

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Board of Cosmetology

Regulation/Package Title: Salons

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

Date: first written on November 13, 2012, edited for second time January 16, 2013 and
revised again on March 13, 2013

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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☒ Rescinded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 4713-11. Application for Operation of Beauty Salon

The chapter is overdue for a five-year review. Dramatic changes have been made to this section to modernize and take cost out of the processes associated with business licensure and adherence

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to law. This section was one of the most business-unfriendly in the Board's rules. The rules are now devised to make it easier to open an Ohio salon and operate it in a more entrepreneurial manner without obsolete dictates of the State Board. The true intent of CSI can be seen in these proposed rules. Ohio's entrepreneurs will benefit, with the net result of more job opportunities for more Ohio cosmetologists being created at a more rapid pace. The proposed rules will facilitate the hiring and continued employment of licensed people as it encourages new opportunities.

This chapter sets forth uniform rules for starting and operating a salon in Ohio. A primary goal in the revisions is language clarification, so that the rules are easier to understand and to follow. A second goal was to remove rules that no longer worked or that created burdens to business.

Ohio Adm. Code 4713-11-01. Rescind/new. The current rule tells applicants for a license to operate a salon that the applicant should file an application and not begin operating until receiving a license from the Board. The license is good for ninety days, during which time the salon is to be inspected. The proposed rule removes the inspection requirement and adds the requirements that licensed salons follow the zoning and planning requirements where the licensed salons are located. Because the inspection requirement is gone and current technology lessens the time it takes to process an application, the proposed rule speeds up the licensing process.

Ohio Adm. Code 4713-11-02. Rescind The current rule describes what the floor plan requirements are for a salon. However, the requirement to submit a floor plan along with an application for a license was removed from Ohio Adm. Code 4713-11-01 several years ago. The proposed rule change would eliminate the entire rule.

Ohio Adm. Code 4713-11-03. Edit The current rule sets forth water and sewage safety standards for salons. The change in the proposed rule is the removal of the words "promulgated by the Ohio department of health." The wording was removed because the standards in the rule are essentially common sense, based upon commonly practiced health, safety sanitation policies. Further, their use is not tied to any particular statute or rule, or at least the current rule does not point to any specific statute or rule in the Department of Health.

Ohio Adm. Code 4713-11-04. Edit The current requirement to comply with all requirements and/or permits would continue in the proposed rule. Only the words "if applicable" would be removed in the proposed rule.

Ohio Adm. Code 4713-11-05. Edit The restroom requirement was changed after the first submission of the rules to the CSI and to the general public. One stakeholder suggested that the

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necessity of having hot water in a restroom be removed. Another suggestion given at about the same time was to permit salons to use nearby restrooms if the restrooms were kept clean and if the owner of the restroom permitted the use. The wording has been edited in an attempt to make the rule easier to understand and follow.

Ohio Adm. Code 4713-11-06. Rescind/ new The current rule requires a cabinet or storage container to safely store chemicals. The proposed rule simplifies the requirement, saying that each storage container should be able to provide storage for the substances to be used in the services provided by a salon's licensees. The proposed rule would remove the current last two sentences. The first sentence to be removed suggests the size and number of storage containers in a salon should be "adequate to provide for the number of licensees providing services and square footage of the location." The proposed rule's removal of this sentence clarifies that it is not the containers providing for the salon's square footage. The second sentence that the new rule would remove contains a requirement that the Board must vote on any deviations from the square footage/container/licensee combination. These changes should make it easier for salons to store chemicals safely

Ohio Adm. Code 4713-11-07. Rescind/new? Or just rescind -The sign requirement currently resembles the sign requirement for schools as found in Ohio Adm. Code 4713-3-05. The proposed changes to the rule points individuals to the standard signage rule found in rule 4713-1-11 of the Administrative Code. The goal of this change was to eliminate duplication of rules wherever possible.

Ohio Adm. Code 4713-11-08. Rescind/new The current rule limits the use of homes and mobile vehicles for salons. The proposed rule totally overhauls the current rule, making it easier to operate a salon in a residence. It also permits the use of certain mobile vehicles under certain, very limited conditions, designed to protect the safety and welfare of the salon user. The proposed changes to this rule would increase the opportunities for individuals to have small businesses. For home salons, the entrance to the salon still needs to be separate from the entrance to the house, so clients would not sit waiting for appointments in a chair next to the family dirty laundry (has happened) or in the home living room with the family (also happened). Under the proposed changes to the rule, the salon may have doors that go into the garage or the main home, but the doors should be solid and they should not be open, and should have the possibility of being secured. This change would allow the home owner to go in and out of the salon through the house, but would continue to prevent customers from wandering into the home. The proposed rule permits the equipping of certain types of mobile vehicles as salons. If this is done, the mobile salon must have a means of obtaining fresh water and ridding itself of sewage. The mobile salon is to cease operating immediately if one part of the clean water or sewage and waste disposal system fails to work. The salon is not to operate while moving; this would

prevent harm to clients should the salon be in motion and need to stop suddenly. Because inspections are without prior notice, salons must have operating a mobile tracking device, so that the Board inspectors can find and check the salons. Inspectors making surprise visits should protect the general public from mobile salons that operate without clean water, a working toilet or other essential requirements. It is also a means of trying to prevent the salons from ignoring or failing to follow the infection control rules as set forth in Chapter 4713-15 of the Administrative Code.

Ohio Adm. Code 4713-11-09. Rescind/new The exhaust of chemical fumes from a salon is the subject of the current rule. The proposed rule removes reference to an administrative code rule with a corresponding chart that no longer exists. (Speaking of a rule that is currently impossible to follow or to enforce, look no further than this one in its current form!) Instead, the proposed rule stresses that the exhaust system used in a licensed salon should be properly maintained and should be equipped with commercial exhaust fans or air filtration equipment. The requirement for a commercial exhaust system is based upon the type of chemical fumes that can be present in a salon. To ensure the air is as breathable as possible, the Board is requiring the more powerful systems. Quite a few chemical products are used in salons. Especially in manicuring salons, the smell of chemicals can be quite overpowering. The goal is to not only protect the members of the public using salons from the effects of the chemical emissions present in a salon, but also to keep licensees from suffering physical damage from extended exposure to the fumes.

Ohio Adm. Code 4713-11-10. Rescind/new R.C. 4713.08(A)(12) allows the Board to establish standards for professional service in a salon. The current rule and the proposed new rule both explain what services a salon may offer besides those of a licensed professional cosmetologist, although R.C. 4713.42 allows a salon to offer its customers other professional services. While the current rule contradicts itself in several spots, leaving it unclear whether a salon may offer a service not licensed by any board, the proposed rule would allow the salon to offer a service that is otherwise legal, safe and, if it does not involve physical touching, is not regulated. Based upon the requirement to enact rules for independent contractors that the General Assembly set forth in R.C. 4713.39, proposed 4713-11-10 allows independent contractors to work in salons. The proposed rule also indicates that independent contractors should sign an agreement with salon owners, (as described in proposed rule Ohio Code 4713-13-02) so that all parties understand the licensing, tax and payment arrangements involved with the independent contractor's license or employment agreement. Salons are to have similar agreements with employees. Finally, the proposed rule reinforces other rules and laws, such as R.C. 4713.41(C) and OAC Chapter 4713-8, allowing only the scope of practice for which a license was issued to be practiced in the salon.

Ohio Adm. Code 4713-11-11. Rescind/new The current rule permits the use of cosmetology professionals in stores offering glamour photography services. The change proposed in the current rule would be to mandate a cosmetology service could be only provided by licensed cosmetologists or estheticians. The proposed change would include a removal of the requirement that the cosmetology service of glamourizing someone before the photo is taken occur in a licensed salon.

Ohio Adm. Code 4713-11-12. No change to rule. This currently says that all individuals holding a license are permitted to work in a salon. If the licensee is acting outside of the scope of the license or performing poorly, the licensee should be reported to the agency that licensed the person.

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

R.C. 119.03, R.C. 4713.08, 4713.39

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)?

In R.C. 4713.41 and R.C. 4713.42, the General Assembly set forth certain general requirements for a salon in which a branch of cosmetology is practiced and, in R.C. 4713.39, required the Board to write rules for those individuals who want to hold independent contractors licenses. The rules in this chapter amplify the statutes and give them the structure to enable them to be successfully carried out. Most of the changes to the existing rule are simply stylistic. However, the changes to the requirements for a salon in a residence, a salon in a mobile vehicle and the clarification of what services may be provided in a salon are new. It is expected that these changes will encourage the individuals to start small businesses.

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

At this time, no measures of the success of this regulation in terms of outputs or outcomes are in existence. With the rules making it easier to start new businesses in homes and certain types of mobile vehicles, the Board will measure the number of licensed salons in homes and in mobile vehicles to see if the rule encourages the growth of these small businesses. The Board will also measure the licensing violations to see if they decrease or increase in number based upon these rules.

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.

Stakeholders, staff and interested parties discussed the rules in this chapter intensely before the rules were rewritten. After the rules were drafted, 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. 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 made many useful suggestions. Clara Osterhage, a Board member, a founder of the Ohio Salon Association and the franchisee of many Great Clips salons, thoroughly studied all of the rules and made many useful comments and suggestions. In addition, representatives of all of Ohio's career technical schools and proprietary schools were consulted about the rule changes. The school leaders asked to comment on rules 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 were James Rogers, Chairman, Sue Carter Moore, President, Bobby Lott, Vice President and a Commissioner of NACCAS and Luke Hanks, General Manager and Board member. Salons also contributed suggestions about this rule chapter. 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 for

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further changes to the rules. Ms. Wilkins Doran organized a meeting with William Fitzgibbon, a partner in Larr Policy Consulting LLC, and Robert Tannous, Esq., a partner at the Porter Wright offices key Board staff members and the Board attorney to discuss the rule changes. Tammy Hurley, Studio 33 Salon and Spa, sent back the forms and met in person with one of the individuals revising the rules. For Chapter 4713-11, the stakeholders were first e-mailed a draft 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. After the original comments from stakeholders were assimilated into the proposed rules, the rules were posted for general comments on November 21, 2012. Comments were sent to the Board and to the Common Sense Initiative Office. After the posting, several stakeholders suggested changes to rules in this chapter and most of the changes were accepted and incorporated into the proposed rules.

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

In general, the stakeholders strongly approved of the proposed rule changes made in this chapter. One change suggested by several salon owners was the removal of the currently-required licensee list. Salon owners found the licensee list to be burdensome as it had to be updated on a monthly basis and had to be available when inspectors came to inspect the salon. Inspectors like the list. Inspectors said the list showed who was working in the salon, allowing them to verify the worker's license's existence and whether it was current and was proper for the service provided. Several changes suggested to rules in this chapter occurred after the November 21st posting of the proposed rules on the Board's website. One stakeholder suggested that mandating hot and cold running water in a salon was a hardship on some salons. That requirement was removed from the rule. Another stakeholder requested licensees in a salon have the possibility of using a restroom outside the salon under certain circumstances. This suggestion was also incorporated into the rule. A stakeholder was concerned that the proposed rules would allow unregulated services that involved physical touching and could be unsafe, such as body bleaching, to be in salons. The rule was changed to permit a salon that wants to rent space to other than cosmetology professionals to only allow unlicensed persons whose service is legal and does not involve touching another individual, or an person with a valid license from another Ohio agency to rent the space and perform the services in a salon. Also added was the word "cosmetology" in a sentence describing how independent contractors had to be licenses, as mandated by R.C. 4713.39. The Ohio Chapter of the American Massage Therapy Association had requested clarification

of the independent contractor in a salon requirement, because the Medical Board does not require the message therapy practitioner to have an independent contractor's license. A final change was to insert wording to ensure the door into a home salon, permitted in this rule, remains closed when the home salon is open for business.

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. The chapter is designed to supplement the laws passed by the General Assembly describing the way a licensed salon should be operated, what facilities should be in or near a salon, and whom a salon owner may allow to rent space or use space in a salon.

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?

None. Most of the salons operating in Ohio would qualify as small businesses. The Board wanted a uniform set of rules for all salons in Ohio. To have developed the rules otherwise would have disrupted the uniformity of the scheme as envisioned by the General Assembly and fleshed out by the Board's rules.

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. The Board thought spelling out the requirements for each salon would create a uniform minimum quality standard and would provide stronger protection for the general public.

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 in other agencies. The Board has removed rules from this chapter that duplicated other rules and consolidated them with other similar rules in Chapter one. Those rules governed four-legged animals and fish in salons, inspections by Board inspectors in salons and signs for salons. The new rule, in proposed OAC 4713-1-09, parallels the American Disability Act requirements for service animals in public places.

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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 as well as of those rules will not be changing. 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 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 individuals holding cosmetology licenses and all licensed salons.

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

In general, the revisions to the chapter lessen the adverse impact of the current rules and open up more possibilities for those who would like to start a small business. A salon is mandated by statute (R.C. 4713.10) to pay a fee in order to receive a license. Based upon R.C. 4713.11 and approval of the Controlling Board, the licensing fees for a salon were increased to seventy-five dollars (\$75.00) for the first license and sixty dollars (\$60) to renew the license every two years. The revisions to the rules in this chapter do not increase the cost of applying for a license. The chapter allows a salon to rent space to other, legitimate providers of services, something that could make owning a salon more profitable. The chapter has also made it easier to open a salon in a residence and opens up the possibility of a salon on wheels that travels to customers. There is always the possibility of fines, suspension or revocation for those who violate the chapter. However, first-time violators of the law may be offered corrective education instead of other punishment. The corrective action courses will be offered with the hope that further education will decrease the need for fines, which under R.C. 4713.64 are set at a maximum of five hundred dollars (\$500) for the first violation, one thousand dollars (\$1000) for the second time a licensee is found in violation of a law or rule, fifteen hundred (\$1,500) for the third violation of the same law or rule, and suspension or revocation for really bad violations or violators of laws

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and rules. The Board also has the power to mitigate the violations under OAC 4713-8-02.

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, in general, the chapter lessens any adverse impact that the current rules may have on small businesses. The range for fines is set by R.C. 4713.64 to be a maximum of \$500 for the first violation, with a new option for corrective action courses instead of a penalty. The time to comply with the regulations and the cost would vary, depending upon the size of the salon and the services it provides. The chapter revisions remove several requirements that are no longer necessary, thereby saving small businesses time and money. For example, gone will be the requirement for an applicant for a first salon license to draw or have drawn a floor plan to scale. Another time-consuming requirement that will be removed is that salons prominently display and constantly update a list of all individuals working in the salon who do not provide a cosmetology service.

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

The statutes such as R.C. 4713.41 passed by the General Assembly require rules to make them operative. The chapter’s revisions actually benefit legitimate salons and will make it easier to establish new salons in homes and in some mobile vehicles. Most salons are small businesses. This rule ensures the salons can rent space to other individuals who hold other licenses or who just provide a legitimate service. Further, without regulations, it would be much harder to prevent the abuse of customers of salons. For example, Board inspectors have held in violation of current rules home salon owners whose waiting area for customers was next to dirty laundry or next to the sleeping area for several animals not used as disability service animals or filled with mice traps. The regulations allow the Board to stop such practices and to protect the general public.

Regulatory Flexibility

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

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No. Most of the salons and licensed independent contractors would qualify as small businesses. The rules are uniformly applied to protect the consumers of the services of salons.

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 infractions are not charged, but a warning is issued. The proposed chapter removes several rules that currently generate paperwork violations.

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.