

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Board of Cosmetology

Regulation/Package Title: Examinations

Rule Number(s): 4713-7-01, 4713-7-02, 4713-7-03, 4713-7-04; 4713-7-05; 4713-7-06;
4713-7-07; 4713-7-08; 4713-7-09; 4513-7-10, 4713-7-12.

Date: first submission November 8, 2012 reedited for second submission January 16, 2013,
reedited a third time on May 3, 2013.

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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☒ Rescinded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 4713-7 The Examination

The rules in this chapter set a structure for examining individuals who have completed the required educational requirements and want to receive a license. An examination testing both

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the candidate's practical and theoretical skills is considered to be a very important part of getting a cosmetology license. The examination ensures that the licensee has the minimum skills necessary to practice the profession of cosmetology without injuring any members of the general public. While most of the changes to the rules are stylistic, the chapter is overdue for its five-year review.

Careful attention was paid to modernize these rules to accommodate for technological innovations, the elimination of paper work, and fostering an environment of ease of usage to work with The Board for instructors, schools, and students. Streamlined rules are reflective of these CSI values.

Ohio Adm. Code 4713-7-01. Edited rule No changes were proposed to this rule except for improving the wording slightly and continuing the change of the word "Board" to board and removing the term "examination number" to comport with the correct term, "board ID number".

Ohio Adm. Code 4713-7-02. Edited rule The manner in which the exam taker is to take the examination, and the dismissal from the examination if an individual is found in violation of any rules remains the same in the proposed rule as it is in the current rule. The devices prohibited were updated and the language was clarified in the proposed new rule. R.C. 4713.24 sets forth certain general conditions for the examination. The rules elaborate on the conditions and requirements. Complying with the examination rules is important. The purpose of the examination is to allow an individual to prove the individual has a certain level of skills. The rules are designed to limit or prevent opportunities for cheating. Further, someone acting out or being disruptive may distract another individual, especially one who is nervous. The distraction could prevent another individual from doing as well as possible on the examination. In life, one must follow certain rules to be a member of society. Failure to follow rules, especially if the failure could cause harm to others, should be punished in some way. The Board has set forth a clear demarcation – take the examination without disrupting it or cheating or looking as if cheating could happen, or fail and take the examination again with proper behavior.

Ohio Adm. Code 4713-7-03. Edited rule The rule describes who is permitted in the examination room. The proposed rule takes out the word "models" as live models are no longer used during the Board's examinations. These "live models" were an inconvenience to those sitting for examination and created much scheduling difficulty for all involved. The elimination of live models in the examinations fosters a much greater ease of testing earlier, leading to earlier opportunities for prospective licensees to work.

Ohio Adm. Code 4713-7-04. Edited rule This rule, basically saying that the Board develops an appropriate examination based upon the required curriculum, is not changed.

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Ohio Adm. Code 4713-7-05. Rescind/new (meaning remains the same) R.C. 4713.24 sets the general requirements and conditions for the examination. This rule currently provides that the language for the examination is English. The proposed rule removes the requirement that the Board provide the examination in any language that the national testing association offers it in, because the test is now created locally by the Board. The provision of different language versions of the test would be very costly for the Board. However, the proposed rule does allow for interpreters or other solutions for those with legitimate medical exceptions to the English only requirement, but does mandate two weeks advanced notice so that the Board can properly fulfill the request.

English only examinations are appropriate for individuals who will be practicing a profession in an English-speaking area, who will need to read instructions on equipment and products, all of which are usually in English and may or may not have been translated into a second language. The individuals taking the Board's examination are taught in Ohio schools, using textbooks that are in English. If they are immigrants from another country and hold a license or have skills in cosmetology from the other country, there are free English as a second language classes all over Columbus. The language skill, again, will allow these individuals to use the chemicals and the equipment in the profession in 2013. In a sense, the situation resembles that of a medical person, who must know English to understand much of the science and to communicate with patients, and, therefore, must test only in English. The requirement to test in English is a facially neutral practice that would not have a disproportionate adverse effect on any group protected by Title VI.

Many individuals born in other countries are at least bilingual speakers, and having an English-only examination for them would not have a disproportionate effect or an adverse effect on them. As a basic level of education in cosmetology is required to take an examination in Ohio, individuals who have limited or no English would find it difficult to take classes at schools without learning some English. True, the main textbook is translated into Spanish and Vietnamese, but it is not in Somalian, Russian, French, Chinese, Arabic or any other language of the many immigrants in Ohio. There are approximately 6,500 spoken languages in the world today. The national helpline for trafficking references answering and helping people in 170 languages. R.C. 5502.63. Besides English, the major languages spoken by Ohio residents are French, Spanish, Spanish Creole, Russian, German, Italian, Serbo-Croatian, Polish, Greek, Hungarian, Chinese, Korean, Arabic, Yoruba, Swahili, Bantu, and Somali. Probably, other of the 6,500 languages are also spoken in Ohio. The cost to schools of translating these materials into every single possible language would be high, thereby greatly burdening the schools.

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Were the Board to adopt a policy of translating into some of the many languages spoken in Ohio, but miss one or two or more of them, the failure to translate the one language used by one person would be denying the one person who only speaks that language an equal chance at success in the profession of cosmetology. Such a situation could result in a lawsuit against the entity that purports to offer the coursework, or even the examination in other languages. Finally, the cost to the Board of translating the examination into every conceivable language would be prohibitive. Every time a question is updated, it would have to be translated into multiple languages. The Board would need to staff its practical examinations with a multitude of people who speak other languages and who understand the rules and practices of cosmetology. The alternative, to allow someone to bring a translator, could result in fraud as the Board could not have on staff or easily available someone who would verify that the translator gave only the questions and not the answers as well.

Ohio Adm. Code 4713-7-06. Rescind/new (removes outdated requirements) The rule describes the materials a student must bring to the examination. For example, students are to bring their own model under R.C. 4713.26. This means the student in 2013 shall bring a mannequin head with hair on it and a hand model to the examination. The proposed rule comports with the current practice. The rule states that the Board will supply each applicant a testing information packet (“TIP”) that will have information as to what equipment, tools or other would be required at the examination. The more general reference to the TIP would be superior to the current rule that specifically spells out each item someone should bring. With the proposed language, the Board will more easily be able to update the requirements for exam takers, because exam takers would know to look in the TIP. The Board would, in turn, be spared the expense and the time necessary to promulgate a rule reflecting the change in items needed for the examination. The examination to be a cosmetologist involves a practical test to see if the individual has the minimum skills needed in the profession as well as an understanding of cosmetology theory. To pass the examination, each individual must show certain skills. Traditionally, individuals have provided their own equipment when they have come to the Board examination. It parallels what students must do purchase certain equipment to use in courses. Those operating in a salon, even as employees, must purchase certain equipment to perform cosmetology services. So, too, the examination-taker is required to bring the supplies necessary to prove competency. The rule does not spell out the specific items needed, but directs students to the web page of the Board. This allows the Board to update the necessary equipment and supplies as the test changes to meet changes in the profession. School stakeholders applauded the use of the web to announce supplies for the examination as it would allow updating to what is needed.

Ohio Adm. Code 4713-7-07. Edit The current and the proposed rule set forth the score considered to pass the examination is at least seventy-five percent. The proposed rule clarifies

that the score of seventy-five percent must be on both the theoretical and the practical examinations.

Ohio Adm. Code 4713-7-08. Rescind/new R.C. 4713.21 allows those who fail the examination the possibility of reapplying to take it again. R.C. 4713.10(D) sets the charge for each retake of the examination. The current rule addresses what happens when an individual fails the examination. It mandates certain numbers of clock hours an individual wanting to pass the exam must take if that individual has failed the exam three times. The proposed rule continues to allow an individual failing all or a part of either the theoretical or practical examination to take remedial courses at the school from which the individual graduated. The proposed rule also allows a student to try another school, but credits the first school with the success or failure of the student on any following examinations. Some schools have been reluctant at best to take students who have failed the examination, especially if the students came from another school. The goal of this rule is to remove some of the reasons why a school might hesitate to take an individual from another school when that individual has failed the examination several times. Paragraph (F), originally proposed has been removed out of fear that it might cause someone to think that there were only limited situations in which one could ask for other opinions. The rule has been reworded since it was first proposed in order to make it more accurate and easier to understand. The CSI Office raised concerns about the difference in the requirements for those trying to pass the managing license examination. The difference is based upon the nature of the managing license and the skills needed to obtain it. Under R.C. 4713.41 a managing license is required for a salon. The managing license allows an individual holding it to have charge of and immediate supervision over the salon at all times when the salon is open for business. The basic requirements for the managing license are set forth in R.C. 4713.25. First, the managing license is the only license examination that one may take either after completing an extra three hundred hours of classes or having a certain amount of experience as a working professional. The individual seeking the managing license can take the exam without classes as perhaps it is not the lack of classroom knowledge that is preventing the individual from passing the test. Second, because there has been a huge controversy over the managing license and the role of the holder of that license in a modern salon, the managing license and all requirements for it have not been changed at this time. The requirements for manager would first need to be altered in Chapter 4713 of the Revised Code before being changed in the rules, which are only to amplify the laws, not change them.

Ohio Adm. Code 4713-7-09. Rescind/new This rule basically echoes the law's requirement for testing individuals with licenses or registration as a cosmetology professional in another state or country. Both current R.C. 4713.34 and R.C. 4713.34 as set forth in Sub. H.B. 453 mandate an examination conducted under R.C. 4713.24 for a practicing license or a managing license. The proposed rule eliminates the part of the rule that essentially repeats the words of R.C. 4713.34.

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The proposed rule does add language requiring the individual to present a current, valid license or certificate from the other state when applying to take the examination. The out of state testing designation existed in the proposed rule, because too much fraud and trafficking has taken place and continues to exist in this profession. At this moment, the Board is filing a case against a salon operated by two people who obtained their license from an out-of-state school closed because its students purchased hours to avoid classes and examinations. The designation, as described in the proposed rule, was to clarify that the licensee passed the examination, although not trained in an Ohio school. The Board decided to remove the distinction after discussing it further at the suggestion of the Common Sense Initiative Office. The Board has the ability to sanction fraudulent behavior under R.C. 4713.64. Ohio will send reciprocal licensing information to another state at any time under certain circumstances. The limitations on the transfer of licensing information during the first year after a licensing exam goes back to the problem of fraud in this industry. Ohio will send reciprocal licensing information to another state at any time under certain circumstances. The limitations on this during the first year after a licensing exam goes back to the fraud in this industry. To elaborate, some individuals fraudulently get a license in one state and rapidly apply to another state to translate it to a valid license in another state. Some of this occurs when people are trafficked and need legitimate licenses. This paragraph is an attempt to end or at least limit the problem of fraudulent transfers of licenses.

Ohio Adm. Code 4713-7-10. Rescind The current rule creates subsets of cosmetology licenses. The proposed rule eliminates this section as it is repetitive of other rules and laws.

Ohio Adm. Code 4713-7-11. No rule exists at this time.

Ohio Adm. Code 4713-7-12 is being rescinded as it has been combined with another rule in another chapter. The current rule addresses the problem of a student who has completed some of the course work in a school's cosmetology program, but then drops out of the program. It is proposed that this rule be moved to Chapter 4713-5, where it complements the rule for "withdrawn students."

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

R.C. 119.03, R.C. 4713.08

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- 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 set forth a process to apply for a license that included an educational and an examination component. An individual wanting to be a cosmetology professional must first comply with the educational requirements, apply to take an examination, R.C. 4713.20, and then follow the laws to take the required licensing examination, R.C. 47123.24, R.C. 4713.25, R.C. 4713.26 and R.C. 4713.28. The General Assembly, in R.C. 4713.21, provided statutory authority to guide the process of reexamining an individual who has failed the cosmetology professional examination, allowing the individual to reapply for an examination under certain conditions. 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 in this chapter amplify the statutes while creating a structure to enable the laws to be successfully carried out and followed.

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

The Board will begin to track examination pass rates to see if limiting the number of times someone may take the examination before needing to return to school changes the pass numbers. In addition, the Board will begin to track and interpret the data of the rules in these categories – dismissals from examinations, testing date no shows, complaints from those asking for the exam to be offered in a language other than English and the language requested, the number of board certification requests denied because of one year rule, and the number of exemptions for license transfers requested.

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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.

In 2011, when the Board decided it would be less expensive to have an in-house created examination, several committees consisting of stakeholders, employees of stakeholders and Board employees developed the plan for the examination. At the same time, the committees began looking at the rules and the policy behind the rules with the intent of making certain the rules supported the testing process. When the committee members found discrepancies between the current policy and the rules, such as mandating the use of live models during examinations, they understood the importance of rewriting all of the rules, not only the ones in this chapter.

After the rules were drafted, all members of the Board were contacted and were asked to comment on them. The Board members, with the exception of two of the members, by statute must be active in various aspects of the cosmetology profession. Representatives of all of Ohio's career technical schools and proprietary schools, many of whom actively attend Board meetings, also contributed greatly to the shaping of these 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. The administrative leadership of the Columbus-based Salon Schools Group not only responded to the e-mails but also called a meeting on October 11, 2012, to speak with key staff about all of the rewritten rules, and to discuss proposed changes to them. 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 member of the Board. Salons were also consulted about this rule. For example, Elizabeth Murch, Executive Director of the Ohio Salon Association commented extensively both in writing and in person. Lisa Wilkins Doran, the Vice-President 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 extensively on the rules. Clara Osterhage, also a Board

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member, and professionally an owner of many Great Clips, spent many hours reviewing the rules and providing useful corrections and additions to them. 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. For Chapter 4713-7, 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. There were a few changes suggested after the rules were posted for the general public and the Common Sense Initiative Program. For the most part, the changes suggested by the stakeholders were incorporated into the proposed rule package. The rules were reposted again in January 2013 to allow the general interested public to comment on the changes made by the stakeholders. The Common Sense Initiative Office (CSI Office) requested several discussions with members of the Board and asked questions about the rules. The answers to the questions have been included in the discussion of each individual rule in this rule package, and changes to the rules were made as suggested. The BIA was reedited to include the new material.

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

With all of the discussion and comments on the entire rule package, few stakeholders suggested changes to this particular chapter after the rules were written and sent out. Several school representatives met with the Board to suggest changes after the second posting of the rules. Mr. Hornsby, an owner of the Cincinnati-based Hornsby Group, Mr. Yearwood, President, CEO and Owner of the Dayton school, Carousel Beauty College, and Mr. Hanks, General Manager of the Salon Schools Group and now a Board member were concerned that the reeducation requirements for those students who repeatedly failed the Board's examination might not be sufficient. The change to OAC 4713-7-08 based upon their suggestions would allow for an exception to the mandatory hours for students who failed examinations three times, thereby adding paragraphs (E) and (F) to rule OAC 4713-7-08. Proposed paragraph (E) of 4713-7-08 would permit a school to mandate more hours for an individual who failed the examination three times, if the school's testing of the individual indicated the classwork requirements set forth in the rule would not correct the student's problem. Paragraph (F) of the same rule allows the student to go elsewhere for another opinion about the student's abilities. However, these were the only comments and changes made to the rules and they came after the second posting of the rules. In general, the

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stakeholders strongly approved of the proposed rule changes made in this chapter. No stakeholders suggested changes to any of the rules in this chapter. Sue Carter Moore, President of the Salon Schools Group, verbally told the Board that she was pleased to see the testing information packet rule. She stated that she believed the proposed rule would be easier to follow than the current rule.

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 sets up the manner in which the examinations for cosmetology professionals are to take place. The rule is designed so that the process of examinations is structured and uniformly applied to all seeking a cosmetology license.

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?

None. The Board is required by R.C. 4713.20 and R.C. 4713.24 to issue licenses only after an applicant passes an examination. The Board moved away from examinations provided by outside agencies and created its own examination, to save the State of Ohio money and to create a stronger licensing process. The Board designed the examination process as a means of ensuring those in the cosmetology profession have at least a minimum knowledge of the skills needed to be in the profession as well as the safety and infection control processes necessary to protect the general public. To avoid allowing individuals who do not have proper skills possibly harming members of the general public, the Board has determined that alternatives to taking the examination for license are rarely, if at all, appropriate.

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 taking examinations would better protect candidates for licenses 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 or the board's examinations. 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 as well as of those rules 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 rules affect all who would like to hold a cosmetology licensee, all schools teaching these individuals and all salons looking to hire cosmetology professionals.

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

Chapter 7 basically structures the examination process for students seeking licenses. Most of the adverse impact in this chapter falls upon individuals, rather than small businesses. Individuals would have to pay the fees to apply for a license, would have to spend time studying for examinations, keeping records, time retaking exams, time retaking coursework after failing a certain number of examinations, individuals could be expelled from the examination for acting inappropriately and would have to pay for their own supplies. Until they pass the examination, individuals have only a limited ability to work in the profession. License fees after passing the examination are \$45 for an individual license. R.C. 4713.10(D) sets the fee for retaking the

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examination. Operating without a license is a violation of R.C. 4713.14, can be punished under R.C. 4713.64 and is a misdemeanor under R.C. 4713.99. The penalty for not following through on the payment of the fee to take the examination or for not having the proper license would be on the individual licensee, who would not be permitted to take the examination. The rules in proposed Chapter 4713-7 allow salons to know that the pool of new cosmetology professionals have a minimum level of competence – sufficient to pass the Board’s examination. If anything, the proposed rules build in a bonus for schools, allowing them to determine how much education a student who has repeatedly failed the examination might need.

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. These individuals are required to have a certain amount of education before taking the examination, take and pass the examination in order to get a license. So, first the individual pays for school. After that, the application for the examination takes time to write and a short time to have notarized. The application for the examination costs \$31.50. Should the individual pass the examination the first time, the individual would then pay \$45 to receive a license. If the individual takes the examination three times, at a cost of \$31.50 each time or \$94.50, and fails each time, the individual would then have to return to school to take additional hours before taking the exam again. The cost of the additional school hours would vary from school to school and would also depend upon the number of hours the student was required to take. Hopefully, no one will violate the rules and have to forfeit taking the examination or will fail to pass on the first try and need to pay more for additional exams and additional clock hours.

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

The rule actually benefits legitimate salons. Most salons are small businesses. This rule ensures the salons can hire employees, who have at least a minimum understanding of the profession’s requirements. Further, without regulations, it would be much harder to prevent the abuses of the general public that could occur if poorly trained individuals are providing cosmetology services.

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Regulatory Flexibility

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

No. The rule describes how the examination of individuals will take place. Most of the salons and schools of cosmetology in Ohio would qualify as small businesses. The individuals taking the examinations do not. The Board may grant individuals exemptions to the examination requirements in very limited circumstances.

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 individuals applying to take examinations and 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. The Board's staff is available during reasonable business hours to answer questions and to provide assistance.