



# Common Sense Initiative

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## Business Impact Analysis

Agency, Board, or Commission Name: Ohio State Dental Board

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Regulation/Package Title (a general description of the rules' substantive content):

2024 November 5-Year Rule Review – Chapter 12

Rule Number(s): 4715-12-02, 4715-12-03, 4715-12-04, and 4715-12-05

Date of Submission for CSI Review: 10/28/2024

Public Comment Period End Date: 11/08/2024

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_ rules (FYR? \_\_\_)

Amended/ X rules (FYR? Y)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

#### **4715-12-02**

This rule sets forth the minimum education, training, and application requirements for a dental assistant to receive a certificate allowing them to take x-rays in the dental office. Amendments to the rule include acceptance of one (1) additional dental assistant examination, American Medical Technologists Registered Dental Assistant (AMT RDA) as an acceptable pathway to receive a certificate. Additionally, language was added that allows the Board to issue a Dental X-ray Machine Operator certificate to applicants who have work experience, government certification, or private certification as a dental x-ray machine operator from another state that does not issue that license or certificate pursuant to the enactment of S.B. 131 of the 134<sup>th</sup> General Assembly which became effective December 31, 2023.

#### **4715-12-03**

This rule sets forth the guidelines for renewal of the Dental X-ray Machine Operator certificate. The amendment to the rule removes the specific sponsor language as the Board no longer approves “Biennial” sponsors of continuing education.

#### **4715-12-04**

This rule sets forth the minimum education and training requirements for Dental X-ray Machine Operator certificate initial training programs/courses and sets forth the application

and fee requirements for approval of the program/course. Amendments to the rule removes the term “Permanent” regarding sponsors and specifies that only those sponsors as listed in paragraphs (A)(1) to (A)(10) of OAC 4715-8-02 may apply to provide the Dental X-ray Machine Operator initial training program/course. Additionally, the subject area of “digital imaging, sensors, and data storage” was added to the list of topics to be included in the curriculum to address newer technologies in the dental practice.

#### **4715-12-05**

This rule sets forth the continuing education requirements to biennially renew the Dental X-ray Machine Operator certificate. Amendments to the rule expand the list of acceptable continuing education sponsors to include all of those sponsors listed in OAC rule 4715-8-02 and expand the list of acceptable continuing education topics for renewal to include newer technologies. Additionally, the language that gave the ability of the Board to excuse or waive the continuing education requirement was removed.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

**Authorized by:** 4715.03, 4715.53, and 4715.57

**Amplifies:** 4715.53, and 4715.57

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

The proposed amendments implement a federal requirement and are being amended to enable the state to maintain approval to administer and enforce a federal law. Ad part of Sec.979 of the Consumer-Patient Radiation Health and Safety Act of 1981, 42 CFR 75 mandates the promulgation of regulations for the minimum standards for the utilization of ionizing and non-ionizing radiation by Dental X-ray Machine Operators in the interest of public safety and to prevent the hazards of improper use of medical radiation.

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

The question is not applicable since the proposed amendments do not exceed a federal requirement.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

In the interest of public safety and to prevent the hazards of improper use of medical radiation, Congress determined the need for standards for occupational groups utilizing ionizing and non-ionizing radiation (i.e. radiographer, dental hygienist, dental assistant, nuclear medicine technologist, and radiation therapy technologist). Subsequently, ORC 4715.53 was implemented in 1995 setting forth the certification [licensure] requirements for Dental X-ray Machine Operators in Ohio.

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

The rules are not quantitative regulations, nor do they impose measurable (if any) quantitative burden on the certificate holder. The success of the regulations will be measured by the certificate holders understanding or legal objections to the rules.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

The rules in this package are not being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931.

**Development of the Regulation**

**9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

The Board's Law and Rules Review Committee holds open meetings throughout the rule review year. The Committee is comprised of six (6) members including representatives from the Ohio Dental Association and the Ohio Dental Hygienists' Association. Additionally, the Board sends public notices and proposed Rule Review agendas to the Board mailing list, a listing of parties interested in all Board proceedings. The Board met on October 2, 2024 to accept the proposed amendments and approve the filing of these rules.

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

The Board received input from the Board's Law and Rules Review Committee over multiple meetings during 2024. No additional comments were received from other interested individuals.

**11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Scientific data was not used to develop the rules as the rules are not data driven.

**12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The Board did not consider further alternative regulations for these rules.

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

In 1994, Am.Sub.S.B. 191 or the 120<sup>th</sup> General Assembly was introduced as part of Sec.979 of the Consumer-Patient Radiation Health and Safety Act of 1981, 42 CFR 75 which mandated the promulgation of State regulations for the minimum standards for the utilization of ionizing radiation. Original language of the bill required all individuals utilizing ionizing radiation be licensed through the Ohio Department of Health. The Ohio Dental Association aggressively lobbied to have the Ohio State Dental Board to be the responsible State entity for regulating radiography in the dental practice. All other individuals performing radiologic procedures are regulated/licensed through the Ohio Department of Health. Therefore, there is no conflict with other sections of Ohio law. These rules are the sole state regulatory guidelines for Dental X-ray Machine Operators engaged in the use of ionizing radiation.

**14. 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 will continue to use its website to educate and update certificate holders on its rules. Board employees provide informational presentations to stakeholder organizations and groups of dental personnel in an effort to keep the dental profession apprised of current regulations. Stakeholder organizations also ensure that rules, particularly amended rules re provided to their members through communications and continuing education opportunities. Staff training is conducted for any rule changes to ensure that regulations are applied consistently.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

**a. Identify the scope of the impacted business community, and**

OAC Chapter 4715-12 impacts individual certificate holders by setting forth the minimum education, examination, licensure/certification requirements, and minimal continuing education requirements for licensure/certification renewal that is specified in 42 CFR 75. Costs of education, examination, and continuing education are set by the providers and the Board has no control over these costs. The Dental X-ray Machine Operator is charged with recordkeeping of initial education, examination, and continuing education documentation for four (4) years.

**b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

Initial education costs are set forth by the providers of the 7-hour initial training program/course and are not within the Boards control. Initial certification costs are set forth in ORC 4715.53(A). Dental X-ray Machine Operator certificate holders are not business owners and therefore, any education, examination, and/or certification and renewal requirements do not have an adverse effect on small businesses. However, if a certificate holder does not renew the certificate or is not in compliance with the continuing education law and rules, the Board may choose to implement disciplinary action against the certificate holder. Depending on the extent of the violation, the adverse impact to the certificate holder due to the disciplinary action could be as little as no cost with only a time commitment to as much as obtaining continuing ethics education in addition to the original continuing education requirements. Such discipline may negatively impact the employer dentist [small business owner] in loss of staff capabilities due to suspension of the Dental X-ray Machine Operators certificate.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**

There are no proposed changes to these rules that would reduce a regulatory burden imposed on the business community.

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

In the interest of public safety and to prevent the hazards of improper use of medical radiation, Congress determine the need for standards for occupational groups utilizing ionizing and non-ionizing radiation (i.e. radiographer, dental hygienist, dental assistant, nuclear medicine technologist, and radiation therapy technologist). Subsequently, ORC 4715.53 was implemented in 1995 setting forth the certification requirements for Dental X-ray Machine Operators.

### **Regulatory Flexibility**

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

These rules do not provide any exemptions or alternative means of compliance for small businesses. The law does not differentiate on the size of the business and, therefore, it applies to all licensed, certified, or registered providers.

**19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ORC 4715 does not allow for the implementation of fines or penalties. Therefore, this is not applicable.

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

Resources available to assist small businesses with compliance are the Board's law, rules, and policies online at the Board's website. Additionally, Board staff respond verbally and in writing to queries from interested parties.