

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Board of Cosmetology

Regulation/Package Title: Standards of Safe and Effective Practice

Rule Number(s): 4713-8-01, 4713-8-02, 4713-8-03, 4713-8-04; 4713-8-05; 4713-8-06;
4713-8-07; 4713-8-08; 4713-8-09, 4713-8-10

Date: November 13, 2012 , reedited for second submission on January 4, 2013, reedited
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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☒ Rescinded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 4713-8

The purpose of the revision of this chapter, as clearly set forth in Ohio Adm. Code 4713-8-01, is to consolidate and to make more business-friendly the established standards by which the

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CSIOhio@governor.ohio.gov

Cosmetology profession in Ohio has been operating. The goal of rewriting these rules was to clarify the existing standards and requirements to make them easier to follow, with the hope that improved clarity would reduce the need for enforcement of the rules. The chapter also establishes how the Board members should determine the standards by which Cosmetology professionals should be judged.

Since at least 2008, OAC Chapter 4713-8 has described the scope of practice for each of the branches of Cosmetology to which the Board grants a license. Moved to this chapter were the requirements designed to allow an individual who wants to perform a service not taught in Cosmetology school, but within the scope of practice of the license held by the individual. The current rule, found in OAC 4713-13-12, calls the services “special services.” However, nowhere else do the rules use the term “special services”. The rules in current Chapter 4713-8 call them either “advanced practice”, “advanced Cosmetology services”, or “services unregulated in salons.” Moving what is currently titled “special services” and is currently OAC 4713-13-12 to this chapter as 4713-8-09 was an attempt to clarify what licensees can do outside of their basic training. After very useful comments from the Common Sense Initiative (CSI) Office and to further eliminate any possible confusion as to what constitutes advanced practice services, the Board split the various parts of what advanced services is into three separate parts, and defined the two parts not defined before, “unregulated services” and “advanced techniques” in the definition section of proposed OAC 4713-1-01. “Advanced techniques” was defined as meaning enhanced techniques used to provide services that are an inherent part of the licensee’s scope of practice, and that may require above the basic training in skills needed to perform the service. For example, while using one color of hair dye would be a basic service, the use of several colors of dye on hair at the same time would require training above the basic skills taught to each student. How to roll hair when doing a simple perm is taught as part of the basic course. A more complex perm service would be using a large and a small roller on the same group of hair; this would be an advanced technique. Should a hair designer want to do a difficult haircut, or a manicurist want to go beyond a basic polish to enhance nails with nail extensions or to put flowers on nail extensions or other such techniques for which further training would be needed, the licensee would need skills beyond the basic skills used for those services. Advanced techniques constitute an enhancement of the basic skills taught to each licensee in schools and, for that reason, advanced techniques do not require approval of the board before a licensee trained to use them does so in a salon. The definition of “advanced practice services” was tweaked to clarify that it differed from the training called “advanced techniques” in that it involved proof of training for the use of devices, equipment, products, chemicals or processes and Board-determination that the proposed use was within the scope of practice of the licensee’s license. The definition of “unregulated services” was added to proposed OAC 4713-1-01. In proposed OAC 4713-8-09, the Board clarified that some advanced practice services might not be regulated under any state or federal laws or rules. To clarify that advanced techniques are part of

the services a licensee, properly trained, may offer, the scope of practice rules for Cosmetology and for the branches of Cosmetology now have an additional paragraph saying licensees may train to perform advanced techniques. In general, proposed rules 4713-8-03 through 4713-8-07 are basically the same as the current rule. Certain parts of the rules are clarified as stated above. Finally, this chapter provides Board members with flexibility when determining what, if any, punishment a person violating the Board's laws and rules should be given.

Part of the chapter needs the five-year review process. To standardize the dates for the next five-year review, the entire chapter is being submitted for the five-year review.

Ohio Adm. Code 4713-8-01. This is a rescind/new rule. The rule sets forth certain standards to which the members of the Cosmetology profession should adhere and points out that it is the Board that is to evaluate and determine if the standards are met. The rule gives criteria the Board may use to determine adherence to acceptable and prevailing standards of safe Cosmetology. The CSI Office also asked for information as to how the licensee is on notice as to what the "acceptable and prevailing standards of Cosmetology" are. For those of us not in the Cosmetology profession, the wording of a rule allowing the Board to evaluate the "safe and effective Cosmetology practice" may seem vague. Cosmetologists, however, spend a considerable amount of time studying the common standards and behaviors required in the practice of Cosmetology or of the practice of a branch of Cosmetology. When in school, students of Cosmetology learn from reading the standard textbooks, such as Milady, the basic, minimum standards of their chosen profession. The Board's examination is based upon these textbooks. Classes are taught by individuals who studied the same standards. All of this gives students and practitioners of Cosmetology specific performance minimum standards for each service within the scope of the license, or "permitted practice" for the license that they wish to hold. In addition, all persons holding licenses are to adhere to the minimum sanitation/disinfection/safety practices expressed in Chapter 4713-15 of the Board's rules. It is these standards that form the common standards and behaviors of a cosmetologist. The proposed changes to this rule include an expansion of Ohio Adm. Code 4713-8-01(A)(2). This change stresses the importance of adhering to the Board's standards for safety, sanitation and disinfection as set forth in the Board's laws and rules. While the current rule implies that the disinfection and safety standards must be met, the proposed rule clearly states this requirement. Later in this chapter, the rules explain the requirements for each branch of the Cosmetology. At the suggestion of the CSI Office, all the definitions currently found in Ohio Adm. Code 4713-8-01(C) have been moved to Ohio Adm. Code 4713-1-01. This was a good suggestion. The terms defined in the current chapter are used in several chapters of the Ohio Administrative Code, and, therefore, belong in a more general set of definitions.

Ohio Adm. Code 4713-8-02. The current rule starts off by repeating what is in 4713.64 – a licensee who violates rules may be subject to discipline. Current Ohio Adm. Code 4713-8-02(A) limits the scope of possible discipline to violations of the rules in OAC Chapter 4713-9. The proposed rule’s language was changed to make the terms more uniform as the CSI Office suggested. The first paragraph, paragraph (A), stresses that the Board’s power to discipline would encompass not only licensees, who fail to follow the standards of practice and sanitary rules of the Board, but also those pretending to be licensees. Paragraph (A) of this rule was reworded at the suggestion of the CSI Office to clarify an important aspect of R.C. 4713.14 - non-licensees, those acting outside of the scope of their current license, and those without permits acting as if they had permits, who may also be disciplined for their violations. The current rule, in paragraph (B), then sets forth some factors that the Board may use to mitigate the discipline, if it is imposed. Proposed paragraph (B) of rule 4713-8-02 just clarifies the fact that the Board has the power to mitigate the punishment for a violation of any permit or licensee holder or of any person providing continuing education courses to Ohio licensees in a manner that violates R.C. 4713.62 or the rules adopted under that law. It also allows the Board to mitigate the punishment of those who violate the tanning rules, or any punishment for the violation of rules by any person permitted to certify tanning facility operators. Finally, proposed OAC 4713-8-02 restates the permission R.C. 119.09 gives boards to hire an attorney to hear cases and make recommendations of facts and law to the board, and, in so doing, ensures that all licenses and permit holders and providers of continuing education and tanning certificates may be heard in such hearings.

Ohio Adm. Code 4713-8-03. The current rule sets forth the scope of practice for a licensed Cosmetologist. The proposed changes would tighten the rule’s wording to make the rule clearer and easier to follow. The proposed rule would also clarify the limitations for Cosmetologists working under the direct supervision of a licensed physician, and would describe a permissible chemical peel. The proposed rule continues the reminder that licensees must follow all applicable laws and rules. At the suggestion of CSI, the Board is removing the reference to tax and worker’s compensation law in section (3) of paragraph (B) of these rules. While the Board had thought to add the requirement to follow specific business laws, the Board will no longer elaborating on the term “applicable laws and rules” except to add local to the already existing requirement to follow those laws and rules of the federal and state governments. However, the reminder that licensees must follow all applicable laws and rules that is currently in the rule will continue to be in the rule. To what already existed, the Board has added the requirement to follow the local laws and rules, to remind licensees that they are to be in compliance with any local zoning or other requirements when working. Section (3) of paragraph (B) in this rule is important, because there are laws and rules beyond those of the Board, such as the FDA product laws, that a licensee should follow to provide safer services to customers. Licensees need to be reminded about their obligations to follow all laws and rules, especially those involving their

business, if they are independent contractors or salon license holders. Unlike doctors and dentists, who have had at least several years of post-college education before going into their professional schools, the current requirement for entry into a Cosmetology school is a tenth grade education or the equivalent. A person who entered the profession prior to 2003 could have done so after only eight years of school. These individuals enter a very creative profession, but also one that offers opportunities for those who want to own their own business. For that reason, all students of a branch of Cosmetology receive a very basic business education during their pre-license schooling. Individuals, who have acquired a managing license, a current requirement for independent contractors under R.C. 4713.39 or salons under R.C. 4713.41, have taken as part of their schooling, courses in consumer and product safety, salon operation and procedures, salon supervision and management, product and service sales training, communication skills. Finally, many other agencies, for example the Veterinary Medical Licensing Board in OAC 4741-2-01(D), have rules reminding their licensees to follow applicable non-agency laws and rules.

Another addition to the proposed rule is a reminder to licensees that the license in Cosmetology supersedes all licenses of any branch of Cosmetology, with the exception of a Cosmetologist also holding an Esthetician license. The proposed rule reminds licensees that when an individual holding a license from a branch of Cosmetology obtains a Cosmetology license; that individual must surrender all other licenses except an Esthetician license. The Cosmetologist is permitted to keep a license to practice Esthetics, because some doctors, who use licensees to perform services permitted when under the supervision of a physician, prefer the individual be licensed as an Esthetician. The proposed rule clarifies that some services (“advanced practice” services) that are not regulated may be offered by a licensed Cosmetologist, who has the proper training to safely and correctly perform the service.

At the suggestion of CSI, paragraph (H) has been consolidated with paragraph (D) as both paragraphs address “advanced services.” The definition of “advanced services” in R.C. 4713-1-01 has been modified appropriately. To clarify that training beyond the basics learned in school was needed by licensees wanting to perform more complex services, the Board added a paragraph addressing the performance of “advanced techniques.” Advanced techniques are considered to be a step above the basic skills that form the foundation for professionals holding a license in Cosmetology or in a branch of Cosmetology. The Board also removed lists of specific services that a licensee could perform with either advanced training or advanced techniques.

The changes to proposed rules OAC 4713-8-04 through 4713-8-07 mirror the changes in proposed OAC 4713-8-03. For that reason, the rationale for the changes will be summarized rather than repeated verbatim.

Ohio Adm. Code 4713-8-04. The current rule sets forth standards that a licensed Esthetician should follow. The proposed changes would tighten the rule’s wording to make the rule clearer and easier to follow. The proposed rule would also clarify the limitations for Cosmetologists or

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CSIOhio@governor.ohio.gov

Estheticians working under the direct supervision of a licensed physician. The rule describes certain services within the scope of practice of a licensee, and set forth the service in detail, so as to distinguish this service from one that could only be provided by a person with a medical license. The proposed rule clarifies that what happens when an individual holding a license from a branch of Cosmetology obtains a Cosmetology license; that individual, once obtaining a Cosmetology license, must surrender all other licenses except the Esthetician license. The proposed rule changes some of the services that are not regulated, but may be offered by a licensed Esthetician, or Cosmetologist, who has the proper training to safely and correctly perform the service. At the suggestion of CSI, paragraph (H) has been consolidated with paragraph (D) as both paragraphs address “advanced services.” The proposed rule continues the reminder that licensees must follow all applicable laws and rules, but at the suggestion of the CSI Office, the Board is removing the reference to tax and worker’s compensation law in this rule. To clarify that licensees need training in certain skills beyond the basics learned in school, the Board added a paragraph mandating training for those wishing to perform “advanced techniques” - skills more advanced than the basic skills that form the foundation for professionals holding licenses.

Ohio Adm. Code 4713-8-05. The current rule sets forth standards that a licensed Hair Designer should follow. The proposed changes would tighten the rule’s wording to make the rule clearer and easier to follow. The proposed rule changes some of the services that are not regulated, but may be offered by a licensed Hair Designer, who has the proper training to safely and correctly perform the service. At the suggestion of the CSI Office, paragraph (F) has been consolidated with paragraph (D) as both paragraphs address “advanced services.” As noted above, the Board will continue to require licensees to comply with any other applicable laws and rules, adding only the requirement to obey the local laws. To clarify that licensees wanting to perform more advanced services need training in the skills which is beyond the basics learned in school, the Board added a paragraph about “advanced techniques.” Advanced techniques are an enhancement above the basic skills that form the foundation for professionals holding basic licenses.

Ohio Adm. Code 4713-8-06. The current rule sets forth standards that a licensed Natural Hair Stylist should follow. The proposed changes would tighten the rule’s wording to make the rule clearer and easier to follow. The proposed rule changes some of the services that are not regulated, but may be offered by a licensed Natural Hair Stylist, who has the proper training to safely and correctly perform the service. At the suggestion of the CSI Office, paragraph (F) has been consolidated with paragraph (D) as both paragraphs address “advanced services.” As noted above, the Board will continue to require licensees to comply with any other applicable laws and rules, adding only the requirement to obey the local laws. The Board added a paragraph

mandating training for those wishing to perform “advanced techniques”, skills above the basic skills that form the foundation for professionals holding this license.

Ohio Adm. Code 4713-8-07. The current rule sets forth standards that a licensed Manicurist should follow. The proposed changes would tighten the rule’s wording to make the rule clearer and easier to follow. The proposed rule changes some of the services that are not regulated, but may be offered by a licensed Manicurist, who has the proper training to safely and correctly perform the service. At the suggestion of the CSI Office, paragraph (F) has been consolidated with paragraph (D) as both paragraphs address “advanced services.” As noted above, the Board will continue to require licensees to comply with any other applicable laws and rules, adding only the requirement to obey the local laws. The Board added a paragraph mandating training for those wishing to perform “advanced techniques”, skills above the basic skills that form the foundation for professionals holding this license.

Ohio Adm. Code 4713-8-08. The current rule establishes how a person may have a special event in a place that is not licensed as a salon or a school. The proposed rule makes some stylist changes to the current rule so that it comports with the requirements of JCARR and is easier to read and to follow. The proposed rule also expands the scope of the special event permit to include invalids not able to get to salons. A member of the staff has issued routine permits to licensees to provide services at out-of-salon “locations”, since at least 2008, with the executive director appointing the individual who actually filled out the permits. To clarify the rule, the term “Board” has replaced the term “staff under the supervision of the executive director,” wording that preexisted this revision of the rules. The authority for the Board members to delegate the authority to issue routine permits is also found in other rules, such as current and proposed OAC 4713-1-02 that amplifies R.C. 4713.06. For that reason, the Board has agreed to change the wording for purposes of consistency as the CSI Office has requested. The Board members are available and would decide any policy decision about the validity of issuing a permit. The extended special permit that gives licensees the possibility of providing services to invalids, like the existing special event permit, is important. The permit lets the Board know that the event will happen and alerts the licensee that an inspection of the location and the services provided may occur. The alert to licensees is important, because, just as licensees must follow infection control laws and rules, so, too, must individuals holding special events permits. The proposed rule has added paragraph (D) to the existing rule, allowing licensees to perform non-chemical services in unlicensed facilities, including private residences, care facilities, and nursing homes that do not have a licensed salon. The goal of this rule is to allow an individual not able to leave his/her home or a nursing facility that lacks a licensed salon to access services for the duration of the time the person is unable to leave the home. The doctor’s statement is required to assure that the individual really needs to be provided Cosmetology services outside of a salon. The Board would prefer the statement of the doctor be notarized as it would better

ensure that a doctor, rather than someone pretending to be a doctor, verifies that the individual is unable to go to a salon. However, in deference to the CSI Office, the Board will not require the doctor to notarize the statement. The Board will not require those who have a permit to provide limited services in homes, etc. to give advance notice of when they will be serving their clients, a general requirement to allow an inspector to find and check the conditions under which the service is being provided. As in general, all licenses are to practice in a salon, paragraph (D) creates an exception that will allow a licensee to provide services to an individual as long as that individual is unable to go to a salon. Paragraph (D) is, thereby, expanding the business possibilities for the licensee. The licensee providing this service would download a form from the Board's web page and would send it, along with the doctor's letter, to the Board. The licensee would need a separate form for each individual to whom the licensee provides home/nursing home Cosmetology services. The permit will be valid for a maximum of one year, thereby giving the client regular service over a period of time and freeing the licensee from having to file for a new permit every time the licensee sees the client in her home.

Ohio Adm. Code 4713-8-09. This is a new rule for this section, although a very similar rule currently is in OAC Chapter 4713-13. It was revised and separated into three paragraphs, (A) for advanced practice services, (B) for a form of tattooing that creates permanent make-up and (C) for advanced techniques, skills within the scope of a licensee that have been enhanced by further training.

The rule change was necessary because fragmented requirements found in different chapters made for confusion. The current rule was created to clarify exactly what services a licensee could perform beyond the basic skills taught in schools. Currently OAC 4713-13-12 calls these services, "special services." However, nowhere other than in Chapter 4713-13 did the term "special services" appear. In current OAC 4713-5-07, the term "postgraduate classes" is defined to be something very similar to "special services". In Chapter 4713-8, all of the descriptions of the scope of practice for each branch of Cosmetology indicate that these licensees may provide something called "advanced Cosmetology services" or advanced Esthetic service", etc. These terms are not defined anywhere in the rules, nor is it stated what constitutes an advanced Cosmetology services. The current scope of practice rules in OAC Chapter 4713-8 also allow licensees to perform "services unregulated by the state", something defined by the "special services" rule currently in OAC 4713-13-12 that also describes services regulated by other boards and services not providing training.

In an attempt to clarify what a licensee can do, the "special services" rule was moved to proposed new OAC rule 4713-8-09, was renamed "advanced practice" and a few of the educational opportunities in current OAC 4713-5-07 were moved to this rule. Paragraph (B) continues a policy of allowing licensees to train to do a form of tattooing that looks like make-

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up. Mary Clifton, MA, RS, Recreation Programs Administrator, Bureau of Environmental Health, Ohio Department of Health specifically stated that the Department of Health continues to have no objection to this rule, either as it is currently or in the proposed form. The CSI Office also helped the Board understand that this rule needed to be clarified. That was done. With the help of the CSI Office's keen eye and editing skills, the failure to change the term "advanced Cosmetology services" to "advanced practice services" was remedied. Also clarified is that some advanced practice services may be within the scope of practice of a licensee, but not regulated by any federal or state laws or rules. Using certain types of equipment may require training, the use of that particular type of equipment might not be regulated, but the service the licensee would perform with that equipment could be within the scope of practice of a licensee. For example certain implements and procedures used to take calluses off of feet would fall into this category. Another attempt to clarify the rule was the addition of paragraph (C) to explain that advanced technique services are skills that may be obtained from a variety of training venues from which a licensee needs to train before performing the service. A licensee performing an advanced technique services, does not need a certificate or other proof of training. For example, to do a permanent one is trained to use one size rollers. For longer hair, several different types of rollers may be used to create that puffy in the middle and at the top of the head and curly at the bottom look. This type of permanent requires advanced skills and training before it can be successfully done. In contrast, a licensee performing an advanced service must have a certificate of training or proof the device/equipment/chemical is authorized for use in a Cosmetology service. With this rule as revised, it now will hopefully be easier for a licensee to determine what other services the licensee may provide.

R.C. 4713-8-10 is a new rule, written to amplify the Board's power, effective as of March 22, 2013 and set forth in the new R.C. 4713.64, to allow those found to have violated the Board's rules to take a corrective action course rather than to pay a fine or face a suspension or revocation of the license. The law is designed to help licensees avoid harsher punishment, by making them sit through a class explaining why what they did was not correct and how it should be done correctly. Individuals taking the course will not receive continuing education credit for the course. If they did, they would, in a sense, be rewarded for committing a violation. The corrective action courses will only be available for those licensees, who violate a law or rule for the first time. For example, if someone maintains dirty equipment, the licensee might not understand the dangers of that practice, and a course helping the individual learn how to correctly care for equipment might be useful. However, should that individual be found more than once with the exact same violation, that fact would indicate the corrective education did not work and perhaps a fine would encourage the individual a bit more to comply with the laws and rules of the Board. At some point, when the violations keep being repeated, and especially if the violations might seriously harm a customer, the licensee's license should be suspended or revoked and the licensee should be fined as further punishment.

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

R.C. 119.03, R.C. 4713.08, 4713.09, 4713.30, 4713.35, 4713.39, 4713.62

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 indicated that each branch of Cosmetology should have a license to practice and should adhere to the laws and rules governing the practice. R.C. 4713.14, R.C. 4713.20, R.C. 4713.28, R.C. 4713.30, R.C. 4713.31, and R.C. 4713.64. In R.C. 4713.29 and R.C. 4713.34, the General Assembly also provided general guidelines for individuals with out-of-state licensees, who wish to practice a branch of Cosmetology in Ohio. The rules basically remind licensees about the areas in which they have been trained and encourage them to stay within those boundaries when practicing their profession. The rules are designed to protect the general public from those individuals who would attempt to perform services outside of their scope of practice or for which they have no training. The rules in this chapter amplify the statutes and give them the structure to enable them to be successfully carried out.

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

The Board will begin to measure the “scope of practice” violations to see if the clarification of the rules in this chapter impacts either positively or negatively on the number and the type of violations. The Board will also measure the corrective action rule’s impact on those who violate the Board’s rules and laws, to see if there is a decrease, increase or no change in the

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number and type of violations made by licensees who have taken the corrective courses in lieu of paying a fine or other punishment.

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.

This particular set of rules was basically edited for purposes of clarification. All of the rules written in this and other chapters were discussed with Board members and stakeholders even before the process of rewriting them started. The goal was to modernize the rules and to have them comport with the current practices of the profession. All members of the Board were contacted. After being drafted, the rules in Chapter 8, along with other rules, were mailed to the stakeholders and interested parties. As part of that first notification process at the end of September 2012, the rules were then posted on the web and the Board then solicited comments. Thereafter, meetings with stakeholders took place. All members of the Board were contacted and were asked to participate in all aspects of the rule rewrite process. The Board members, with the exception of two of the members, by statute must be involved in the profession of Cosmetology. In addition, representatives of all of Ohio's career technical schools and proprietary schools were consulted. 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 were James Rogers, Chairman, Sue Carter Moore, President, Bobby Lott, Vice President and a Commissioner of NACCAS and Luke Hanks, owner, General Manager and now a Board member. 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 Director of Operations for Salon Lofts, e-mailed suggestions and, along with William Fitzgibbon, a partner in Larr Policy Consulting LLC, and Robert Tannous, Esq., met at the Porter Wright Morris & Arthur LLP offices on October 11, 2012 with 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. Steve

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CSIOhio@governor.ohio.gov

Thompson, a former Board President, current Board member and one of the founders of the Ohio Independent Cosmetologists and Barbers Association has commented on the rules. All Board approved CE providers were e-mailed the first draft of these rules including the out-of-state providers such as Christopher M. Calabucci and Jerry Gardner from Elite Continuing Education in Ormond Beach, Florida, a correspondence course provider for the Board. The Board incorporated most of the changes as suggested by the Stakeholders into the rules. The rules were posted again in late November, 2012, when they were first sent to the CSI Office. A few more changes were made, basically after some of the Stakeholders or Board members decided that further revisions were needed. The CIS requested this chapter and other chapters be reposted in January because of the changes that occurred after the first posting. One Board member, Clara Osterhage, made very useful suggestions after the first and the second postings. Most of the suggested changes were then incorporated into the rules.

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

The stakeholders strongly approved of the proposed rule changes made in this chapter. No stakeholders suggested major changes to any of the rules currently in this chapter or the proposed rules for this chapter. Salon Lofts and Board member Clara Osterhage did have a few grammatical changes that were incorporated into the rules. Most of the suggested changes to the proposed revised rules and new rules came from the CSI Office.

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, such as R.C. 4713.35, describing the requirements and skills needed for the different licenses in the profession, as well as the scope of practice for each branch of Cosmetology. Chapter 4713-8 has been in the Administrative Code for at least nine years, and possibly in another format for a longer time.

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 wanted a uniform clarification of the scope of practice for each individual branch of the Cosmetology profession. 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

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Board's rules. The Board also did not want the licensees practicing a service for which they either were not trained (outside the scope of their practice) and/or which should be performed by someone holding a license from the Medical Board or another agency or board.

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 branch of Cosmetology 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.

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 to the rules as well as those rules that 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 Board currently has over 133,000 licenses on file. Close to ten thousand salons are licensed in Ohio. Over 200 schools have licenses to teach Cosmetology or one of

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its branches. There are close to 40,000 individuals holding Managing Licenses in the various branches of Cosmetology. The rules affect all who hold a Cosmetology licensee, all schools teaching these individuals and all salons looking to hire Cosmetology professionals. Under the proposed rules in this chapter, the approximately fifteen-thousand four hundred licensed Independent Contractors, who are, essentially, small businesses, will face penalties for acting outside of the scope of practice set forth in their licenses as they have under the current rules. Given the large number of licensees and the content of this chapter, most of the adverse impact in this chapter falls upon individuals, rather than small businesses.

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

R.C. 4713.64(B), the Board may fine, suspend or revoke a license or assign a corrective action course to a licensee who violates a law or a rule. The length of the corrective action course will be several hours. Fines are set under R.C. 4713.64(D) at no more than \$500.00 for a first violation and \$1,000 for a repeat a second time of the same violation. Under proposed rule 4713-8-02, the Board may mitigate any penalty. The Board does not have documents or statistics as to the cost to employers for compliance with the regulations in proposed Chapter 4713-8 of the Administrative Code. There are currently no measures of the time it takes to follow the rules or the time necessary for an employer to verify that the employees are following the rules. Further, the time it would take a licensee to earn \$500 would depend upon the type of practice the licensee has. Also, for the first time, licensees violating the rules will be offered the opportunity avoid a fine by taking a corrective action course. The goal of corrective action courses is to teach skills and theory to licensees with first-time or minor violations to try to prevent future violations. The courses will be designed with a staff component working in conjunction with a private provider to develop in which they will, hopefully, gain an understanding as to why an inspector or investigator found violations of the Board's laws and/or rules. These two steps should be viewed as beneficial for the businesses, the licensed community and for the general public, who can be seriously harmed by those who act outside of the scope of their license or perform services for which they were not trained. Further, proposed OAC 4713-8-08 would allow a licensee to offer services outside a salon under certain limited circumstances. This rule would positively affect those small businesses that choose to offer services to someone who has no ability to go to a salon, for example someone in a nursing home without a salon or an ill person who cannot leave her home.

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, the adverse impact of the rule falls on the individuals wanting to be Cosmetology professionals. Licensed Independent Contractors are considered to be individuals operating a small business, often within the walls of another business like Salon Lofts. The cost of violations depends upon the nature of the violation and the number of times an individual has violated a particular provision of the law or rules. Under R.C. 4713.64(D), a violator may face a fine, revocation or suspension of a license or a corrective action course. As of March 22, 2013, R.C. 4713.64 allows a correction action course, cost to be determined after passage of the rule, to be an option for a first-time violator rather than face a \$500 fine, the maximum permitted under R.C. 4713.64 for a violation. The second violation, however, will be at the second violation rate of \$1,000 and so forth. The Board may mitigate the fine, based upon circumstances, and may agree to settle for less than the fine suggested in the Notice of Violation and Opportunity for a Hearing sent to each individual charged with a violation. Settlement has been as low as \$10, based upon the power to mitigate punishment in current OAC 4713-8-02.

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

The chapter actually benefits legitimate salons. Most salons are small businesses. The salons know what service they can offer based upon the license of the people working in the salon. This chapter describes the scope of practice for Cosmetologists, thereby limiting each licensee to certain tasks for which that licensee allegedly has been trained. By setting forth standards, the Board attempts to protect the public. The Board also uses the standards set forth in an attempt to prevent licensees from using Mr. Clean or a similar substance to remove dye accidentally splashed onto a customer’s face, a problem that was the subject of a recent complaint.

Regulatory Flexibility

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

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The regulation does not provide any exemptions or alternative means of compliance for small businesses. Most of the salons, schools of Cosmetology in Ohio and licensed independent contractors would qualify as small businesses. The individual licensees would not. All individuals holding valid licenses, however, would be able to use the proposed OAC 4713-8-08(D) exception from in-salon practice to perform non-chemical services to home-bound individuals. Under proposed OAC 4713-8-08(D), the opportunities for business for these licensees would increase. At the same time, a group of ill people will have access to services that might help them feel better about the way they look.

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?

In current OAC 4713-8-02, the Board may waive penalties to violations of the rules in Chapter 4713-8. The proposed changes to that rule and other rules in Chapter 4713-8 would allow the Board to mitigate any violation under certain circumstances and would allow the Board to provide corrective education to first-time violators of the Board's laws and rules. Part of the reason for the revision of all of the rules of the Board was to eliminate some of the paperwork violations when the failure to properly complete the paperwork would not lead to a greater harm. In general, very minor infractions have not been cited, but the licensee who committed the violation is warned and is told why the inspector is wrong. The Board expects the policy to continue under the proposed rules. This chapter gives the Board guidelines as to how to determine a penalty and when a penalty can be mitigated. The new, corrective action rule is designed to limit continual violations of the same laws and rules by educating the violator as to how to properly act. Proposed Chapter 4713-8 of the Administrative Code also helps licensees understand how to practice their profession within the scope of their license and avoid a penalty, or, worse, harm to a client.

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.

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