

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

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

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Corporations, Securities, & Commercial Licensing

Name of person filling out RIS:

Mitchell Page

Phone number of person filling out RIS:

517-241-6659

E-mail of person filling out RIS:

PageM6@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2023-17 LR

Title of proposed rule set:

Mortuary Science

Comparison of Rule(s) to Federal/State/Association Standard

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

These proposed rules were drafted with consideration of national and state accreditation associations, the Academy of Professional Funeral Service Practice (APFSP), the American Board of Funeral Service Education (ABFSE), the Council for Higher Education Accreditation (CHEA), and the International Conference of Funeral Service Examining Boards. The proposed rules adopt some of these association accreditation standards by reference and adopt the APFSP as one option for acceptable continuing education course certification. The rules are neither more nor less stringent than these accreditation standards, as the rules do not engage in the accreditation of higher education. Instead, they adopt some of the accreditation standards by reference. As to the APFSP, the rules accept that organization as one option for continuing education course certification. If a continuing education course provider chooses to seek direct department approval for a course, rather than going through the APFSP, then the rules are more stringent in that the department will only approve in-person courses, while the APFSP offers a vast range of options for course settings. There are no parallel federal rules.

A. Are these rules required by state law or federal mandate?

Yes. Changes to the Occupational Code in 2020 saw the addition of Section 1806b, MCL 339.1806b, as amended by 2020 PA 265, that sets a new requirement of four hours of continuing education courses that a license holder must complete each year of a two-year license renewal cycle, beginning October 31, 2025. Under MCL 339.1806b(2)(b), the department must determine the eligibility of a proposed continuing education course.

MCL 339.1810(2) requires the promulgation of rules that prescribe training standards for licensees and nonlicensees that handle medical waste in a funeral establishment. A licensee who owns or operates a funeral establishment must train employees in these standards, consistent with MCL 339.1810(3).

MCL 339.205 requires that the department shall promulgate rules to implement articles 1 to 6 of the Occupational Code, MCL 339.101 through 339.2919.

MCL 339.308 requires that a board shall promulgate rules to fulfill its role, and that it may promulgate rules to set minimal standards of acceptable practice for an occupation. The department has crafted these rules in order to clarify the statutory requirements, and is given the authority to do so under the following:

Section 205 of the Occupational Code (“Code”), MCL 339.205, requires the department to promulgate rules that enable it to fulfill its role under Article 18 of the code and implement articles 1 to 6 of the code.

Section 307(2) of the Code, MCL 339.307(2), states that the Board of Examiners in Mortuary Science may assist the department in the implementation of the Code.

Section 308(1) of the Code, MCL 339.308(1), requires the Board to promulgate rules that are necessary and appropriate to fulfill its role, as outlined in article 3 of the Code.

Section 308(2) of the Code, MCL 339.308(2), states that the Board may promulgate rules to set the minimal standards of practice for the occupation of mortuary science.

Section 1810(2) of the Code, MCL 339.1810(2), requires the department, in consultation with director of public health, to promulgate rules to prescribe training standards for licensees and nonlicensees that handle medical waste in a funeral establishment.

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

These rules do not exceed a federal standard. The Federal Trade Commission’s (FTC’s) Funeral Rule, 16 CFR 453, does require funeral providers to give consumers accurate price information on a “General Price List”, as well as to create a “Statement of Funeral Goods and Services Selected” document for the consumer. The rule details some disclosures that must be made to the consumer by the funeral provider and prohibits certain misrepresentations during the process of selling goods to the consumer, such as false embalming requirements.

The proposed rules do not interfere with the standards laid out in the FTC’s Funeral Rule since the Funeral Rule lays out requirements for funeral providers to adhere to in the process of selling goods to the consumer and does not govern the process of state licensing. The proposed rules clarify facility standards, licensee and trainee licensure requirements, introduce continuing education parameters, and detail standards of care and storage, all of which lie outside the bounds of federal authority under the Funeral Rule.

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

The proposed rules would bring Michigan more in line with the rules and standards of mortuary science licensees in Minnesota, Ohio, and Wisconsin - fellow Great Lakes states with similar geography and economies to Michigan - that have previously established continuing education requirements for the mortuary science industry, and would emulate some of their standards. For example, the methods by which Minnesota and Wisconsin approve continuing education courses were studied in crafting the proposed rules, and Ohio’s rules for what may count towards continuing education credits was looked to as a model for the department to follow.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The proposed rules aim to adopt similar standards as those in other Great Lakes states, and states of similar size to Michigan, namely Minnesota, Ohio, and Wisconsin. Where the rules exceed the standards in other states is due to there being a lesser level of regulation in those jurisdictions. For instance, a state of similar geographic size and population, Georgia, does not have standards for funeral establishments laid out as explicitly as is done in Michigan's statute or these proposed rules. Or, in the case of Colorado, a state of similar geographic size to Michigan but less population, there has been deregulation of the deathcare industry in recent years, leading to Michigan's rules exceeding the standards of Colorado's.

While Michigan exceeding the standards of those in Colorado and Georgia leads to a comparatively increased burden for the department to enforce, and for licensees to comply, the benefits greatly outweigh them; The price of deregulation can range from dirty work environments to obscene mishandling of dead human bodies, such as what Colorado witnessed in recent years that lead to their consideration of new regulation (See: <https://www.msn.com/en-us/news/us/colorado-lawmakers-debate-bill-that-would-license-funeral-home-directors-after-several-grisly-discoveries/ar-BB1kBIQE>).

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

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

A. Explain how the rules have 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.

In an effort to avoid or minimize duplication or other conflicts, the department crafted the proposed rules with the assistance and professional guidance of members of the Board of Examiners in Mortuary Science. The Board's subject matter expertise helped determine which matters were already covered by statutes or guidelines and which required additional rule promulgation. For example, Michigan's regulatory scheme for mortuary science relies heavily on state statutes to lead the way of regulation, with cooperation from certain local actors, such as medical examiners. This means that the department is equipped with a depth of knowledge of which laws apply to the industry in different situations. The department is aware of the Federal Trade Commission's (FTC's) guidelines for funeral establishments, known as "The Funeral Rule", and this was integrated into the development of these rules, as well as consideration of existing rules.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The purpose of the proposed rules is derived from concerns from both the industry and the public. A primary concern is that mortuary science licensees are not subject to continuing education requirements that other licensed professions in Michigan and mortuary science licensees in other states are, which could lead to a falling of standards over the length of a license's life.

There have also been numerous disciplinary cases over the years that resulted in serious violations of mortuary science laws and rules, involving licensees with years of experience.

As it pertains to the behavior of establishments, the proposed rules intend to alter practices that could lead to deceptive advertising of services, murky understanding by the public about which individuals are tasked with overseeing the care and custody of a dead human body, and distasteful care and storage practices.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The proposed rules are expected to help curb the number of mistakes, corner-cutting, or other improper choices made by licensees who may just need a refreshing of knowledge to fix.

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

As it pertains to continuing education, current practice allows a licensee to obtain a license and operate in perpetuity without ever refreshing their knowledge of current laws and standards of practice or engaging in educational activities with their peers. The desired practice would be to require continued educational engagement for all licensees, no matter how long they have been practicing.

As it pertains to requirements for resident trainees, currently, there is no limit on the number of times a trainee may apply for and receive an additional trainee license, which, in effect, allows a trainee to continuously practice mortuary science without attaining the official license. The desired practice is that trainees obtain a trainee license with the intended purpose to obtain a mortuary science license, and the desired behavior is that trainees use a trainee license to obtain the necessary educational and practical experience in the desired field.

As it pertains to standards of conduct, the department would like to see more specific rules for the chain of custody of a dead human body than what is currently permitted.

The department also sees the current status of “Arrangement Centers” as sometimes engaging in behavior that could fall under the practice of mortuary science by unlicensed individuals and would instead like to see these centers operate more narrowly and maintain a fair playing field for all licensees and funeral establishments in a given region.

C. What is the desired outcome?

The desired outcome of the proposed rules is for a robust Mortuary Science industry in Michigan that ensures the dignity of decedents, protects the public from licensees’ wrongdoing or sloppy behavior, and maintains its professional status and rigor to continue attracting individuals of good character.

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

The harm that could result from the behavior that the proposed rules are designed to alter is massive. When a mortuary science licensee neglects to maintain standards regarding the care and custody of a dead human body, there could range from physical degradation of the body, incorrect final disposition, financial losses for all involved, emotional and mental pain and suffering to loved ones, to serious health hazards to employees of an establishment and the public.

The likelihood that these harms will occur in the absence of the proposed rules is almost certain. While the department can’t necessarily predict from who or where it could occur, there have been numerous examples in the recent past exposing the need for additional safeguards, and without them, the harms will continue to occur unabated.

A. What is the rationale for changing the rules instead of leaving them as currently written?

Not only does the new statute require clarifying rules as it pertains to the implementation of continuing education, but over the course of many years, the department and Board have seen disciplinary actions that have exposed certain shortcomings in the existing statutes that merit clarification via rule. Without implementation of the proposed rules, licensees and establishments will continue to be subject to lesser requirements than peers in neighboring and similar states.

6. Describe how the proposed rules 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.

The proposed rules protect the health, safety, and welfare of Michigan citizens through the addition of continuing education requirements for mortuary science licensees, which aims to affirm the competency of the professionals in the industry and refresh any skills of those who may need it. The health and safety of employees and licensees will be protected through the addition of more precise requirements for handling dead human bodies and maintaining a clean and sanitary working environment for embalming, storage, or in public-facing interactions.

This is the least burdensome alternative for those required to comply because the costs can be severe if there is a mishandling of final disposition of a decedent, or if there is physical harm inflicted on employees and/or the public. Not only can there be monetary burdens that arise from errors or misconduct, but also irreversible emotional and mental harm to those already experiencing grief and loss. Not to mention that it only takes a small number of bad actors to tarnish the standing of all professionals, even though the vast majority conduct their work with pride and high standards.

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

Current R 339.18923 was completely reworked and updated to reflect the modern industry as it pertains to resident trainees. R 339.18927 likewise is unnecessary and will be rescinded under this ruleset as section 1808 of the code, MCL 339.1808 already covers it.

R 339.18930 will be rescinded under this ruleset as the requirements for relicensure are inherently changed by the introduction of continuing education requirements, and the new proposed R 339.18929d covers this.

R 339.18933 is unnecessary and will be rescinded under this ruleset as the powers afforded to the department under the occupational code already permit the inspection of funeral establishments.

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 reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The net fiscal impact on the department to implement the proposed rules is unknown. The department has seen an increase in revenue through the collection of mortuary science fees as a result of 2020 PA 334, which amended section 43, MCL 338.2243, to increase the licensing fees for mortuary science on a graduated scale beginning in 2021 through 2025. This increased revenue contributes to being able to administer the licensing program, including work that must be done to implement new continuing education requirements.

The department may see an increase in costs to implement the proposed rules in the form of more work for licensing staff to process the new licensing requirements, and for regulatory compliance staff to handle new disciplinary actions that may then arise. This may contribute to an increased workload that over time, in addition to other licensing programs, and may merit the hiring of new staff. However, the department does not foresee the need to hire new full-time staff as a direct result of these proposed rules. And these new costs were also considered by the legislature when the new statutory requirements were signed into law in 2020.

The department already conducts routine inspections of facilities and of licensee records, and existing staff is aware of the proposed rules that may alter the specifics of how inspections are conducted and what is being reviewed but would not change the fundamental nature of licensing and inspections for mortuary science licensees or funeral establishments.

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

As a result of 2020 PA 334, section 43 of the State License Fee Act, MCL 338.2243, was amended to increase the fees collected by the department for the mortuary science licensing program. This began October 1, 2021, and there have been increased fees effective October 1, 2023, and will be again effective October 1, 2025. The higher fees allow the department to increase the revenue it has available to administer new statutory requirements and in-part implement these rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules are necessary to address shortcomings in Michigan's regulatory scheme for mortuary science. While the vast majority of licensed professionals conduct their work with integrity and high standards, the way that the rules are currently written may allow for dead human bodies or cremated remains to be handled in a manner that doesn't meet those high standards. They may allow for corner-cutting when it comes to managing an establishment or in completing a resident trainee ramp-up to a full mortuary science license.

So, while it is true that licensees will begin to see new requirements from the rules that could add to their workload in their professional capacity, the net impact on the industry and on the public is positive. Not to mention that many licensees already go above and beyond the rules as they are currently written. By bulking up certain requirements, the possibility of improper conduct is lessened, and the state will begin to match its neighbors and peers in the regulatory realm for the first time, particularly as it pertains to continuing education.

The purpose of the proposed rules is best accomplished via rule as opposed to statute, which is limited in depth, and as opposed to a guideline which is not a strong enough compliance tool in this context. There are no duplicative acts or regulations that arise from the proposed rules, showcasing the need for them to be promulgated.

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

The proposed rules, despite the burdens mentioned, are reasonable because they may lead to the following: 1.) An increase in public trust in the deathcare industry, 2.) A fairer playing field for licensees, 3.) Added value to the profession and licenses, and 4.) A reinforcement of the integrity of the profession and industry within Michigan.

The proposed rules are necessary to bring Michigan in line with its neighboring states and states of similar size across the country. They will help ensure that Michigan's mortuary science professionals continue to be some of the best in the country. Without continuing education and the specific care and facility requirements laid out in the new rules, mistakes may occur more frequently.

In an industry of such finality, even minor errors can have significant negative impacts on consumers and the public's perception of the industry. These proposed rules will help lead to less errors, more accountability, and a higher caliber industry across the board.

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 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 will be no known increase or decrease in revenues to other state or local governmental units as a result of the proposed rules. There will also be no known increase or decrease in costs.

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

The proposed rules do not change the responsibility of any city, town, village, or school district. Proposed rules R 339.18935 and R 339.18937 do, however, clarify how a mortuary science licensee interacts with a county medical examiner, something already established by section 1807 of the occupational code, 1980 PA 299, MCL 339.1807, and section 3206(1) of the estates and protected individuals code, 1998 PA 386, MCL 700.3206. R 339.18935 clarifies that a cremation permit endorsed by a county medical examiner must accompany cremated remains that are being transported, and R 339.18937 clarifies that if visual identification of a decedent is not feasible, positive identification by a county medical examiner may be used under certain circumstances.

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

County medical examiners must continue to take actions that are already current practice – signing burial transit permits and assisting in identification prior to final disposition under specific circumstances. It is the mortuary science licensee, however, that is tasked with overseeing the final disposition of a dead human body, meaning they are responsible for maintaining these records and making them available upon inspection.

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 rules.

An appropriation to state or local governmental units has not been made for any additional expenditures associated with the proposed rules. The primary funding source for the mortuary science licensing program, fees, did see increases via an amendment to the State License Fee Act in 2020 PA 334.

Rural Impact

14. In general, what impact will the rules have on rural areas?

The proposed rules will overall have the same effect on rural areas as they do on urban or suburban areas, though it is possible that rural areas may encounter unique challenges that arise from being situated further from population centers. For example, licensees based in rural areas may have to travel longer distances to attend in-person continuing education opportunities. Or a funeral establishment may rely on a county medical examiner with less resources than a county with a larger population.

The rules will also have a positive impact on rural areas through the clarification of the 75-mile rule for designated managers of a funeral establishment. By affirming that a manager may not reside more than 75 miles from the establishment that they manage on a full-time basis, rural funeral establishments will not be run by absentee managers based too far away to responsibly handle day-to-day operations. Rural areas will also be positively impacted by the proposed rules by clarifying the safeguards for handling and transporting a dead human body or cremated remains (R 339.18932 and 339.18935), ensuring that decedents and their loved ones in rural areas will be treated with dignity and care at the same level as other parts of the state.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The public rural interests that will be affected by the proposed rules are decedents and their loved ones who will be directly interacting with the funeral industry because of a death or anticipated death. There are also the members of communities that are neighbors to a funeral establishment who rely on the state’s rules and regulations to ensure their health and well-being are protected.

The private rural interests that will be affected by the proposed rules are funeral establishments, licensees and employees that work there, crematory facilities, cemeteries, and other businesses that service the deathcare needs of rural areas.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

There are no known direct impacts on the environment as a result of the proposed rules.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The department and board did not consider exempting small businesses from the proposed rules, however, there was careful consideration during the drafting process to ensure the new requirements were not overly burdensome for small funeral establishments, or for those in rural areas with less volume of business.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules 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 rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The department established a rule drafting process alongside members of the Board of Examiners in Mortuary Science in a rules subcommittee, in order to ensure that the proposed rules did not venture into overly burdensome territory. In particular, the department paid special attention to the Upper Peninsula and other rural areas where the volume of decedents for funeral establishments is much lower than in Michigan's population centers. This is especially apparent in the requirements for resident trainees, so that R 339.18925 was amended in an attempt to offer more options for trainees to complete experience requirements than what is currently permitted.

Additionally, R 339.18942 prohibiting the practice of mortuary science at unlicensed arrangement centers was crafted to even the playing field for small businesses. Currently, arrangement centers run by larger businesses may toe the line of unlicensed activity and can deceptively compete for customers in a new geographic region of the state. The new rule would ensure that anything constituting the practice of mortuary science must be conducted at a licensed facility and be overseen by a licensee. This will help smaller businesses compete for those customers on a fairer playing field.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The probable effect on small businesses will by-and-large be the same as the effect on all businesses no matter the size. It is possible that smaller funeral establishments may have less resources to make changes to their facilities, but the proposed rules do not impose new major facility requirements beyond officially requiring in R 339.18931 that there be locks on publicly accessible doors to embalming and preparation rooms, a feature that many establishments already have.

The department is not able to determine an exact number of "small businesses" that will be affected by this rule, as it currently does not collect data on funeral establishment revenues, or compare the volume of decedents entering their care, two metrics that could help determine what constitutes a "small business" in this context. However, the rules drafting process included representatives of rural regions and of smaller establishments to ensure those unique needs were not being overlooked. There are currently 690 active funeral establishment licenses as of April 2024.

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

The department does not treat licensees differently based upon how small or large their business may be. While the department worked diligently to draft rules that remain reasonable for small businesses, when it comes to compliance or reporting requirements, the standards remain the same as any other business. This helps ensure that the safety and welfare of the public and employees in the industry is upheld no matter the establishment.

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 department made compliance and reporting requirements simpler for all businesses, including small businesses, by requiring that licensees maintain appropriate records (such as proof of continuing education) in a manner they see fit, in anticipation of a department audit. The department was conscious to avoid micromanaging the manner in which a business maintains records by not introducing a system of submitting voluminous records with each license renewal. This will allow for licensees, including those that would be classified as small business, to continue having a streamlined license renewal process.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

R 339.18922 adopts by reference the standards for accrediting mortuary science programs as adopted by the American Board of Funeral Service Education (ABFSE) and the criteria for recognizing accrediting organization of the Council of Higher Education Accreditation (CHEA), which are both nationally recognized guidelines. For that reason, the department need not establish performance standards to replace standards required by the proposed rules.

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

The proposed rules impact individual licensees and funeral establishments. There is no expected disproportionate effect on small businesses because of their 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 rules.

There is no separate cost for report preparation specific to small businesses. The rules require licensees maintain records of completed continuing education for 4 years and clarify that statutorily required case reports for all dead human bodies that enter the care of a funeral establishment, records of release, disposition, or location of cremated remains, documentation of positive identification of a dead human body, and signed statements of funeral goods and services must be retained for 7 years. Record keeping requirements apply to all licensees and establishments.

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

There are approximately 690 funeral establishments in the state. The department does not determine which licensed establishments qualify as a small business. In addition, the department does not determine the annual gross sales or number of full-time employees associated with each establishment license to allow for determining the number of small businesses. However, the impact on establishments who may qualify as a small business is minimized in the proposed rules because they were written to provide the least amount of regulation necessary to protect the public.

There are no separate costs specific to small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no expected increased costs for small businesses concerning legal, consulting, or accounting services.

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

All licensed funeral establishments in Michigan are subject to the same requirements and costs resulting from the administrative rules. There are no expected costs that should adversely affect competition in the marketplace.

The costs to an establishment are outweighed by the benefits of ensuring the public is protected and the dignity of the decedents is maintained. While there are minor burdens resulting from the proposed rules, the rules are necessary to provide a framework of standards for the licensure of mortuary science licensees and funeral establishments. There are no anticipated costs to small businesses that will cause them or the marketplace economic harm 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.

Exempting or setting lesser standards of compliance for funeral establishments that may constitute a small business is not in the best interest of the public and would increase costs of protecting the public. It would likely cost the agency more to devote staff time to determining which licensees work for small businesses and then enforce different requirements for those individuals.

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

The costs to an establishment are outweighed by the benefits of ensuring the public is protected and the dignity of the decedents is maintained. Exempting or setting lesser standards of compliance for funeral establishments that may constitute a small business is not in the best interest of the public. Doing so would increase harm for all involved by creating disparity in how establishments are regulated.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The department worked with multiple stakeholders at the Mortuary Science Rules Subcommittee meetings, that included members of the Board of Examiners of Mortuary Science. The board is composed of members of the profession and public members who work in businesses in Michigan.

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

Representatives of funeral establishments were involved in the development of the rules through the Mortuary Science Rules Subcommittee, but the department is not aware who meets the definition of a “small business”.

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

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

The department does not foresee any statewide compliance costs of the proposed rules on businesses or groups in addition to the impact on licensees and establishments. There may be costs for businesses that are licensed funeral establishments to lock a public-facing door. The amount of this cost is not known as some establishments already engage in this practice, and the costs associated with installing a lock can vary. For instance, a business could decide to comply with this by hiring a locksmith and pay them anywhere from \$50-320. But it cannot be determined how many businesses need to do so, and the cost could be less depending on how a business decides to comply.

A business may also incur a cost if they choose to cover the cost for an employee to take a continuing education course. This could cost around \$100 per course per employee. However, that cost can vary, as the opportunities to complete continuing education credits varies, and the associated costs can change. It also cannot be determined whether a business chooses to do so on their employee’s behalf, so it is unknown how many businesses would incur such a cost.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

There are approximately 690 funeral establishments, 95 resident trainees, and 1,987 mortuary science licensees in Michigan. The proposed rules will impact all of these stakeholders.

A licensee may bear costs from fulfilling continuing education requirements or from adding features to an establishment to meet facility requirements such as locks on doors. They and the public will also benefit from the health and safety improvements as a result of the proposed rules.

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)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules may impose minor costs on businesses and licensees, such as costs to enroll in a continuing education course should a business decide to cover the cost for a licensee that they employ, or the cost to install a lock on a public-facing door of an embalming room. However, the benefits of the proposed rules imposing those requirements greatly outweighs them and may already be standard practice for many licensees or establishments. Businesses that may be affected are those that don’t already have locks on public-facing doors. It is unknown the exact number of businesses that fall into this category out of the 690 funeral establishments licensed in Michigan. It is also unknown how many funeral establishments may choose to cover costs for an individual licensee that they employ to take a continuing education course. The estimated cost of this requirement is also unknown as the method of compliance for locking the doors may vary.

27. Estimate the actual statewide compliance costs of the proposed rules 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.

The department does not expect the proposed rules to result in additional costs for application fees, licenses fees, new equipment, supplies, labor, accounting, or record keeping on regulated individuals or the public. The proposed rules will not result impose costs on individuals to be educated on the proposed rules. Therefore, the estimated cost is \$0. However, as a result of the statutorily established continuing education requirements that the proposed rules clarify, there may be costs associated with education and training for regulated individuals. All 1,987 mortuary science licensees will be affected by continuing education requirements and possible associated costs. Because there are a number of ways to complete the requirements, including a large variety of courses and course providers, it is not possible to determine an exact estimate for what the cost may be, and how it will vary year-to-year.

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

Mortuary science licensees and resident trainees will be affected by the proposed rules. There are approximately 1,987 mortuary science licensees and 95 resident trainees in the state as of April 2024.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed rules do not create an expected increase or decreased cost for application fees, examination fees, or licensure fees. There may be qualitative impact on licensees in that they now must engage in continuing education throughout the life of their license, which may be a departure from routine for some. There may also be qualitative impact in that licensees may find facility and standards of care requirements to be listed by the department clearer than before as they comply with laws and rules. There will be quantitative impacts on licensees seeking to comply with continuing education requirements, likely through fees imposed by course providers or travel costs, if applicable.

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

There may be reductions in costs associated with reductions in negligent behavior by licensees or establishments, however, these costs cannot be estimated prior to implementation of the proposed rules.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The proposed rules clearly establish a system of continuing education that was mandated by 2020 PA 265. Through the implementation of continuing education for mortuary science licensees, the industry may grow safer as it helps ensure licensees maintain their expertise and continue performing at a high standard of service to the public.

The proposed rules also establish clearer standards for funeral establishment facilities and for the handling of decedents. The clearer standards will help ensure that lapses by any one establishment or licensee will be either remedied expeditiously or avoided altogether.

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

The proposed rules are not anticipated to have negative impacts on business growth or job creation. The proposed rules may help increase the value of a mortuary science license, and therefore increase over time the number of professionals on track to attain one. The proposed rules will not result in the elimination of jobs.

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 as a result of the proposed rules.

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 the proposed rules and a cost-benefit analysis of the proposed rules.

The department crafted the rules through a collaborative effort with a rules subcommittee of the Board of Examiners in Mortuary Science, representing licensees and different parts of the state. Through routine debate and discussion, as well as consultation with outside organizations and jurisdictions, the department, along with the board, revised the rules and gauged hypothetical and potential impacts on businesses and individuals from different backgrounds, statuses, or regions. The department consulted with peer regulators in other states to learn more about their methods of regulation, and how best to protect the public.

Specific sources of information were also found from the following:

Academy of Professional Funeral Service Practice - <https://www.apfsp.org/>

American Board of Funeral Service Education - <https://abfse.org/>

State of Georgia Funeral Service Board

<https://sos.ga.gov/page/funeral-service-board-rules-and-regulations>

State of Illinois Department of Financial and Professional Regulation

<https://idfpr.illinois.gov/profs/fundiremb.html>

<https://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1301&ChapAct=225%C2%A0ILCS%C2%A041/&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Funeral+Directors+and+Embalmers+Licensing+Code>

<https://www.ilga.gov/commission/jcar/admincode/068/06801250sections.html>

LARA – Bureau of Professional Licensing, Occupational Licensing (For professions with continuing education requirements already enacted)

Accountants – MCL 339.729, R 339.5101 – 339.5503

Architects – MCL 339.2009, R 339.15101 – 339.15507

Pharmacists – MCL 333.17731, R 338.3041 – 338.3045

Real Estate Brokers – MCL 339.2504a, R 339.22101 – R 339.22667

State of Ohio Board of Embalmers and Funeral Directors

<https://funeral.ohio.gov/home>

<https://funeral.ohio.gov/continuing-education>

<https://codes.ohio.gov/ohio-revised-code/chapter-4717>

State of Minnesota Department of Health

<https://www.health.state.mn.us/facilities/providers/mortsci/index.html>

<https://www.revisor.mn.gov/rules/4601/>

<https://www.revisor.mn.gov/statutes/cite/390>

<https://www.revisor.mn.gov/statutes/cite/149A>

National Funeral Directors Association - <https://nfda.org/education/ce-information>

State of New York Department of Health

https://www.health.ny.gov/professionals/funeral_director/continuing_ed_unit_prov.htm

State of Wisconsin Department of Safety and Professional Services

<https://dsps.wi.gov/Pages/RulesStatutes/FD.aspx>

<https://dsps.wi.gov/Pages/Professions/FuneralDirector/CE.aspx>

<https://dsps.wi.gov/Pages/Professions/FuneralEstablishment/Default.aspx>

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

No estimates or assumptions were made.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the proposed rules that would achieve the same or similar goals.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to the proposed rules that would achieve the same or similar goals.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Section 205 of the Occupational Code (“Code”), MCL 339.205, requires the department to promulgate rules that enable it to fulfill its role under Article 18 of the code and implement articles 1 to 6 of the code. MCL 339.307(2), indicates that the Board of Examiners in Mortuary Science may assist the department in the implementation of the Code. MCL 339.308(1), requires the Board to promulgate rules that are necessary and appropriate to fulfill its role, as outlined in article 3 of the Code. MCL 339.308(2), indicates that the Board may promulgate rules to set the minimal standards of practice for the occupation of mortuary science. MCL 339.1810(2), requires the department, in consultation with director of public health, to promulgate rules to prescribe training standards for licensees and nonlicensees that handle medical waste in a funeral establishment. Since the rules are permitted and mandated by statute, private market-based systems cannot serve as an alternative. Each state is responsible for oversight and regulation of their funeral and deathcare industries. Private market-based systems are not used for oversight or regulation.

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

No alternatives were considered during rule development.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

In order to locate continuing education opportunities as the rules go into effect and courses become available, licensees may go to the department’s website for Mortuary Science, www.michigan.gov/mortuaryscience, where a list of acceptable courses will be featured. The rules will also be featured as a Spotlight detailing the updates upon the time that the proposed rules become effective.

Compliance with the new rules is the responsibility of licensees, who should maintain records and proof of continuing education in anticipation of a possible audit by the department. In renewing their license, the licensee is attesting to the fact that they have completed the required continuing education for that license cycle. The department will conduct random audits to ensure compliance with this new requirement, and licensees may face disciplinary actions.

Records regarding the chain of custody of a dead human body should also be maintained for the length of time specified in the proposed rules in the case of an audit from the department. Routine inspections by the department will continue as is current practice, and licensees should continue to be prepared for those.