

**MEMORANDUM**

TO: Jim Trakas, The Ohio State Board of Cosmetology

FROM: Paula Steele, Regulatory Policy Advocate

DATE: June 18, 2013

RE: **CSI Review – Salons (OAC 4713-11-01 through 4713-11-12)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of ten amended rules, one no-change, and one recinded rule and are being reviewed by the Ohio State Board of Cosmetology under the five-year review requirements of ORC 119.032. The rules address the regulatory requirements for licensing, operating, and providing salon services. The rules were submitted to the CSI Office on November 27, 2012, and the comment period expired on January 29, 2013. There were no comments received during the public comment period.

CSI's review of the BIA associated with the proposed rules prompted a request for additional information and BIA revisions concerning several answers regarding topics such as public purpose of the regulation, how the Board would measure the success of the regulation, and the discussion of adverse impacts to business. CSI also requested the rules be submitted in ready-to-be- filed fashion to make rule review efficient and accurate.

The proposed rules include provisions for licensure application and facility requirements for plumbing and waste disposal, restrooms, storage, signage, and exhaust. The proposed rules also address resident and mobile home salons as well as the permitted services at all salons. Licensure requirements and business/worker agreement documentation are articulated.

The BIA describes an adequate early stakeholder outreach process which resulted in most of the amendments within the proposed rules. The BIA identifies the proposed rules' adverse impacts as affecting all cosmetology licensees and licensed salons. While the Board identified the salon license fee as the primary adverse impact, the BIA incorrectly reported the cost as being mandated in the Revised Code as \$75 for the initial license and \$60 for a biennial renewal. Review of ORC 4713.10 revealed the cost as \$60 for initial license and \$50 for renewals. In identifying other adverse impacts, the Board acknowledged that violations of the proposed salon rules could lead to corrective action education requirements, fines, or revocation of a license. However, this rule package does not address specific sanctions for violations and therefore is not subject to CSI analysis. Finally, while the proposed rules do require certain facility provisions that are not identified as an adverse impact, the requirements appear to be standard building requirements that do not exceed the public's expectation for a safe facility operation.

The BIA implies uncertainty as to whether the proposed rule 4713-11-07 *Display of Sign* should be amended or completely recinded because the sign verbiage appears in OAC 4713-1.

In November 2012, the Cosmetology Board submitted rule packages to the CSI Office for review consisting of eleven Administrative Code chapters, which represents all or nearly all of the Board's rules. Most of these rules were overdue for the five-year reviews required by ORC 119.032. This comprehensive review proved to be a daunting challenge, and resulted in incomplete and incorrect submissions, multiple revisions to both the rules and BIAs, and inadequate justifications for a number of adverse business impacts. As a result, since that time, the Board staff and CSI Office have been in frequent discussion about the rules and the changes required for approval.

Given the need to move forward with the completion of the five-year reviews, we will recommend the Board to proceed with filing the rules with the Joint Committee on Agency Rule Review, provided that certain specific concerns are addressed. It is the intention of the CSI Office to remain engaged with the Board to further evaluate the rules and seek the appropriate balance based on the Board's role in protecting the public. Moreover, we encourage the Board to establish staggered review dates for future five-year reviews, to ensure that each chapter receives the scrutiny and attention it deserves.

Recommendations

Upon review of the revised BIA and ready-to-file draft version of the rules, the CSI Office makes the following recommendations:

1. Revise the BIA to reflect the correct fees for salon licensure and renewal, and resubmit the corrected version of the BIA to the CSI Office for a cursory review of the BIA changes.

Conclusion

The Board should address the recommendation above before filing this proposed rule package with the Joint Committee on Agency Rule Review (JCARR).

cc: Mark Hamlin, Director of Regulatory Policy