

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: The Ohio Board of Cosmetology

Regulation/Package Title: Schools

Rule Number(s): 4713-3-01, 4713-3-02, 4713-3-03, 4713-3-04; 4713-3-05; 4713-3-06;  
4713-3-07; 4713-3-08; 4713-3-09; 4513-3-10, 4513-3-11, 4713-3-12, 4713-3-13.

Date: first written November 8, 2012, edited for second submission January 10, 2013 and  
edited for a third submission to CSI on March 11, 2013

**Rule Type:**

☒ New

☐ 5-Year Review

☒ Amended

☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

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

Chapter 4713-3 Schools

This chapter sets forth the minimum requirements for a structure for a building used as a cosmetology school. The rules describe the steps necessary to complete before The Ohio State

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Board of Cosmetology (“Board”) will issue a license to open a cosmetology school. The chapter describes the physical structure required of a cosmetology school, how a school should structure its contracts, its withdrawal policies and how a school should advertise itself before it is actually licensed and after the school receives its license. The purpose here is to ensure the facilities are safe, sanitary and adequate with sufficient space and physical equipment to allow for the proper training of students. Wherever possible, the proposed rules in this rule package balance the safety of the public with the costs to enforce such safety, and have de-regulated aspects of these rules to lift unnecessary burdens off of business and to foster CSI principals.

In general, the proposed rules should be far less burdensome on schools than are the current rules. A critical change is that the Board proposes to eliminate a rule that is in conflict with 4713.44(H) of the Revised Code. The current rule mandates a bond valued \$25,000 more than the requirement in the Ohio law. A number of changes that should be cost effective for schools without compromising the integrity of the Board’s mission are being proposed. Common sense changes, such as not forcing schools to label certain rooms, will save small to larger amounts of money for school operators while having no negative impact on the education of the students. Eliminating a requirement that those opening schools come to the Board office for a preliminary meeting will save businesses time and money, as will the elimination of some of the paperwork violations.

Many of the changes are made to accommodate technology and modern practices that the former rules did not recognize. Other changes are to clarify confusing language or to consolidate in one rule several rules scattered in different chapters. Finally, the proposed rule package eliminates outdated and uncompetitive policies that currently limit competition and drive up cost to business and students.

Ohio Adm. Code 4713-3-01. The current rule describes what a person needs to do to open a school of cosmetology. The proposed changes to the rule add a request for additional information on the application, such as the names of the individuals who have incorporated the school and the top management of the school. The requested information is to assist the Board in finding responsible individuals, should the school not follow the rules or in other ways harm students. The proposed rule removes the very broad current requirement forbidding an individual convicted on a felony charge at some time in his or her from any involvement with a school. The proposed rule clarifies the school’s recordkeeping requirements and its limits on advertising prior to being licensed as a school and consolidates the advertising and recordkeeping in other rules. Following the suggestion of the Common Sense Initiative Office, the record keeping requirement for records in general and for the records of the instructors was limited to five years, to comport with the other record keeping requirements in the rules relating to schools. The school will, however, no longer need to retain its opening package forever. The

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Board maintains the same records. The proposed rule also mandates a statement of financial worth sufficient to cover the cost of the completion of the education of the students the school enrolls, should the school fail. This rule excepts those schools that prove financial responsibility by either belonging to an association that has a financial responsibility requirement or by being a governmental school. The proposed rule indicates that the Board will annually establish the minimum standard of financial responsibility schools are required to have. The proposed rule eliminates the \$35,000 bond requirement, leaving the amount set in 4713.44 of the Revised Code as the bond amount for new schools, so that the rule no longer attempts to change the law. The proposed rule does mandate that all schools, upon the renewal of their licenses, must prove that they continue to meet the financial responsibility requirement. R.C. 4713.44(C) mandates a school maintain persons licensed under R.C. 4713.31 or 4713.34 to teach students. Proposed 4713-3-01(D) allows the Board the ability to verify the credentials of those who will teach, to ensure that they have active licenses, no outstanding fines, or history of violations, etc. This part of the rule has existed for many years and is designed to protect students from unqualified instructors. Also at the suggestion of CSI, the rule's numbering was corrected.

Ohio Adm. Code 4713-3-02. The current rule and the proposed rule set forth the floor plans for schools. R.C. 4713.44(A) mandates students be taught the requirements necessary to meet the requirements for sitting for the examination for entry into the profession. R.C. 4713.44(B) says a school should have sufficient equipment and apparatus to educate the students. The rule sets forth a minimum requirement of square feet and a certain set-up to provide for the education of twenty-five students. The facility may expand on this, but may not have a smaller space. The floor plan proves what the school will offer. The final inspection verifies that the school was set up according to its floor plan. The space and equipment requirements were written to prevent schools from opening small, one room or inadequate spaces as a front for a cosmetology school where instruction is not given; but hours are sold. Students need a certain amount of time practicing the skills that they are taught. Assuming that the school in question was not set up to defraud students or the Board, by selling clock hours instead of training students during those hours, a school with inadequate equipment could not give a student the training needed to pass the examination for licensure. Unfortunately, the Board has found schools without sufficient space offering training that, because of the lack of space and equipment, could never meet the minimum standards required in R.C. 4713.44(B). The training offered in such schools could be compared to training someone to drive a truck by squeezing three such individuals in the cab of a truck and having them alternate during the required time for behind the wheel training. With too many people and too little equipment, how can there be proper training? The Board has also found alleged schools in small spaces that sold hours to students. The changes in the rule are designed to remove confusing wording while continuing the original goals of preventing fraud, and encouraging the proper education for students.

Ohio Adm. Code 4713-3-03. The rule describes the minimum requirements for a school's physical equipment (such as a shampoo bowl for schools teaching cosmetology, a ventilation system that has an exhaust able to remove the chemical smells.) The current record keeping requirement has been moved to another rule, consolidated with other rules and updated to allow for computer storage of records. The proposed rule also addresses the requirements of a room for safekeeping the records of a school, the equipment needed to safeguard the records and the length of time the records should be kept. The rule mandates a protection for the belongings of students. Locker facilities, while not part of the training of a cosmetology professional per se, do protect the belongings of a student from theft. Certainly, a secure place into which to store belongings, including cosmetology supplies and mannequin heads, would qualify as necessary equipment under R.C. 4713.44. It seemed to the Board important to ensure protection for each student's personal belongings. Without such rules, some schools would not provide lockers. Worries about losing items can distract from studying and lessen the chance of a student gaining the skills needed to work in his or her chosen profession. Office - R.C.4713.44, in paragraphs (D),(E), (F), (G) and (H), requires schools to maintain certain records. The records are to ensure the student receives the minimum education and the hours required. The records are also to indicate the qualifications of the instructors, including apprentice instructors and to ensure that these individuals have current, valid licenses. Some of the duplication of wording was removed from the record keeping requirement.

Ohio Adm. Code 4713-3-04. This rule addresses additions to a school that needs extra training space, where it should be and how to notify the Board about its existence. Additional facilities belonging to the same school have been monitored and regulated for many years to ensure that they meet the standards of R.C. 4713.44. The additional facilities are also to be closely located to the main school building and are limited to what they may contain. The purpose is to prevent a school from saying it is adding additional clinic space, but, in reality opening up a second school that lacks the required facilities and equipment. The inspection and required paperwork ensures the school is following the rules. The proposed rule enforces the need to inspect the facility before it is opened, but removes the requirement that a school submit an AAA map or the equivalent along with the application.

Ohio Adm. Code 4713-3-05. Signs are to advertise the location of a school and alert the general public to what goes on within the school. They are a form of "speech" that has protection under the U.S. Constitution's First Amendment, but advertising signs are not considered the same kind of "speech" as a statement by a Congressman on the floor of the U.S. House of Representatives. Regulating the content of signs is a permissible limitation of what is called "commercial speech." Such a limitation on the school's speech is permissible under current interpretations of commercial speech, even with the very broad interpretation of the commercial speech doctrine by the U.S. Supreme Court in *Sorrell v. IMS Health* 131 S. Ct. 2653 (2011). Any limitations

must advance a substantive governmental interest. The regulations of sign content in this rule comport with the permissible regulation of commercial speech under the First Amendment of the U.S. Constitution.

The current rule has signs for practice rooms and clinics and mandates a sign at the front entrance of the school in letters at least three inches tall that is to read “School of Cosmetology.” The current rule also discusses how a school should advertise for students. The current rule requires a school to send the Board copies of its advertising, should the Board so request it.

The proposed rule has been, in part, consolidated with other cosmetology rules about sign requirements in rule 4713-1-12 in the Ohio Administrative Code. The purpose of consolidation is to ensure uniformity in signage for outdoor signs for salons, schools and tanning facilities.

The main sign for a school should be seen as a school necessity under R.C. 4713.44(A). A sign identifies the school and advertises its existence to potential students as well as to possible patrons of its clinic. It seems common sense that the school has the same name on its sign as is on its Board license. The name allows people find its location and to verify its standing with the Board before using it to learn cosmetology or to receive less expensive cosmetology services in the school clinic. Besides the fact that the sign lets the students know where the school is located, it also helps inspectors find the school. The school inspections, as discussed in the BIA for Chapter 4713-1, helps protect the consumers of a school’s educational program as well as any member of the general public using a school’s student-operated salon.

The proposed rule retains advertising requirements specific for schools. Advertisements for clinics must state that only students perform the work. Students are to practice to get experience as part of the class work required under R.C. 4713.44(A). Students practice on themselves and on members of the public, who would like to pay less for a service. The signs are to make certain the members of the public who come understand they are being services by someone learning to perform the services, not by a seasoned professional. A member of the public should not have to accidentally receive a student haircut, but should understand fully what the outcome possibilities might be before sitting down for a student-provided service. The general public, especially those who need to watch pennies and make decisions on cost, should be informed that services at a school are performed by students - i.e. the cut or dye may not be performed as well as it would at a professional, licensed salon. The policy as well as the advertisement of students only performing services also keeps the school salon from unfairly undercutting the salons with licensed professionals. The sign rule also prevents the schools from unfairly competing with licensed professionals, who may be located in nearby salons.

R.C. 4713.081 requires the posting of the sanitary standards in a school and in a salon. Why? To help the public discern conditions that might make getting a cosmetology service unsafe and to remind the licensee that the licensee must follow the sanitary rules.

All signs are to include the statement that “[n]o student shall enroll or sign a contract until the school’s license has been approved.” This provision limits advertising to the general public until the school has preliminary approval to open and says once it has preliminary approval, the advertisement is to be limited to “opening soon” signs and new school coming information. Further, one too many persons advertising for students before getting permission to open has taken money from students eager to learn the cosmetology profession, and then vanished with the students' hard earned money. When a school has proven that it can open and will open, it can then advertise to get students.

Also, the school is to provide copies of advertisements to the Board to prove that the school is following the rules of the Board. The honor system has not worked in the past. Providing copies of advertising to the Board protects the good schools that follow rules from the schools out to take money and not provide students a solid education.

None of the current restrictions or proposed changes would violate the First Amendment of the U.S. Constitution as it applies to commercial speech, because they are necessary to protect the students and other licensees as well as the general public. For example, limiting the ability of a school not yet approved to advertise advances a substantive governmental interest as does the requirement schools post a sign saying students only perform cosmetology services or post sanitary standards.

The proposed rule removes some of the restrictions on advertising wording for schools that are open. It also removes some of the current signage requirements inside schools.

Ohio Adm. Code 4713-3-06. R.C. 4713.44 requires schools to provide adequate training and to keep training records, presumably to prove the training requirement has been met. R.C. 4713.20 mandates an applicant taking the examination provide proof that the applicant has completed the coursework. The record requirement provides that proof. This rule merely fleshes out statutory requirements. The requirement for schools to maintain training records for each student or a withdrawal or transfer form is described in the current rule. The proposed change is to clarify who from the Board can receive records and how a student can obtain that student’s personal records. The change also recognizes that records may be kept off site in a computer or in a storage area, especially if the owner of the school owns several different locations or several different schools. All records are to be kept a minimum of five years; this is a change from



several different rules with different minimum record keeping requirements. Paragraph (A) was clarified at the request of CSI.

Ohio Adm. Code 4713-3-07. The current rule, requiring applicants or responsible persons from the school to be present for Board questioning before the school opens, would be eliminated. This should be a great relief for businesses, saving them time and money.

Ohio Adm. Code 4713-3-08. The rule discusses the Board's issuance of a license that allows the school to open. The changes to this rule are merely cosmetic, designed to make the rule easier to read and understand. Basically, the rule elaborates on the statutory requirements in R.C. 4713.44, which requires schools meet certain standards of education and equipment to obtain a license. R.C. 4713.64(A)(1) allows for punishments including denial of license for those failing to meet the Board's laws and rules. The Board believes that a school failing to meet certain minimum requirements should not be permitted to open, to take money from students, and to compete with schools that want to provide a good education and have paid money to have sufficient or more than sufficient equipment and space. The Board cannot find a reason to allow a school in violation of R.C. 4713.44 to open and to take money, some of it provided by taxpayers through federal grants to help students pay tuition, to schools that will fail to deliver proper training to students.

Ohio Adm. Code 4713-3-09. The rule tells licenses that school licenses do not transfer and how to inform the Board should the school close. The changes to this rule are merely cosmetic. R.C. 4713.44 says "[t]he state board of cosmetology shall issue a license to operate a school of cosmetology to an applicant who pays the applicable fee and satisfies all of the following requirements:" The law then lists requirements. The law does not say that the license shall be transferred after purchase or even may be transferred after purchase. From the wording of R.C. 4713.44, it is clear that the General Assembly intended that each time a school has new owners or moves locations, the school shall have a new license. The rule merely says what happens to renew a license. The general process as to how a person obtains a license for a school, salon or tanning facility has been consolidated in proposed rule 4713-1-11.

4713-3-09(B) addresses those schools that close, leaving students who have paid tuition but not completed sufficient hours to sit for the examination. This paragraph is based on R.C. 4713.44, which mandates schools provide an education for students. Sometimes a school goes bankrupt. Sometimes an owner decides to close a school. The rule tries to provide for such problems, so that the student's records can be transferred and preserved. This paragraph also reminds those schools considering closing of their responsibilities to notify the Board so that the Board can assist with assuring the records of those students continuing their studies transfer to the student's new school.

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Ohio Adm. Code 4713-3-10. This rule, mandating the school license and each instructor's license be conspicuously displayed for public view, is not changed. It amplifies R.C. 4713.56, which mandates the posting of licenses of schools, salons and all licensees.

Ohio Adm. Code 4713-3-11. The school policy rule sets minimum requirements for tuition, contracting and refund, should the student withdraw before completion of the program. R.C. 4713.08(A)(13) mandates the Board establish standards for training in branches of cosmetology in Ohio. R.C. 4713.08(A)(19) allows the Board to develop rules. The law also sets forth requirements for schools to operate, keep records, offer coursework, and hire instructors. R.C. 4713.44 and R.C. 4713.45.

Refund policy is an important part of a school operation. Schools take in a certain number of students and calculate their expenses based upon the revenue from the students. However, sometimes people become ill and cannot continue a program or sometimes, after a few classes, an individual determines that cosmetology is the wrong profession. Schools need to have a policy that sets out what, if any, money a student is refunded when a student withdraws from a cosmetology program. The current rule followed an old policy of the National Accrediting Commission of Career Arts and Sciences ("NACCAS") and spelled out the refund amounts permitted based upon that policy. NACCAS updated its policy, but the Board's rule remained the same. This caused problems to the majority of Ohio's cosmetology schools that have been accredited by NACCAS and must follow its policies. The school stakeholders specifically requested that the current NACCAS rules be followed. The rule also addresses the collection of tuition from students, who study in a given program, but do not pay what they owe the school under the enrollment agreement or contract they signed. The proposed rule amendments strengthen the requirement that schools clearly outline the obligations of both the institution and the student and provide details of the school's cancellation and settlement policy. The contract/enrollment agreement between the student and the school is to be a clear statement of the obligations of both parties. The requirement to have a contract with certain elements in it helps to ensure that all students at a particular school are treated in the same manner. This rule reminds other schools that they must take students from those schools that close. The rule sets forth conditions to make taking students from other schools or readmitting students palatable for the schools.

Ohio Adm. Code 4713-3-12. As authority for this rule, the Board relied on R.C. 4713.08(A)(13), which mandates the Board to establish standards for training in branches of cosmetology in Ohio, and in R.C. 4713.08(A)(19), which allows the Board to develop rules for anything not specifically mentioned, as well as on R.C. 4713.44 and R.C. 4713.45, both of which set forth requirements for schools to operate, keep records, offer coursework, and hire instructors. The current rule describes catalogue requirements and was a word-for-word copy of an old NACCAS

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policy for catalogues. The proposed rule allows a school to use a handbook and or a catalogue. The proposed rule gives schools a choice, so that those schools wanting a catalogue to be just an advertising piece may do so as long as the student and potential student receive a document containing the schools rules and policies. The handbook/catalogue should be a clear statement of the coursework and cost of attending the school. As some schools will use a catalogue as an advertising tool and omit school rules and other necessary items, the Board decided to allow schools the option of having both a catalogue and a handbook, or to have only one or the other. The Board requires schools to have a consistent policy and rules and to ensure that the school's students have easy access to these policies and rules. The requirements for a catalogue will parallel those of NACCAS, the national accrediting group to which most cosmetology schools belong. The concern was that students in schools not accredited by NACCAS did not receive specific information as to the school's requirements for students, because the schools use the catalogue more as an advertising tool than a tool to inform students of policies. For that reason, the proposed rule adds a student handbook and sets forth the requirements that the school describe its policies in the handbook and/or the catalogue.

Ohio Adm. Code 4713-3-13. This rule currently sets forth the school contract or enrollment agreement requirement. The contract/enrollment agreement between the student and the school should be a clear statement of the obligations of both parties. The purpose is to protect both the student and the school. For purposes of the Board's rules, the terms school contract and school enrollment agreement are treated as if they are interchangeable. Some schools use one term for their agreements and others use another. For that reason, the Board decided to treat the use both terms and focus more on the contract/agreement's content requirements.

R.C. 4713.08(A)(13), R.C. 4713.08(A)(19), R.C. 4713.44 and R.C. 4713.45, as stated above, are the basis for the contract requirement. The Board had based its previous policy for contracts or enrollment agreements almost word-for-word on the policy of NACCAS in 2000. However, over the years, NACCAS changed its standards, but the Ohio rule remained the same. Most of Ohio's cosmetology schools belong to NACCAS and several individuals hold leadership in its Board. The schools belonging to NACCAS had to have one set of requirements in its contract to meet the NACCAS and something a bit different to meet old standards. To make life easier for schools, the school owners and the school officers suggested that the Board just refer all schools to the NACCAS handbook. The handbook is easy to find on the Internet and easy to read. For that reason, the Board decided that idea would work and adopted a rule with the requirement to rely on the NACCAS handbook's wording for contracts. The Board took these steps, even though it means that the Board will have to update this rule every year to make certain it comports with the current NACCAS handbook. The new rule clarifies the purpose of a catalogue, adds a student handbook, and indicates that the contract or enrollment agreement should follow the policy of the national accrediting body for schools of cosmetology, NACCAS.

The proposed rule changes interchange the terms “contract” and “enrollment agreement” in the rule because both terms have been used throughout the rules of the Board to mean the same type of agreement. Several provisions were added in the proposed rule. The proposed rule requires minors to have a parent or a guardian sign the contract. The student is to receive a copy of the contract and other information about costs before the student makes any payment. The contract is not binding until accepted in writing by an appropriate official at the school. Finally, the proposed rule clearly states that if a student has a problem with the school or vice versa, the Board of Cosmetology is not a party to that dispute.

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

R.C. 119.03, R.C. 4713.08

**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 Board is statutorily required in R.C. 4713.44, and R.C. 4713.45 to provide for the education of those who want to hold a license in cosmetology or in one of its branches. That education is a critical precertification requirement as seen in R.C. 4713.20, R.C. 4713.24 and R.C. 4713.25, where the General Assembly clearly set forth an educational requirement that must be fulfilled prior to allowing an individual to sit for an examination. To properly educate individuals wanting to be cosmetology professionals, a school must have sufficient equipment and facilities to ensure students can get the minimum practical and theoretical knowledge to be employable, and to not harm the general public when practicing their chosen profession. Educating those who cut hair, do nails and/or perform other cosmetology services about safety, sanitation and necessary skills is essential to the safety and welfare of

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the general public. Sufficient numbers of shampoo bowls and space to learn facial treatment skills, for example, help this process.

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

The Board will measure the impact of the rules by keeping statistics on the number of licensees, who are found in violation of the Board's laws for building structure, record-keeping or other provisions of this chapter. In the proposed rules, schools offering part of the required theory course to students on the internet have been required to provide statistics to the Board. The requirement for schools to keep information was added to allow the Board to determine if internet education is feasible for students of cosmetology, and if it is, how much of the education should be provided on the internet. Schools are very pleased with the revisions to proposed rule 4713-3-06. The satisfaction of stakeholder/school owners indicates that while there are currently no statistics documenting the effectiveness of the rules in this chapter, without the proposed change, which they describe as "a reasonable approach to student review of records", there would be a negative impact and financial burden to all parties. 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, Mr. Yearwood, has been most helpful with the development of the rules and with the Board's attempt to determine the impact of the proposed rules on small business as required by question 6. Don Yearwood's analysis of the impact of proposed rule 4713-3-06 is attached to this document as Appendix number 1

**Development of the Regulation**

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

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

The school community was especially helpful in the development of these rules and in providing what little statistical analysis of their impact that exists. School leaders were consulted throughout this process, and helped develop policy changes behind some of the newest rules. 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.

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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. In addition, all members of the Board were contacted. Several Board members must, by statute, be involved with the schools, either as an owner or affiliated with a career technical school teaching cosmetology. 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, Vice-President of Operations for Salon Lofts, e-mailed suggestions for all of the rule changes. Along with William Fitzgibbon, a partner in Larr Policy Consulting LLC, and Robert Tannous, Esq., met at Porter Wright Morris & Arthur, LLP, Ms. Doran met with key Board staff members and the Board attorney on October 11, 2012 in the Porter Wright offices 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 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. After the initial meetings during which the policy for the new rules was developed and after the draft version of proposed Chapter 4713-3 was written, the stakeholders were 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. Even after the CSI posting, several leading school owners requested a meeting, during which they proposed several changes to the proposed rules. These changes strengthened the rules and were incorporated into them. The Board voted to accept the rule changes as proposed by the school leadership. The second posting for CSI includes these changes. The Board made a few additional corrections to these rules based upon suggestions from CSI and resent the rule package back to CSI a third time after the changes were made.

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

The stakeholders really liked the proposed rule changes. For the most part, the changes removed inconsistencies, awkwardly phrased sentences and unpleasant, unnecessary requirements. There were minor changes in the proposed rules as drafted made at the request of stakeholders. James Rogers from the Salon Schools Group and Tim Hornsby from the Hornsby Group suggested the catalogue/handbook rule be revised to base this rule on the

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standards for catalogues set forth in NACCAS, the national accrediting association for most of Ohio's cosmetology schools. They also suggested that the contract and the student refund requirements be based on the NACCAS policies. These stakeholders argued that basing the contract, refund and handbook/catalogue requirements on NACCAS standards would greatly ease the burden of complying with the rules. Following their request, the rules were modified to refer to the NACCAS handbook as set forth on the internet. Also eliminated at the request of a stakeholder was the requirement that schools send individuals to meet with the Board prior to opening. The stakeholder argued that compliance was time-consuming and expensive, and the Board's justification for the meeting could not outweigh this objection. The facial room requirements in the proposed rule were changed, also at the request of several stakeholders, who had complained that compliance with the current rule was too difficult and too costly.

**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, but, over the years, a sense of the equipment and space needed in a school of cosmetology developed. Questions like how many shampoo bowls should a facility have are also questions as to how much time practicing skills will a student have. Without sufficient equipment and space, the student cannot effectively practice the skills needed to be a cosmetology professional. The chapter creates minimum requirements for the facilities in which cosmetology professionals are to be educated and the manner in which records of the education are to be kept.

**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 is constantly trying to find the best way to ensure its professionals have proper education. With the current regulations, the Board has experienced schools selling hours to individuals so that the individuals seemed to qualify for licensing examinations without having taken any classwork or practiced any skills. In addition, individuals who do not have good, basic training in the skills of the cosmetology profession can and have seriously injured those members of the general public who use cosmetology services. Schools with inadequate facilities definitely would not provide students with all the tools they would need to be successful. Then, while many schools accept students from failed schools, the concern is that some students may not be placed anywhere. For this reason, the Board developed a rule requiring schools to have a minimum financial base sufficient, to be determined on a

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yearly basis, to protect students. The Board also is proposing changes in the rules that would make it easier for a student from a failed school to be accepted elsewhere. The requirement to maintain of contracts and records of students for a period of time helps students, who decide to withdraw from a course and later return. The record requirement also protects the legitimate schools that could be financially harmed by unscrupulous school owners who sell hours without demanding student performance. Without a regulatory scheme mandating minimum facility and school requirements, not all schools would provide sufficient resources to give students a basic education in cosmetology skills and theory. Having schools trying to provide adequate facilities and equipment compete with those that don't want to do so harms the better schools and could encourage a race to the bottom. The end result would hurt those individuals who want to be competent professionals as well as the unsuspecting public using cosmetology services. It is common sense to believe that poorly skilled professionals, providing poor service or actually harming clients would undermine the entire profession. For the above reasons, the rules in this chapter have been written.

**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 a structure for schools would better protect students and the general public.

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

The Board works with the Department of Education to ensure that its requirements for training students complement the requirements for education for those individuals in the technical schools. No other organizations or boards regulate the for-profit schools of cosmetology. As a result, this regulation does not duplicate an existing Ohio regulation.

**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 knowledgeable about 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

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

### **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

The rules affect all who would like to hold a cosmetology licensee and all schools teaching these individuals.

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

The opening packet for a school requires a \$250 payment to apply for permission to open a school. The school would then need to send copies of documents, such as the layout of the school, to the board. It is assumed that any person starting a school would have plans for the rooms and equipment in the school, so the major cost here would be getting the information into e-mail or other format. The school would need a \$10,000 bond. Unless the school fits into the exemptions, for example a public technical school or a school accredited by a national association, the school would have to prove sufficient finances to educate twenty-five students. Licensee fees, time keeping records, time needed to keep facilities up to the sanitation standards set forth in the rules, penalties for violations of rules and time spent complying with the rules.

**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.**

Considering that many schools gross in the millions per year, the \$250 application fee is minimum. If the Board permits the school to open, the school would not need to pay anything additional for the license. The Board does not have any good information as to the time and cost of applying for the opening license. The school owners need to spend hours compiling documentation to show that they have the floor space and equipment necessary to operate a school. Many of the documents that the Board demands also must be provided to other governmental agencies or just must exist if the school is actually going to function. The owners of those schools, who would like to be accredited by NACCAS would need to meet even more

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stringent requirements. All schools need to pay a fee of \$250 to receive or to renew a school license. The cost of violations is set forth in R.C. 4713.64 and start at \$500 for the first violation. The Board may also suspend or revoke a license. For natural persons who are first time offenders, the Board will be able to use corrective action courses to try to prevent the commission of the same violation a second time. The cost of violations depends upon the number of violations and the number of times an individual has violated a particular provision of the law or rules. It is not yet clear what a corrective action course will cost. An owner whose school is absolutely not able to meet the minimum standards set forth in this rule or to maintain those standards would face a denial of a license or of a renewal of a license or a revocation of an existing license. All reports from stakeholders indicate that the proposed changes would make the rules easier to follow and may reduce their costs to comply with the rules.

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

The question asks for a balancing of a scheme mandating minimum requirements for schools training cosmetology professionals with the paperwork, rules, and license fee of \$250 every two years that adversely impact schools complying with the rules. Even with the current minimum requirements, school owners have been found selling hours to students, or overcrowding their facilities so that no student has adequate time to practice skills. The regulatory scheme gives Ohio the possibility of eliminating such schools. Without regulations, it would be much harder to prevent the abuses of students and, ultimately, the general public that could occur if poorly trained individuals are providing cosmetology services. To protect the public, it is necessary that cosmetology professionals attend schools capable of providing them with a certain minimum education in the basics of cosmetology, the skills, the infection control, and the safety issues necessary to be minimally competent in the profession. The rules ensure that schools in Ohio have a facility that meets a minimum standard, sufficient to allow for the education of students. The cost of following these rules to ethical schools is not high.

**Regulatory Flexibility**

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

No. Most of the schools of cosmetology in Ohio would qualify as small businesses. Should an owner be ill or have another situation that has made following some of the rules difficult, the Board may grant a waiver from some of its requirements, depending upon the licensee's

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circumstances and the evidence the licensee presents to the Board. It is important to remember that almost all schools holding licensees belong to a nationally accredited association, NACCAS that has stricter requirements than those found in the Board's rules. To maintain their accreditation with this association, these schools far exceed the minimum standards set by the Board in its rules.

**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?**

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.

**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 schools teaching each branch of the cosmetology profession. All forms are posted on the Board's website. A list of Board approved schools can be found on the web page.

## APPENDIX ONE

### **4713-3-06 Training records and student review.**

**Submitted by Don Yearwood**

#### **Quantify the Impact on Schools and Students:**

- Schools use various student document and data storage systems depending on whether the student is currently enrolled or NOT currently enrolled in school. The utilization of Third Party Servicers for Computerized School Administration Services is common place in the education industry. This is especially true when it comes to Financial Aid services, cataloging of Student Academic Progress, and calculation of On-Time completion of Clock Hours.
- Currently enrolled student records are generally more assessable and thereby allowing 3 days to retrieve records for review is a reasonable timeline.
- Not-Currently enrolled student records are often times archived and, provided maintenance of those records is still required by the state, take longer to re-activate. Therefore, for these students the 10 day requirement to retrieve records is a reasonable timeline.

There are no statistics on this specific rule. However, it is clearly evident that without the Rule's reasonable approach to student review of records it would have a negative impact and financial burden to all parties.

If the schools had to expedite procedures for the retrieval of records this could lead to hundreds of dollars per student in Rush/Expedite charges. These costs would obviously be born by both the school and the student. In addition, the hourly wage cost of assigning additional school personnel to respond to an unreasonable record review request would be disruptive to the school. The disruption could have a detrimental impact on scheduled classes for attending students. This also would translate into higher costs for students and the school.

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