tannous, Esq., a Partner with Porter Wright Morris & Arthur, met at the Porter Wright offices with key Board staff members and the Board attorney on October 11, 2012 to discuss the rule changes and to propose alternatives. Tammy Hurley, Studio 33 Salon and Spa, sent back the forms and met in person with one of the individuals revising the rules. All Board approved continuing education (CE) providers were e-mailed the first draft of these rules as infection control/sanitation/safety is to be included in CE. The CE providers contacted included a few located out-of-state, such as Christopher M. Calabucci and Jerry Gardner from Elite Continuing Education in Ormond Beach, Florida, a correspondence course provider for the Board. For Chapter 4713-15, the stakeholders were first e-mailed a draft

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

version of the proposed rules and forms to respond and request changes to the rules on September 14, 2012. The rules and the forms were also posted on the Board's web page about ten days later, and the same stakeholders were informed that the rules also could be accessed through the Internet. The stakeholders were given a ten day period from the posting of the rules on the Internet to respond with any thoughts or questions. Discussions about the rules and their impact on businesses continued even after the rules were submitted to the general public and to the CSI Office. At that time, this particular chapter, on sanitation and infection control and safety, was reviewed by Leslie Roste, a registered nurse who serves as the Director of Education for King Research. Ms. Roste made a few excellent suggestions that were incorporated into the rules; she also edited an almost final draft of the entire chapter.

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

The intent of rewriting this chapter was to make it more useful to those interested in the cosmetology profession by ridding it of rules and parts of rules that were cumbersome or just didn't work in 2013. Many stakeholders provided information about needed changes in the rules prior to them being rewritten. Most of the changes were accepted. A few were not practical because Board staff experts thought they might decrease the effort to make the services provided in salons as safe as possible. The stakeholders suggested the consolidation of sanitary rules in different chapters that were essentially the same. For example, one rule in this chapter and in several other rules in other chapters concerning animals in salons, tanning booths, etc. were consolidated into one rule and that rule was placed in Chapter 4713-1 of the Administrative Code. Tammy Hurley, Studio 33 Salon, applauded the rule changes, saying that they made the rules concerning sanitation easier to read, would, thereby, be easier to follow, cost her less to follow and would be useful to both her licensed employees and to the general public. One stakeholder commented that requiring salons to keep the entire facility, floor, walls, etc., sanitary, was too much of a burden. Based upon this concern, an exception for the area immediately around a licensee while the licensee was performing a service was added to rules 4713-15-01 and 4713-15-10 to make them more enforceable. Clara Osterhage, a stakeholder and a Board member suggested the revision of paragraphs (C) and (D) of 4713-15-15 of the Administrative Code to encompass electrical equipment that is both metal and plastic. As noted above, the proposed rules have been changed to improve the current rules and to make it easier for the salons to follow them. If the proposed rules are enacted, a salon owner will no longer need to worry about sanitizing employees or some of the more onerous record-keeping requirements. Given the diseases that could be transmitted and other health issues to consumers of services and licensees were the standards looser, the

Board decided not to deregulate further. In general, however, the stakeholders told the Board that they strongly approved of the proposed rule changes made in this chapter.

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?

The Board did not use scientific data to develop the rules as they are not data driven. However, the importance of disinfection is stressed in the statutes and rules of other states, just because of the well-known link between dirty conditions and diseases. For example, North Dakota in 32-02-01-04(1) has language saying as follows: “[w]alls, floors, and fixtures must be kept clean and in good repair at all times.”

The chapter is designed to supplement the laws, such as R.C. 4713.41, passed by the General Assembly. The General Assembly created the Board to regulate the industry, in part to protect the general public. The purpose of the laws in Chapter 4713-15 is to amplify the requirement in law that facilities used by cosmetology professional must practice infection control and safety to protect the general public and other licensees. Many of the provisions in this chapter apply to schools and to tanning facilities in addition to salons, because these facilities also could injure individuals through improper infection control procedures. In determining that items should be disinfected and/or cleaned, the Board used already existing standards of cleanliness for equipment, implements, facilities and employees. The Board consulted with the latest editions of Salon Fundamentals and Pivot Point, nationally recognized cosmetology text books, as well as publications from the United States Food and Drug Administration and Environmental Protection Agency concerning infection control, disposal, and standards of effective practice in infection control. The Board also spoke with nationally recognized experts in the area of cosmetology infection control.

Stories about health issues and resulting lawsuits that have arisen from poor sanitation are rampant, but, given Ohio’s strong regulation background, not as severe in Ohio as they have been in other states. For example, ABC News, on May 29, 2002, reported about a woman, who received herpes from a manicure and was awarded \$3.1 million after she won a suit against the nail salon. (http://abcnews.go.com/sections/GMA/GoodMorningAmerica/GMA020528Nail_herpes_case...5/29/02). The rules in this chapter are to protect those who use salons and cosmetology professionals from diseases that could be passed along from person to person by means of unsanitary equipment or implements. The rules also protect businesses when they require a minimum level of sanitation in salons and for equipment and implements. Harming patrons by using dirty, disease-causing equipment could be far more expensive for a business than

would be the cost of following the rules. Such suits and the publicity for said discourages the public from using cosmetology salons.

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?

The Board did not consider alternative regulates to infection control because the Board determined them to be inappropriate. In general, the rules were designed to be easier to follow and also to deregulate what previously existed. The Board developed the rules to allow the Board to carry out the sanitary requirements the General Assembly wanted in salons, as indicated in R.C. 4713.41. To have developed the rules otherwise would have disrupted the uniformity of the scheme for protection of the public envisioned by the General Assembly.

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. Given the direction set for the Board in the General Assembly, the Board did not specifically consider performance-based regulations, because the Board didn't believe they would be effective.

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

No other organizations or boards regulate the profession of cosmetology. As a result, no rules are duplicated. The rules do occasionally refer to the Board of Health. They do complement the Board of Health's attempt to keep the public in good health.

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 Board plans a massive educational program to ensure the cosmetology professionals in Ohio are aware of the changes in the rules and will become more knowledgeable about those rules that will not change or will only be edited. The new and amended rules will be widely published, on the Board's web site and in professional magazines. In addition, the Board's inspectors and investigators will be retrained as to how to enforce the rules. The staff

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

members at the Board overseeing the administrative violation program will continue to watch to make certain that all license holders in Ohio are treated in a similar manner.

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 rules affect all who would like to hold a cosmetology licensee, all schools teaching these individuals, all salons, all tanning facilities, all certificate and continuing education providers and the general public who use salons, schools and tanning facilities or who are related to someone using them. The rules would also be applicable to continuing education providers that teach a cosmetology service and should be following the infection control requirements and teaching them during their program or class. Some of the rules also affect tanning facilities or are referenced in proposed Chapter 4713-19, as is, for example, the blood-spill-clean-up requirement.

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

While the goal of rewriting the rules has been to deregulate and help promote business growth by decreasing the cost of following rules, maintaining a facility in a sanitary condition does have a cost and does involve a time commitment. Cleaning equipment and implements takes time. The disinfection process requires ten minutes of immersion. The items must be cleaned, with hair removed from brushes, etc., before being disinfected. The solution must be made fresh every day. The time and expense involved in following the requirements would depend on the size of the facility, its staff, the number of implements and pieces of equipment that need to be cleaned and disinfected. Thus, the amount of time needed to follow the rules would be subjective and would vary from person to person. For violations of the rules there could be fines, suspensions or revocations of licenses. R.C. 4713.64 mandates a maximum fine of \$500 for a first-time violation. Violators may settle, usually for at least half of the suggested fine. The newly enacted provision in R.C. 4613.64 will allow the Board to send first time offenders to educational programs so that they can learn what they should do to properly keep follow this chapter. It is expected that the offenders will have to pay an amount that would cover the cost of providing the educational program, a cost still not determined, but less than the \$500 for a first violation. Also, the Board has the power to mitigate a penalty depending upon circumstances. Most of the stakeholders responding to questions about this and other

chapters indicated to the Board the changes to this chapter would be easier to follow and would take less time with which to comply. Those stakeholders suggesting changes were listened to and almost all of the suggested changes were made.

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.

As noted above, most fines are under \$500 for first-time offenders. A first-time offender with multiple violations is usually charged \$100 for each additional violation found during an inspection, although under R.C. 4713.64, the Board may charge up to \$500 for each first-time violation and \$1,000 for each second violation. The offender would be offered a hearing or would be offered a settlement agreement with a fine at least one half of the suggested fine on the Notice of Violation. However, recently, one facility was suspended because it was a repeat offender with many of the same sanitation violations continuing from one inspection to another over a several year period. It is difficult to quantify the time it would take to comply with the sanitation provisions as the statistics do not exist now, the time would depend upon the size of the facility involved, etc. Obviously, for the one violator mentioned above, any time keeping the salon sanitary is too much. As stated above, a failure to follow good infection control procedures could be even more expensive for a small business than would be following the proposed regulation. For example, an individual whose health is compromised by an improperly disinfected implement at a salon may be able to win a large lawsuit against the salon and its owners. And certainly, publicity about a dangerous pedicure spa that causes infections could radically decrease business for the salon and for other similar salons.

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

As stated above, the rules in this chapter amplifies R.C. 4713.41, R.C. 4713.08 or are required by statutes. Further, the proposed rules clarify language and consolidate existing rules, thereby making the rules in general less burdensome and time-consuming to follow. Finally, the rules fulfill the regulatory purpose of the agency – protection of the general public and licensees along with the establishment of a minimum level of safety and sanitation/disinfection to accomplish that goal.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Regulatory Flexibility

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

No. Not complying with the regulations could endanger the general public. Further, most of the salons, schools of cosmetology, tanning facilities, continuing education and certificate providers and licensed independent contractors regulated by the Board would qualify as small businesses. The rules in this chapter amplify a law passed to set forth how these entities will protect the general public and protect their own staff from the disease and infection that can be transmitted through items not properly disinfected. Because the rules in this chapter set forth a uniform minimum standard for disinfection/infection control and safety, there are no exceptions to the requirements.

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?

This chapter gives the Board guidelines as to how to determine a penalty. The Board investigators and inspectors write up all violations, but only the repeat violations or the more serious first-time violations are actually charged. Minor paper violations are not charged. In the future, first-time violators will receive education on sanitary compliance, so that they better understand what they should be doing.

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

The Board's website provides comprehensive information pertaining to requirements for cosmetology professionals, including up-to-date information about the Board's laws and rules, possibilities for updating skills, and schools teaching each branch of the cosmetology profession. All forms are posted on the Board's website. The Board's staff is available during reasonable business hours to answer questions and to provide assistance.