

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio State Board of Optometry

Regulation/Package Title: No Change – 5 Year Review

Rule Number(s): 4725-3-01, 4725-3-03 through 4725-3-08, 4725-5-18 and 4725-9-04

Date: 02/21/2014

Rule Type:

New

Amended

5-Year Review

Rescinded

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

Regulatory Intent

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

This rule package requires the following:

No Change Rules:

- 4725-3-01, and 4725-3-03 through 4725-3-08 - pertains to requirements for licensure.
- 4725-5-18 - outlines supervision requirements, which a violation would trigger sanctions.
- 4725-9-04 – involves reporting requirements for a waiver of continuing ed.

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

The proposed rules are authorized by section 4725.09 of the Ohio Revised Code.

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?

The rules do not implement a federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

This rule package exceeds federal requirements because the regulation of the optometry profession has traditionally been done at the state level by legislatively created state boards of optometry, such as the Ohio State Board of Optometry. The Ohio State Board of Optometry regulates all aspects of optometry practice, including admission to practice, standards of practice, and discipline of optometrists.

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)?

Section 4725.09 of the Ohio Revised Codes authorizes the State Board of Optometry to adopt rules governing the practice of optometry. The rules proposed under this statutory authority are necessary to facilitate compliance with the provisions in Chapter 4725 of the Ohio Revised Code to promote the public's safety.

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

The success of the regulations will be measured by having rules written in plain language, licensee compliance with the rules, and minimal questions from licensees.

Development of the Regulation

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

Those reviewing the listed rules for the 5-Year Rule Review including; 6 Board Members, which include 5 licensed optometrists and 1 public member, the Ohio Optometric Association, the Ohio State University College of Optometry, Luxottica, our assigned Assistant Attorney General, the Executive Director of the Board and our Program Administrator 2.

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

For this no change rule package, the Ohio State Board of Optometry reviewed the current regulations as part of the mandated 5-year rule review process. No additional changes to the rules were recommended.

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?

Scientific data was not used to develop or review this rule.

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?

Since the regulations are essential to the protecting the public's safety, the Ohio State Board of Optometry did not consider any regulatory alternatives.

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.*

The agency did not consider a performance-based regulation for this rule package. It is the Board's responsibility to ensure that the practice of optometry is consistent throughout the state. It was the determination of the Board that the rule package did not lend itself to performance-based regulations.

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

The Board's Assistant Attorney General reviewed the Ohio Administrative Code to ensure that these regulations do not duplicate an existing Ohio regulation.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules will be posted on the Optometry Board's web site, information concerning the rules will be included in information materials e-mailed to licensees, and notices will be sent to associations, individuals and groups. Optometry Board staff are also available via phone or email to answer questions regarding implementation of the rule.

In addition, the Board's investigator is trained to educate licensees on current and/or new regulations during on-site inspections and during laws and rules training to new graduates at the Ohio State University College of Optometry and to out of state licensees, wishing to transfer their license to Ohio.

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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 impacted business community includes over 2100 Ohio licensed optometrists and the professional and/or general corporations who offer services through authorized business entity.

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

Violation of the rules may result in administrative licensure discipline for the optometrist. Discipline might include reprimand, suspension of the license, required course work, and/or revocation of the license.

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.

4725-3-01, and **4725-3-03** through **4725-3-08** – all pertain to requirements for application and licensure.

4725-5-18 - outlines delegation of duties to ancillary personnel, supervision requirements of the personnel. Failure to comply with this rule could result in sanctions.

4725-9-04 – involves reporting requirements for a waiver of continuing ed.

These no-change rules require minimal time for compliance, and only applies to an Ohio licensed optometrist.

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

The Ohio State Board of Optometry is committed to ensuring that optometrists adhere to standards that protect the health and safety of all Ohioans.

The listed rules have been in place for many years and their regulatory intent justifies the adverse impact to the regulated business community in a fair and consistent manner.

Without the listed rules, it would be extremely difficult to oversee our licensees and ensure safety to the public.

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Regulatory Flexibility

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

This rule does not provide any exemptions or alternative means of compliance for small businesses. The law does not differentiate on the size of the business and therefore, applies to all optometrists.

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 Ohio State Board of Optometry does not fine licensees or impose penalties for first-time paperwork violations. However, any failure of a standard of care in the practice of optometry is not considered a paperwork error but a quality assurance issue by the licensee that is necessary for the protection of the public.

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

Board of Optometry staff members are available by telephone and e-mail to answer questions. Board staff members also provide presentations to groups and associations who seek an update on current regulations. Additionally, our investigator is trained to educate licensees on compliance with all Board of Optometry rules and regulations.