

State Budget Office
Office of Regulatory Reinvention
111 S. Capitol Avenue; 8th Floor, Romney Building
Lansing, MI 48933
Phone: (517) 335-8658 FAX: (517) 335-9512

**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RISCBA)**

PART 1: INTRODUCTION

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate the rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) at orr@michigan.gov no less than 28 days before the public hearing.

1. Agency Information

Agency name:	Department of Licensing and Regulatory Affairs		
Division/Bureau/Office:	Bureau of Professional Licensing		
Name, title, phone number, and e-mail of person completing this form:	Dena Marks, Board Analyst 517-335-3679 MarksD1@michigan.gov		
Name of Departmental Regulatory Affairs Officer reviewing this form:	Liz Arasim, Department of Licensing and Regulatory Affairs		

2. Rule Set Information

ORR assigned rule set number:	2018-037-LR
Title of proposed rule set:	Optometry – General Rules

PART 2: KEY SECTIONS OF THE APA

24.207a “Small business” defined.

Sec. 7a. “Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated, and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.

24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40. (1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
 - (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
 - (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
 - (d) Establish performance standards to replace design or operational standards required in the proposed rule.
- (2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

- (a) 0-9 full-time employees.
- (b) 10-49 full-time employees.
- (c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** which shall contain specific information (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5].

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: AGENCY RESPONSE

Please provide the required information using complete sentences. **Do not answer any question with “N/A” or “none.”**

Comparison of Rule(s) to Federal/State/Association Standards:

1. Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Each state establishes its own requirements with respect to optometrists, so there are no federal rules or standards set by a national or state agency that the proposed rules can be compared to.

A. Are these rule(s) required by state law or federal mandate?

The rules are required or authorized by state law including MCL 333.16145; MCL 333.16148; MCL 333.16174; MCL 333.16287; MCL 333.17431; Executive Reorganization Order No. 1991-9, MCL 338.3501; Executive Reorganization Order No. 1996-2, MCL 445.2001; Executive Reorganization Order No. 2003-1, MCL 445.2011; Executive Reorganization Order No. 2011-4, MCL 445.2030.

The rules are not required by federal mandate.

B. If these rule(s) exceed a federal standard, identify the federal standard or citation, describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules do not exceed a federal standard.

2. Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules are consistent with the standards required by the Public Health Code. All states within the Great Lakes region have similar requirements for initial licensure as an optometrist.

Continuing Education: Michigan and all other states within the Great Lakes region require a licensee to complete continuing education (CE) during each renewal cycle, but the requirements differ from state to state.

In the proposed rules a licensee must accumulate 40 hours of board-approved CE credits in each 2-year renewal cycle. If the licensee holds a certification to administer topical ocular diagnostic pharmaceutical agents or certification to administer and prescribe therapeutic pharmaceutical agents, he or she must accumulate 20 hours of CE in pharmacological management of ocular conditions. A licensee must accumulate 2 hours of CE in pain and symptom management. Twenty hours of CE must be completed in a face-to-face, real-time format. The licensee must maintain documentation of the CE credits he or she earned for 4 years. Upon application, the board may waive a licensee's CE requirements.

In Illinois, a licensee must earn 30 hours of board-approved CE in each 24-month renewal cycle. At least 12 hours must be earned in a program certified by an approved optometry college, osteopathic or medical college, or pharmacy college. Licensees are required to keep documentation of CE credits earned for 6 years. Upon application, the board may waive CE requirements for good cause.

In Indiana, a licensee must complete 20 hours of board-approved CE during a 2-year renewal cycle. Beginning April 1, 2020, the CE must include 2 hours in medical charting, billing and coding, healthcare compliance, or compliance with federal or Indiana laws or regulations.

In Kentucky, a licensee must accumulate 8 hours of board-approved CE annually. Five of the 8 hours may be earned remotely. If the licensee is authorized to prescribe therapeutic agents, he or she must also accumulate a minimum of 7 CE hours in ocular therapy and pharmacology. If the licensee is credentialed by the board to perform expanded therapeutic procedures, he or she must attend a minimum of 5 CE hours in expanded therapeutic procedures. If the licensee is authorized to prescribe controlled substances, he or she must accumulate 2 hours of CE related to the electronic monitoring system, pain management, or addiction disorders.

In Minnesota, a licensee must complete 40 board-approved CE clock hours every 2 years. Fifteen of those credit hours may be earned through home study.

In New York, an optometrist certified to use therapeutic pharmaceutical agents must complete at least 36 hours of department-approved CE. At least 27 hours of CE must be earned in a live, in-person course. Up to 9 hours of CE may be earned through a self-study program. The licensee must retain documentation of CE credits earned for 6 years.

In Ohio, a licensee must accumulate 25 clock hours of board-approved CE annually. Ten of the 25 hours must be in pharmacology. The board may approve a CE waiver request based on good cause.

In Pennsylvania, a licensee must complete 30 hours of board-approved CE every 2 years. If the licensee is certified to prescribe and administer pharmaceutical agents for therapeutic purposes, at least 6 hours of CE must concern the prescribing and administration of pharmaceutical agents for therapeutic purposes. If the licensee is certified to prescribe and administer pharmaceutical agents for the treatment of certain types of glaucoma, 4 hours of CE must concern the prescribing and administration of

pharmaceutical agents for treatment of glaucoma. A licensee must retain documentation of CE earned for 6 years. A board may waive CE requirements for a certified illness or undue hardship.

In Wisconsin, a licensee must complete 30 hours of board-approved CE in each biennial period. A minimum of 7 CE hours must be earned in glaucoma education. No more than 6 CE hours may be earned remotely, unless the board waives this requirement based on hardship.

Opioid Training: A new proposed rule will require a prescriber or dispenser to complete opioid and other controlled substances awareness training. Several other states in the Great Lakes region also require prescribers to complete similar training.

In Indiana, beginning July 1, 2019, a licensed health care practitioner who is applying for a controlled substance registration must have completed 2 hours of CE addressing the topic of opioid prescribing and opioid abuse within the 2 years preceding the application.

In New York, a prescriber licensed to treat humans and who holds a DEA registration number to prescribe controlled substances must complete at least 3 hours of course work or training in pain management, palliative care, and addiction.

In Pennsylvania, an applicant for initial certification to prescribe and administer pharmaceutical agents for therapeutic purposes and for the treatment of certain types of glaucoma or a certification to prescribe and administer pharmaceutical agents for therapeutic purposes must, within 1 year of issuance of the certification, complete at least 4 hours of board-approved education consisting of 2 hours in the practices of prescribing opioids. The requirements are satisfied if the applicant completed the 4 hours of education as part of the applicant's optometric doctoral educational program, the board-approved 100-hour course in the prescription and administration of pharmaceutical agents for therapeutic purposes, or through CE from a board-approved optometry CE provider. The 4 hours of board-approved education needs to be completed only once. An applicant seeking certification renewal must complete at least 2 hours of CE in pain management, the identification of addiction, or the practices of prescribing or dispensing of opioids.

Telehealth: By statute, MCL 333.16287, rules must be promulgated to implement the telehealth laws in MCL 333.16284, which requires a health professional to obtain informed consent before providing a telehealth service, and MCL 333.16285, which permits a health professional to prescribe a drug through a telehealth service if he or she acts within the scope of his or her practice, complies with the requirements of prescribing a controlled substance, if applicable, and provides a referral, if necessary, or provides follow up care. Some other states in the Great Lakes region have also implemented telehealth rules for optometrists.

In Illinois, an optometrist may engage in the practice of telehealth to the extent of his or her scope of practice and consistent with the care provided when rendering in-person services.

In Indiana, a prescriber who provides telemedicine services is held to the same standards as those for health care services provided in person. A prescriber may not issue a prescription for an individual unless a provider-patient relationship has been established. Informed consent is required.

In Kentucky, an optometrist is prohibited from beginning an optometrist-patient relationship via telehealth. Before providing a telehealth service, an optometrist must inform the patient in writing, and document the patient's acknowledgement, of the risk and limitations of telehealth services. An optometrist providing treatment and consultation recommendations through a telehealth service, including a prescription or a prescription for eyewear, are held to the same standard of care required in a traditional, face-to-face setting.

Relicensure: Under the proposed rules, an applicant for relicensure in Michigan must establish that he or she is of good moral character, complete the required CE, and pass the optometry jurisprudence exam. If the applicant's license has been lapsed for more than 3 years, he or she must also submit fingerprints, and if the license has been lapsed for more than 6 years, the applicant must also pass the examinations administered by the National Board of Examiners in Optometry (NBEO). The requirements for relicensure differ from state to state within the Great Lakes region.

In Illinois, if an applicant's license has been lapsed for less than 3 years, to be relicensed, the applicant must submit proof of completion of 30 hours of CE during the preceding 2 years and either evidence of an existing therapeutic pharmaceutical agent certification at the time that the license lapsed or certification of graduation between January 1, 1994 and December 31, 2007. In addition, the applicant must submit evidence that he or she practiced optometry for a minimum of 5 years utilizing ocular pharmaceutical agents, including oral agents, under the laws of another jurisdiction that are substantially equivalent to those of Illinois, or evidence that he or she completed a board-approved course in oral ocular pharmaceutical agents.

If an applicant's license has been lapsed or been inactive for more than 3 years, the applicant must provide proof of current cardiopulmonary resuscitation certification and completion of 30 hours of CE within the preceding 2 years. He or she must also submit evidence of an existing therapeutic pharmaceutical agent certification at the time that the license lapsed or certification of graduation from an approved school or college of optometry between January 1, 1994 and December 31, 2007, and evidence that he or she had practiced optometry for a minimum of 5 years utilizing ocular pharmaceutical agents, including oral agents, under the laws of another jurisdiction that are substantially equivalent to those of Illinois and evidence that he or she completed a board-approved course in oral ocular pharmaceutical agents. Or, he or she must provide certification of graduation before January 1, 1994, and evidence that the applicant practiced optometry for a minimum of 10 years utilizing ocular pharmaceutical agents under the laws of another jurisdiction that are substantially equivalent to those of Illinois and evidence that he or she has completed a board-approved course in diagnostic pharmaceutical agents and 120 hours of course work in ocular pharmaceutical agents or its equivalent, or that he or she practiced optometry for a minimum of 5 years utilizing ocular pharmaceutical agents, including oral agents, or evidence that he or she completed a board-approved course in oral ocular pharmaceutical agents. If there is an inaccuracy in any of the submitted documentation for relicensure, or if the relevance or sufficiency of the course work or experience is reasonably questioned because of lack of information, discrepancies, or conflicts, the licensee will be required to provide additional information or appear for an interview before the board.

In Indiana, if an applicant for relicensure has been lapsed for 3 years or less, the applicant's license must be reinstated if he or she completes the required application, submits the required fees, and provides proof that he or she has completed the required CE.

If the applicant's license has been lapsed for more than 3 years, the license must be reinstated if he or she completes the required application, submits the required fees, and provides proof that he or she has completed the CE required, or if the applicant did not complete the required CE, he or she must complete additional training, as deemed appropriate by the board.

In Kentucky, if the licensee fails to renew within 60 days of expiration, the license may be revoked. If revoked, the licensee's license remains revoked for at least one year. Upon application, the board may reissue a license that has been revoked and may prescribe the manner and form of application. In Minnesota, an applicant for relicensure must submit an application, required fees, a letter stating the reason for applying for reinstatement, retake and pass the Minnesota jurisprudence exam, and satisfy CE requirements.

In New York, an optometrist’s license is valid for life unless revoked, annulled, or suspended by the Board of Regents. A current registration is required to practice. If an individual’s registration has lapsed, he or she must apply for delayed registration by contacting the state’s Office of Professions.

In Ohio, if an individual fails to apply for timely renewal, he or she may file a renewal application from the first day of January to the last day of April of the year next succeeding the date of expiration. The applicant must also complete the CE required by the board, pass all or part of the licensing exam as the board considers appropriate to determine if the applicant should be approved, and submit evidence of practice in another jurisdiction. If reinstated, the licensee must meet the CE requirements for the year in which reinstatement occurred.

In Pennsylvania, an inactive or expired license may be reactivated by filing a reactivation application, paying the required fees, completing a verification of the applicant’s professional practice during the lapse, providing proof of malpractice insurance, providing a self-query from the National Practitioner Data Bank, and completing at least 30 hours of CE within 2 years of the date of reactivation. If the applicant is seeking a license for therapeutics, 6 of the CE hours earned must be in therapeutic courses. If the applicant is seeking a license for therapeutics and glaucoma, 4 hours must be earned in glaucoma and an additional 2 hours must be earned in therapeutic courses.

In Wisconsin, an applicant may renew his or her certificate of registration for up to 5 years after lapse by paying the late renewal fee and completing the required CE. After 5 years, the applicant must reapply for licensure using the initial application process.

A. If the rule(s) exceed standards in those states, explain why and specify the costs and benefits arising out of the deviation.

The standards pertaining to relicensure, CE requirements, opioid and other controlled substances awareness training, and telehealth differ from state to state. Overall the standards in the proposed rules do not exceed those of the other states in the Great Lakes region.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s).

There are no other laws, rules, or other legal requirements that may duplicate, overlap, or conflict with these proposed rules.

A. Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

No coordination is needed because there are no other applicable laws that regulate the areas addressed in the proposed rules.

Purpose and Objectives of the Rule(s):

4. Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter.

R 338.301: The current rule provides definitions for terms used in the rule set. The proposed rule adds definitions that are used in the new proposed telehealth rule. The definitions are intended to inform a licensee of the meaning of the terms used for obtaining informed consent from a new or established patient.

R 338.302: This is a new proposed rule that will advise licensees of the new opioid and controlled substances awareness training requirement for prescribers. The rule is designed to ensure that licensees are aware of this new requirement for prescribers.

R 338.303: The current rule provides training standards for identifying victims of human trafficking. The proposed rule will provide the date by which an applicant for initial licensure or renewal must complete the training. The rule is designed to inform applicants for licensure or renewal of the date by which he or she must comply with this requirement.

R 338.304: This is a new proposed rule that will advise an applicant for licensure that he or she must demonstrate a working knowledge of the English language if the applicant’s educational or training program was taught outside the United States. Exceptions are provided for those trained in English-speaking countries. This rule is designed to inform an applicant of this licensure requirement.

R 338.305: The current rule provides information regarding board approved standards for optometric degree programs. The proposed rule will update the information about the accreditation standards. This information is designed to inform an applicant of the educational standards required for licensure.

R 338.306: This is a new proposed rule that will advise a licensee of the consent needed and the standard of care required when providing telehealth services. This rule is required by statute, MCL 333.16287.

R 338.309: The current rule provides the requirements for an applicant seeking licensure by endorsement. The proposed rule will update information regarding the examinations required. It is designed to inform an applicant of licensure by endorsement requirements.

R 338.313: The current rule provides the requirements for relicensure after lapse. The proposed rule informs the applicant that he or she must establish that he or she is of good moral character, pass the optometry jurisprudence examination, and complete the required CE. If the applicant’s license has been lapsed more than 3 years, he or she will also be required to submit fingerprints. If an applicant is applying for relicensure after a lapse of 6 years or more, he or she must also pass the examinations administered by NBEO. This rule is designed to inform an applicant of the requirements for relicensure.

R 338.319: The current rule adopts by reference the standards and criteria of the Council on Optometric Practitioner Education (COPE), approves CE programs approved by COPE, and informs a CE program sponsor how to become a board approved CE provider. The new proposed rule will amend the information in the rule and reorganize it for clarity.

R 338.320: This is a new proposed rule pertaining to approved CE. The substance of the new proposed rule was previously in R 338.323, but the current organization made this rule’s relationship to R 338.319 ambiguous. The new proposed rule will clarify that the identified activities are board approved for CE credit.

R 338.321: The current rule pertains to CE. The proposed rule amends information and clarifies the CE requirements, limitations, and requirements needed for license renewal. The proposed rule is designed to assist licensees in accumulating the CE required for license renewal.

R 338.323: The current rule will be rescinded, and the information relocated to R 338.320 for clarity.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s).

The proposed rules are not expected to change the frequency of any behavior.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Part 1 General Provisions: The definitions are intended to ensure that the licensee or applicant understands the terms used throughout the rule set. The proposed rule adds new definitions to

ensure that a licensee understands and complies with the new proposed telehealth rule in R 338.306.

In R 338.303, the training standards for identifying victims of human trafficking is a one-time training required of licensees and applicants. The current rule is updated to ensure that a licensee or applicant knows the date by which he or she must have completed this training.

R 338.304 is added because the current rules do not inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language. The proposed rule is intended to inform an applicant, who was foreign trained, that he or she must comply with this requirement to be licensed.

In R 338.305, the current rule contains outdated information regarding the accreditation standards adopted by reference. The proposed rule updates the outdated information to inform an applicant of the current, approved educational standards.

R 338.306 is a new proposed telehealth rule added to comply with statute, MCL 333.16287.

Part 2 Licensure: The current rule regarding the required examinations contains outdated information. The proposed rule updates the information to inform an applicant of the required examinations for licensure.

The current rules state the requirements for relicensure, but the organization and formatting make it difficult for an applicant to identify the requirements that he or she must meet, based on the amount of time that his or her license has been lapsed. The proposed rules are intended to clearly inform the applicant of the requirements that he or she must fulfill, depending on the length of time that his or her license has been lapsed.

Part 3 Continuing Education: In the proposed rules, the adoption of standards and criteria of the COPE will be updated. The information regarding board-approved programs and activities has been reorganized and amended for clarity. The desired behavior is that a licensee will clearly understand which programs and activities are board approved for CE credit.

C. What is the desired outcome?

Part 1 General Provisions: The definitions are not in alphabetical order. In the proposed rules they will be reorganized to assist the reader in locating a definition. New definitions will be added to assist a licensee in understanding and complying with the new proposed telehealth rule in R 338.306.

In R 338.303, the training standards for identifying victims of human trafficking are updated to include the date by which an applicant or licensee must have completed this training. The desired outcome is timely compliance by the applicant or licensee.

R 338.304 is added to inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language. The rule is added to assist an applicant who was foreign trained to comply with this licensure requirement.

In R 338.305, the current rule contains outdated information regarding the accreditation standards adopted by reference. The information is updated in the proposed rules to inform an applicant of the approved educational standards.

R 338.306 is a new proposed telehealth rule added to comply with statute, MCL 333.16287.

Part 2 Licensure: The current rule regarding the required examinations contains outdated information. The proposed rule updates the information to inform an applicant of the required examinations for licensure.

The proposed rules regarding relicensure will be reorganized to assist an applicant in identifying each requirement that he or she must meet, depending on the length of time that the license has been lapsed. The proposed rules are intended to inform the applicant that he or she must establish that he or she is of good moral character, complete CE in compliance with R 338.321, and take the optometry jurisprudence exam. Additionally, if the applicant's license has been lapsed for more than 3 years, he or she must submit fingerprints, and if the applicant's license has been lapsed for 6 years or more, he or she must achieve a passing score on the examinations administered by the NBEO.

Part 3 Continuing Education: In the proposed rules, the adoption of standards and criteria of the COPE will be updated.

Board-approved programs and activities have been reorganized and amended for clarity, and all CE requirements and limitations are reorganized into 1 rule to assist licensees in accumulating the CE hours required for license renewal.

5. Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Part 1 General Provisions: The current rules do not include definitions related to obtaining patient informed consent as required in the proposed telehealth rule, R 338.306. The harm that may result is that a licensee may fail to obtain proper informed consent before rendering telehealth care.

In R 338.303, the harm that may result from the current rule regarding the training standards for identifying victims of human trafficking is that an applicant or licensee may miss the date by which he or she must comply with the requirement.

R 338.304 is added to inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language. The harm that may result from the current rules is, if an applicant is not informed that he or she must demonstrate a working knowledge of the English language, the applicant may not comply with all licensure requirements, which may delay licensure.

In R 338.305, the current rule contains outdated information regarding the accreditation standards adopted by reference. The proposed rule updates the information to inform an applicant of the approved educational standards.

R 338.306 is a new proposed telehealth rule added to comply with statute, MCL 333.16287.

Part 2 Licensure: The current rule regarding the required examinations contains outdated information. The proposed rule updates the information to inform an applicant of the required examinations for licensure.

The proposed rules will also clearly inform the applicant of the requirements that he or she must fulfill to be relicensed after lapse.

Part 3 Continuing Education: The adoption of standards and criteria of the COPE will be updated. Board-approved programs and activities have been reorganized and amended for clarity, and all CE requirements and limitations are reorganized into 1 rule to assist licensees in accumulating the required CE hours.

A. What is the rationale for changing the rule(s) instead of leaving them as currently written?

Part 1 General Provisions: The proposed rules are necessary to reorganize the definitions into alphabetical order and to add new definitions to assist a licensee in understanding and complying with the new proposed telehealth rule in R 338.306.

In R 338.303, the training standards for identifying victims of human trafficking are updated to include the date by which an applicant or licensee must have completed this training. The proposed rule will inform the applicant or licensee when he or she must have completed the training to comply with this rule.

R 338.304 is added to inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language. The addition of the proposed rule will inform the applicant who is foreign trained that he or she must comply with this licensing requirement.

In R 338.305, the current rule contains outdated information regarding the accreditation standards adopted by reference. The proposed rule updates the information to inform an applicant of the approved educational standards.

R 338.306 is a new proposed telehealth rule added to comply with statute, MCL 333.16287.

Part 2 Licensure: The current rule regarding the required examinations contains outdated information. The proposed rule updates the information to inform an applicant of the required examinations for licensure.

The proposed rules regarding relicensure are disorganized and will be reorganized to assist an applicant in identifying each requirement that he or she must meet, depending on the length of time that his or her license has been lapsed. The proposed rules are intended to inform the applicant that he or she must establish that he or she is of good moral character, complete CE in compliance with R 338.321, and take the optometry jurisprudence exam. Additionally, if the applicant's license has been lapsed for more than 3 years, he or she must submit fingerprints, and if the applicant's license has been lapsed for 6 years or more, that he or she must achieve a passing score on the examinations administered by the NBEO.

Part 3 Continuing Education: The adoption of standards and criteria of the COPE will be updated. The information regarding board-approved programs and activities has been reorganized and amended for clarity. The desired behavior is that the licensee will clearly understand what is required and prohibited when accumulating required CE credit hours.

6. Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Part 1 General Provisions: The proposed rule will inform an applicant or licensee of the meaning of the terms used in the rule set and will protect the health, safety, and welfare of the public by ensuring that the licensee has a full understanding of each defined term as it is used throughout the rules.

In R 338.303, the training standards for identifying victims of human trafficking are updated to include the date by which an applicant or licensee must have completed this training. The health, safety, and welfare of the public is protected by ensuring that all applicants for licensure and renewal have completed the training by the date required.

R 338.304 is added to inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language. The health, safety, and welfare of the public is protected by ensuring that an optometrist can communicate effectively with patients and staff.

In R 338.305, the current rule contains outdated information regarding the accreditation standards adopted by reference. The proposed rule updates the information to inform an applicant of the approved educational standards and protects the health, safety, and welfare of the public by ensuring that a licensee's educational program meets the current accreditation standards.

R 338.306 is a new proposed telehealth rule added to comply with statute, MCL 333.16287. The health, safety, and welfare of the public is protected by ensuring that informed consent to treatment is secured by the optometrist and ensure that the optometrist will render the same level of care to every patient.

Part 2 Licensure: The current rule regarding the required examinations contains outdated information. The proposed rule updates the information to inform an applicant of the required examinations for licensure. The proposed rules will protect the health, safety, and welfare of Michigan citizens by ensuring that a licensee has demonstrated professional competence by passing the examinations administered by the NBEO.

The proposed rules will require an applicant for relicensure to establish that he or she is of good moral character, complete CE in compliance with R 338.321, and take the optometry jurisprudence exam. Additionally, if the applicant's license has been lapsed for more than 3 years, he or she must submit fingerprints, and if the applicant's license has been lapsed for 6 years or more, that he or she must achieve a passing score on the examinations administered by the NBEO. The health, safety, and welfare of Michigan citizens are protected by ensuring that the applicant is safe to practice, is up-to-date on the most current standards of practice, and has demonstrated his or her current competency in the skills and knowledge required to practice as an optometrist.

Part 3 Continuing Education: The adoption of the standards and criteria of the COPE will be updated. The information regarding board-approved programs and activities have been reorganized and amended for clarity. The health, safety, and welfare of Michigan citizens are protected by ensuring that a licensee is up-to-date on the current standards of practice.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

R 338.323 is rescinded for clarity. This information is updated and reorganized into a new proposed rule, R 338.320.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It does not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Describe the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings).

The proposed rules are not expected to have a fiscal impact on the agency.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

No agency appropriation has been made nor has a funding source been provided for expenditures associated with implementing these rules.

10. Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

Part 1 General Provisions: The desired outcome is to provide clearer definitions. There is no additional burden on an individual.

In R 338.303, the proposed rule will update information regarding training standards for identifying victims of human trafficking. There is no additional burden on an individual.

R 338.304 is a new proposed rule that will advise a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language. The fee to take the Test of English as a Foreign Language (TOEFL-IBT) at a Michigan-based location is approximately \$195.00. The burden placed on the individual to take the TOEFL-IBT is outweighed by the benefit to Michigan citizens by ensuring that a foreign-trained applicant can communicate effectively with patients and staff.

In R. 338.305, the proposed rule will update outdated information regarding the standards of accreditation adopted by reference. There is no additional burden on an individual.

R 338.306 is a proposed rule that will add telehealth requirements, as required by MCL 333.16287. There is no additional burden on an individual.

Part 2 Licensure: The proposed rules will add the requirement that an applicant for relicensure must take the optometry jurisprudence examination. The estimated cost of taking the examination is \$50.00. This burden on the individual is outweighed by the benefit to Michigan citizens to ensuring that the applicant for relicensure is knowledgeable of the requirements to practice as an optometrist in Michigan.

The proposed rules will add the requirement that an applicant must submit fingerprints if the licensee's license has been lapsed more than 3 years. The estimated cost of fingerprinting is \$61.60. This burden on the individual applicant is outweighed by the benefit to Michigan citizens by ensuring that an applicant for relicensure after a lapse of more than 3 years is safe to practice.

Part 4 Continuing Education: The current rules pertaining to CE need to be reorganized for clarity. There is no identified burden imposed on an individual.

- A. Despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The estimated cost for fingerprinting is \$61.60. Fingerprinting will benefit Michigan citizens by subjecting an applicant for relicensure to a more vigorous screening process because the State will be able to perform a background check to verify that the applicant is safe to practice. Further, the rule is required by statute.

The estimated cost for taking the optometry jurisprudence exam is \$50.00. Examination will benefit Michigan citizens by requiring an applicant for relicensure to demonstrate that he or she is knowledgeable about the rules and regulations governing the practice of optometry in Michigan. The estimated cost to take the TOEFL-IBT is \$195.00. However, the cost is outweighed by the benefit of ensuring that the applicant can communicate effectively with patients and staff. Further, the rule is required by statute.

Impact on Other State or Local Governmental Units:

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for such other

state or local governmental units as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no anticipated increases or decreases in revenues to state or local governmental units as a result of the proposed rules.

A. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no anticipated increases or decreases in costs to state or local governmental units as a result of the proposed rules.

12. Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s).

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, county, township, village, or school district as a result of these proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no anticipated actions that a governmental unit must take to comply with these proposed rules.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No appropriations have been made to any governmental units as a result of these rules. No additional expenditures are anticipated or intended with the proposed rules.

Rural Impact:

14. In general, what impact will the rule(s) have on rural areas?

The proposed rules are not expected to impact rural areas. The proposed rules apply to individuals licensed under the Public Health Code as a licensed optometrist, regardless of his or her location.

A. Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The proposed rules are not expected to effect public or private interests in rural areas.

Environmental Impact:

15. Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The proposed rules do not have an environmental impact.

Small Business Impact Statement:

16. Describe whether and how the agency considered exempting small businesses from the proposed rule(s).

The proposed rules impose requirements on individual licensees rather than small businesses. Even if a licensee's work place qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession.

17. If small businesses are not exempt, describe (a) how the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below, per MCL 24.240(1)(a)-(d), or (b) the reasons such a reduction was not lawful or feasible.

The rules cannot exempt small businesses because the rules do not directly regulate small businesses. The rules regulate individual licensees. Further, the Public Health Code requires an optometrist to be licensed, and he or she may work in a small business.

While a licensee may work independently or as part of a small business, the law does not allow the rules to exempt these individuals from the requirements of the rules. However, the impact on a licensee who works as part of a small business is minimized in the proposed rules, as the rules are written broadly. The proposed rule changes will have minimal or no impact on a licensee. As a result, a licensee, whether in small business or not, should not be significantly impacted by the changes.

A. Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

There are approximately 1,784 optometrists in Michigan.

While a licensee may work in a small business, but no matter what type of business environment the licensee works in, he or she will have to comply with the proposed rules. The rules do not impact small businesses differently because the impact is to the individual licensee only.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all optometrist licensees. The rules were drafted to be the least burdensome on all affected licensees.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify compliance and reporting requirements with the proposed rules.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rule(s).

The agency did not establish performance standards to replace design or operation standards required by these rules.

18. Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

The proposed rules do not impact small business; rather, they impact an individual licensee. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rule(s).

The proposed rules affect individual licensure applications and renewals, which are already required of all licensees, regardless if they practice in a small business. There is no separate cost to small businesses.

20. Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There will be no increased costs of compliance for a small business concerning the costs of equipment, supplies, labor, or administrative costs.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses

would incur in complying with the proposed rule(s).

There are no expected costs for legal, consulting, or accounting services that a small business would incur in complying with the proposed rules.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no expected costs to a small business that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her business because it would create disparity in the regulation of the profession. Therefore, there is no cost to the agency for administering or enforcing the rules because exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules impose requirements on individual licensees rather than a small business. Even if a licensee's work qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession. Therefore, exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rule(s).

The department worked with the Board of Optometry in the development of the proposed rules. The Board is composed of members of the profession and public members and it represents both small and large business entities in Michigan.

- A. If small businesses were involved in the development of the rule(s), please identify the business(es).

No small businesses were involved in the development of the rules.

Cost-Benefit Analysis of Rules (independent of statutory impact):

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There are no estimated compliance costs with these rule amendments on businesses or groups.

- A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s).

No businesses or groups will be directly affected or benefitted by the proposed rules. No additional costs will be imposed on any businesses or groups.

- B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on any businesses or groups.

27. Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

If an applicant for licensure is foreign-trained, he or she must demonstrate a working knowledge of the English language. The fee to take the TOEFL-IBT at a Michigan-based location is approximately \$195.00.

An applicant for relicensure must pass the optometry jurisprudence exam. The estimated cost to take the exam is \$50. An applicant for relicensure after a lapse of more than 3 years will be required to submit fingerprints. The estimated cost for obtaining fingerprints is approximately \$61.60.

A. How many and what category of individuals will be affected by the rules?

The individuals affected are applicants who were foreign-trained and applicants for relicensure.

B. What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

The fee to take the TOEFL-IBT at a Michigan-based location is approximately \$195.00. The estimated cost for obtaining fingerprints is approximately \$61.60. The fee to take the optometry jurisprudence exam is approximately \$50.00.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

There are no cost reductions for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Provide both quantitative and qualitative information, as well as your assumptions.

Licensure of Foreign-Trained Applicants: The proposed rules inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language on the TOEFL-IBT. Michigan citizens will be benefitted by ensuring that the applicant has a working knowledge of the English language so he or she can communicate effectively with his or her patients and staff. The rule is required by MCL 333.16174.

Requirements to be Relicensed after Lapse: The proposed rules inform a licensee of the relicensing requirements when his or her license has lapsed. The current rule does not contain the requirements that the applicant must establish that he or she is of good moral character and pass the optometry jurisprudence exam. The proposed rule will inform an applicant of those requirements. The current rules do not inform an applicant whose license has been lapsed for more than 3 years, he or she must submit fingerprints. Michigan citizens will be benefitted by ensuring that the applicant for relicensure is competent and safe to practice.

30. Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The rules are not expected to have an impact on business growth or job creation.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There is not expected to be a disproportionate effect due to industrial sector, segment of the public, business size, or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s).

Illinois: <http://www.ilga.gov/commission/jcar/admincode/068/068013200A00800R.html>;
<http://www.ilga.gov/commission/jcar/admincode/068/068013200A00700R.html>;

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3807&ChapterID=24>;
<http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1315&ChapAct=225 ILCS 80/&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Illinois+Optometric+Practice+Act+of+1987>; <http://www.ilga.gov/commission/jcar/admincode/068/06801320sections.html>;
<http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=022500600K49.5>;
<http://dph.illinois.gov/sites/default/files/publications/Illinois-Opioid-Action-Plan-Sept-6-2017-FINAL.pdf>;
<http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1315&ChapAct=225 ILCS 80/&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Illinois+Optometric+Practice+Act+of+1987>.

Indiana: http://www.in.gov/legislative/iac/iac_title?iact=852&iaca=&submit=+Go+;
<http://iga.in.gov/legislative/laws/2017/ic/titles/25/#25-24>;
<http://www.in.gov/legislative/iac/T08520/A00010.PDF?>;
<http://iga.in.gov/legislative/laws/2017/ic/titles/025#25-1-9.5>;
<https://www.in.gov/pla/opt.htm>; <http://iga.in.gov/legislative/laws/2017/ic/titles/025/#25-1-8-6>.

Kentucky: <http://www.lrc.ky.gov/kar/201/005/010.htm>; <http://www.lrc.ky.gov/kar/201/005/055.htm>;
<http://www.lrc.ky.gov/Statutes/chapter.aspx?id=38841>; <http://www.lrc.ky.gov/kar/TITLE201.HTM>;
<http://www.lrc.ky.gov/Statutes/statute.aspx?id=31346>;
<http://www.lrc.ky.gov/Statutes/statute.aspx?id=45730>.

Minnesota: <https://www.revisor.mn.gov/rules/6500.2900/>; <https://mn.gov/boards/optometry/>;
https://mn.gov/boards/assets/2015%20Minnesota%20Board%20of%20Optometry%20Statutes%20%26%20Rules_tcm21-315760.pdf.

New York: https://www.health.ny.gov/professionals/narcotic/mandatory_prescriber_education/
<http://www.op.nysed.gov/prof/optom/optomlic.htm>;
<http://www.op.nysed.gov/prof/optom/optomlaw.htm>.

Ohio: <http://codes.ohio.gov/orc/4725>; <http://codes.ohio.gov/oac/4725>;
<http://codes.ohio.gov/oac/4726>.

Pennsylvania:
<http://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Optometry/Documents/Special%20Notices/OptoSN%20-%20Notice%20Regarding%20Opioid%20Education.pdf>;
<https://www.pacode.com/secure/data/049/chapter23/s23.21.html>;
<http://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Optometry/Documents/Board%20Documents/OptoM%20-%20Act%20130.pdf>;
<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Optometry/Documents/Special%20Notices/OptoSN%20-%20Notice%20Regarding%20Opioid%20Education.pdf>

Wisconsin: <https://dsps.wi.gov/Pages/Professions/Optometrist/Default.aspx>;
https://docs.legis.wisconsin.gov/code/admin_code/opt/7.pdf;
http://docs.legis.wisconsin.gov/code/admin_code/opt/8/02.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

There were no estimates made because the rules impact an individual licensee as well as an applicant for licensure. No estimate could consider the setting where an individual may use his or

her license. Because the rules only impact an individual, and impact all in the same way, the assumptions made was that no additional cost or benefit would result from the proposed rules.

Alternatives to Regulation:

33. Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. Include any statutory amendments that may be necessary to achieve such alternatives.

The rules are required by statute; there is no reasonable alternative to the proposed rules.

- A. In enumerating your alternatives, include any statutory amendments that may be necessary to achieve such alternatives.

There is no reasonable alternative to the proposed rules.

34. Discuss the feasibility of establishing a regulatory program similar to that in the proposed rule(s) that would operate through private market-based mechanisms. Include a discussion of private market-based systems utilized by other states.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. States regulate optometrists by statute, regulation, or both. Private market-based systems are not used for licensing and regulation. The licensing and regulation of optometrists are state functions, so a regulatory program independent of state intervention cannot be established. There are professional associations that establish criteria for membership as an optometrist, but these professional organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements, but does not join one of the professional organizations, would be able to practice and there would be no way to ensure their competency or hold them accountable.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Since the rules are specifically required by statute, there are no alternatives to the proposed rules that the agency could consider. They are necessary for the administration and enforcement of the licensing process.

Additional Information:

36. As required by MCL 24.245b(1)(c), describe any instructions on complying with the rule(s), if applicable.

Licensure of Foreign-Trained Applicants: The proposed rules inform a foreign-trained applicant that he or she must demonstrate a working knowledge of the English language by scoring 80 or above on the TOEFL-IBT. An applicant who was foreign-trained should complete the TOEFL-IBT.

Requirements to be Relicensed after Lapse: The proposed rules inform an applicant of the relicensing requirements when his or her license has lapsed. The applicant must pass the optometry jurisprudence exam. And if the applicant is applying after a lapse of more than 3 years, the applicant must submit fingerprints to the department.

↓ To be completed by the ORR ↓

PART 4: REVIEW BY THE ORR

Date RISCBA received: 1-24-2019

Date RISCBA approved:	1/29/19
Date of disapproval:	
Explanation:	