



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

Agency, Board, or Commission Name: State Cosmetology and Barber Board

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

Use of Powder

Rule Number(s): 4713-15-09 (Amend)

Date of Submission for CSI Review: 06/02/2020

Public Comment Period End Date: 06/17/2020

**Rule Type/Number of Rules:**

New/ \_\_ rules

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

Amended/ \_\_1\_\_ rules (FYR? \_N\_\_)

Rescinded/ \_\_\_ rules (FYR?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

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.*

4713-15-09 (Amend) – This rule sets forth the Board’s infection control standards regarding the use of powders in barbering and the branches of cosmetology. The rule is being amended to include standards relating to “dip powder nails” services.

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.

Rule 4713-15-09: R.C. §§ 4709.05(E)(1), 4713.08(A)(15).

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.*

No.

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5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.  
Not applicable.
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)?  
To ensure proper infection control procedures and protect the public from potential harm.
7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?  
The success of the regulation will be measured through staff, licensee, and public feedback.
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.*  
No.

### **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 placed this rule on its website, requesting input and comments from all interested parties. Additionally, notification of the proposed rule change was emailed on March 2, 2020, to all entities and persons currently on our interested parties list, along with a response email address. Stakeholders were given until March 8, 2020, to submit their initial comments.
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 one comment on this rule submitted by the Ohio Barber and Beauty Alliance. The comment supported the adoption of the amended rule.
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?  
The rule is based on standardized industry texts and on national best practice standards suggested by healthcare professionals.

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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?

The Board did not consider alternative regulations. The proposed amendment is part of the Board's continuing effort to update the Board's infection control rules to include new or expanding services.

13. 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.*

Industry-standard infection control procedures require specific processes. However, the rule language is broad enough to allow businesses some choice in which products they use.

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

The Board is the sole entity tasked with the regulation of barbering and the branches of cosmetology in Ohio.

15. 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 rules will be posted on the Board's website, and notification will be sent to all regulated persons and businesses that may be impacted.

#### **Adverse Impact to Business**

16. 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; and
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and
- c. Quantify the expected adverse impact from the regulation.

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

**4713-3-02**

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- a) **The impacted community includes board-licensed individuals and businesses who choose to use powders in providing services.**
- b) **The adverse impacts are the small costs associated with using disposable applicators and/or containers and the potential for disciplinary action if they fail to comply with the rule.**
- c) **The adverse impact of using disposable applicators and/or containers is minimal, as the products are very inexpensive. Violators, though, may face fines ranging from \$250.00 to \$1,000.00, based on the number of prior violations, and possible license suspension or revocation.**

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

**Reusing powder applicators and/or powder containers creates a significant risk of spreading a serious infection or disease to members of the public.**

**Regulatory Flexibility**

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

**The rule applies equally to businesses of all sizes.**

**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?**

**The Board will apply its violation guidance matrix if an individual receives notice of a violation of this rule. The matrix permits an individual in violation of this rule to correct the issue(s) and receive a warning.**

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

**There are no special resources required to comply with this rule.**