

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio State Board of Cosmetology

Regulation/Package Title: Chapter 4713-06 Internship Program

Rule Number(s): 4713-6-01; 4713-6-02; 4713-6-03; 4713-6-04; 4713-6-05; 4713-6-06; 4713-6-07; 4713-6-08, and 4713-6-09

Date: 1st submission, November 5, 2010; resubmitted January 8, 2013

Rule Type: Amended and new rules: What started out as just a 5-year review has become a total rewriting of all of the rules of the Board

☒ New

☒ Amended

☒ 5-Year Review

☒ Rescinded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.

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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.

In general, the chapter sets forth a structure in which a school can send a student into a salon to practice cosmetology skills that the student will need when the student actually enters the workforce. Wherever possible in this review, The Board has looked for ways to eliminate duplication and cost in its rules, and is offering proposed changes for efficiency and cost containment. By eliminating the need for an instructor to personally visit a salon intern, the Board is saving substantial time and effort for schools and removing a rule that was difficult to comply with, and that no longer made sense to promulgate. OSBC also adopted more real world and less draconian measures to comply with these rules.

Ohio Adm. Code 4713-6-01. The rule has definitions specific to this particular chapter. The changes to this rule are minor.

Ohio Adm. Code 4713-6-02. This rule sets forth who may participate in the cosmetology internship program. The major change to this rule was the addition of a limitation of the ineligible provision set forth in (D). Under the new, proposed rule, those schools or salons that violate any part of this chapter would be ineligible to participate in the internship program for one year. The current rule could be read to permanently exclude those salons and schools violating any part of the rule from forever participating in the internship program.

Ohio Adm. Code 4713-6-03. This rule describes the manner in which schools and salons should notify the Board of their participation in the internship program. The proposed rule retains the requirement that schools and salons participating in the internship program submit a copy of the written agreement to the Board. The proposed rule eliminates the notification of participation provision as some have complained that the notification provision is time consuming and useless.

Ohio Adm. Code 4713-6-04. This rule sets forth the requirements for agreements between schools and salons that wish to participate in the cosmetology internship program. The proposed new rule would eliminate the requirements for representatives from private or public career-technical schools to visit the salons where their students are interning. Closely monitoring student interns is a requirement for members of the cosmetology school professional association, the National Accrediting Commission of Career Arts and Sciences (“NACCAS”). Most of the schools will continue to send representatives to monitor interns. However, some of the schools not affiliated with NACCAS have expressed concerns about the requirement. It is also a requirement that the Board has not been able to monitor easily. For that reason, the requirement for representatives from schools to monitor interns has been removed from the rule. The proposed rule also changes the aggregate number of hours a student may be scheduled to no

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more than ten hours, thereby matching the wording of current R.C. 4713.32, which also mandates a maximum of ten hours. In the current rule, the rule attempted to alter the standards and requirements of the law. That serious problem was fixed in the proposed rule.

Ohio Adm. Code 4713-6-05. The proposed rule expands upon the current student identification requirements, basically clarifying what currently exists and adding the requirement that the student intern have a governmental or school issued identification with a photograph readily available.

The remaining rules in this chapter concern the hours of each skill an intern should receive from the internship program for each branch of cosmetology. The changes were designed to bring the wording of the rule into conformation with the wording used in the daily practice of cosmetology. Minor changes include the substitution of the term “infection control” for disinfection and sanitation, the removal of the term “credit” and its replacement with the term “clock hours,” the changing of the term “technical instruction” to “theoretical instruction,” the addition of the word “clock” before hours, and the changing of some of the study sections, such as “eyebrow arching and hair removal” to “hair removal.” The changes were designed to bring the wording of the rule into conformation with the wording used in the daily practice of cosmetology.

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

R.C. 119.03 permits the passage of agency rules; R.C. 4713.08 in general permits the Ohio State Board of Cosmetology to pass rules to amplify the statutes. The chapter amplifies R.C. 4713.28 and R.C. 4713.44.

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.

No. This rule 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.

This chapter does not exceed any federal requirement.

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 chapter amplifies R.C. 4713.28 and R.C. 4713.44 by allowing schools of cosmetology to expose their students to real world work experience. From this hands-on experience, the

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student receives clinic hours necessary for the student to graduate the program. To protect the student from being exploited, the chapter mandates contractual relations and some supervision and record keeping on the part of both the salon and the school. The chapter mandates identification of interns. The identification allows the customers of the salon to know who is an intern and to be able to refuse cosmetology services from a student intern. Many students become employees of the salon in which they interned. Salons benefit also as they are able to see and train the individual before offering employment.

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

This is a program that has been in place in Ohio for many years. Every school that responded to the request for analysis of the rules or information about intern success has praised the intern program highly. Its success is measured by students, who complete their training programs and are better able to pass the examinations and work in the real world. Stakeholder Bobby Lott, Vice President of the Salon Schools Group in Columbus, Ohio, said that many student interns were offered jobs at the salons in which they interned. At this time, no one has kept precise statistics as to the number of interns offered jobs and the number of those offered jobs who accepted the jobs at the salon in which they interned. Nor are there any statistics or quantitative analysis of the impact of these rules or the proposed rule changes on the intern programs offered by schools. The lack of statistical analysis on this topic (and on other cosmetology areas) exists not only in Ohio, where no schools or salons keep specific documentation as to the success rate of interns compared to other students, but also nationally. Myra Irizarry, Director of Governmental Affairs for The Professional Beauty Association, a national, Arizona-based organization, representing salons, manufacturers and other interested parties in the cosmetology profession is currently looking into hiring a group to quantify the information and to develop national statistics on these topics. She is considering using Ohio as one of the states to be evaluated in this study, should it go forward. However, at this point, the study does not exist. What is certain is that the Board is operating at its 2008 budget level and sees little increase in that financing during the next few years. Should The Professional Beauty Association not do its proposed study, or do its proposed study without using Ohio, the Board would be willing to work with the CSI Office on inexpensive ways of tracking this type of information. However, the Board cannot afford to do these studies on its own, aside from mandating rather cumbersome record keeping on interns, students, hiring records, both by the agency, and the licensed public, which appears to be at odds with the intent of bringing down the cost of regulations.

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.

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Stakeholders consulted for the review of the revisions to this chapter consisted of the members of the Board of Cosmetology. The Board members, with the exception of two of the members, by statute must be an owner of a proprietary cosmetology school, affiliated with a career technical school teaching cosmetology, a salon owner, a managing cosmetologist, an independent contractor in the cosmetology profession or otherwise 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. 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 Vice President of Operations for Salon Lofts, e-mailed suggestions and also met in person with key staff people 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. For Chapter 4713-6, the stakeholders were first e-mailed a draft version of the proposed rules and forms to respond and request changes to the rules on September 14, 2012. The rules and the forms were also posted on the Board's web page about ten days later, and the same stakeholders were informed that the rules also could be accessed through the Internet. The stakeholders were given a ten day period from the posting of the rules on the Internet to respond with any thoughts or questions.

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

All stakeholders were enthusiastic about the project, saying that an overhaul of the rules was long overdue. Those who commented on the revisions to Chapter 4713-6 of the Administrative Code said that they found the revisions easier to read. No one commenting said anything about expenses increasing if the changes were enacted, but, quite a few indicated that they believed the proposed rules would reduce their costs of operating an intern program. No stakeholder suggested major changes to this chapter.

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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?

This chapter has been in existence for quite some time. There is no record as to why the intern program was developed. No scientific evidence has been used to develop the chapter or to measure its outcomes. In general, one could probably trace work experience internship programs, like that offered to cosmetology students, to the medieval period where apprenticeship in a trade provided training for the profession.

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 did not consider an alternative when revising these rules. The intern program, which has been in existence for more than ten years, seems to be a good idea and useful for students, salons and schools.

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 regulations in this chapter set a structure that provides uniform protections for the salon, the school, and especially for the student. All of the regulations also protect the general public, who might patronize a salon using a student intern. While the Board is always open to new and better ways of operating, one overriding purpose of the Board is to protect the general public and the profession. At this time, the chapter fulfills its purpose. The intern program itself also helps create employable, well-trained professional cosmetologists, also a goal.

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

There are no duplications of regulations, because the Board is the only agency regulating the practice of cosmetology in Ohio. While a small overlap between the Ohio Department of Education's rules for technical schools and the Board's rules exists, the Department is to follow Board rules for internships and for training students to take the professional examination. Finally, all of the Board's rules are being rewritten in an attempt to eliminate duplication in the various chapters of the Board's rules.

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 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 scope of the impacted business community would be all schools and all salons participating in the intern program.

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

Essentially, there is an adverse impact only on those salons and schools that participate in the internship program. Both schools and salons participating in the program would have to spend some time doing paperwork and monitoring the performance of student interns. The time involved would depend upon the number of students placed, the type of license the student is trying to obtain, as that impacts the number of hours the student must be supervised, and other factors. There existing statistics delineating the number of hours or the cost for those hours. Those schools or salons that do not comply would be subject to a violation. At this time, a violation is punished by a fine, or by a suspension or a revocation of a license. Under R.C. 4613.64, the charge for a first time violation can be no more than \$500. The Board looks at mitigating evidence and often forgives minor, first time violations. It is hoped that the Board will not have to impose penalties for violations, but if the Board does have to do so, it is hoped that the school or salon will be deterred from repeating the violations in the future. One element, the requirement to send school staff to monitor the student interns, has been eliminated, leaving such monitoring as a school choice. This could be seen as lessening the adverse impact of the regulations on the schools, as it removes a time commitment and possibly a personnel commitment to travel to each salon in order to monitor each student placed in an internship program.

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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.

The Board lacks records quantifying any adverse impact on schools or salons. The Salon School Group said that the whole process takes it approximately fifty hours a year to comply with the program. The contracts are form contracts, and take minimum time to complete. The schools need to meet with the salons and there is assorted paperwork required to track students. The hours vary constantly depending upon the number of students who qualify for the internship program at any given time. As noted above, there will be no essential changes in the rules for schools and salons utilizing an internship program.

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

The school or salon must choose to participate in the internship program. The internship program helps students find jobs. The program also helps salons find employees. It is a win/win situation for all. The regulations protect all parties and therefore are useful.

Regulatory Flexibility

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

The small salon or the small school would not have to be involved with the intern program. If not involved in the program, the salon or school would not have to comply with the regulations in this chapter.

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 violations are actually charged. Minor infractions are not charged, but a warning is issued. The investigator or inspector explains the nature of the violation to the violator and leaves documentation further describing what was done incorrectly.

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

The Board staff is always available to assist small businesses with compliance. The web page contains the rules and procedures of the Board. The Board takes phone calls, answers e-mails and letters. The Board also will offer a state-wide educational program when the rules are enacted, to help the licensees better understand what they should be doing to comply with the rules of the Board.