

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Corporations, Securities, & Commercial Licensing

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Mortuary Science

5. Rule numbers or rule set range of numbers:

R 339.18901 – R 339.18947

6. Estimated time frame:

12 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The proposed rules will provide a regulatory structure to implement and enforce new continuing education requirements. They will establish and clarify standards of conduct for the mortuary science industry, set minimum requirements for physical funeral establishments, and clarify how licensees should care for and store dead human bodies and cremated remains.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

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), indicates 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), indicates 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.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 339.205; MCL 339.307; MCL 339.308; MCL 339.1806b; MCL 339.1810(2); 339.1810(3) and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, 445.2011, 445.2025, and 445.2030.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

MCL 339.1806b, as amended by 265 PA 2020, 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 that for licensees and nonlicensees that handle medical waste in a funeral establishment, rules must be promulgated to prescribe training standards which a licensee who owns or operates a funeral establishment must train them on, consistent with MCL 339.1810(3).

MCL 339.205 requires the department to promulgate rules to implement articles 1 to 6 of the Occupational Code, and to enable the department to fulfill its role under the act.

MCL 339.308 requires a board to promulgate rules to fulfill its role, and that it may promulgate rules to set minimal standards of acceptable practice for the occupation for which the board is created.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not conflict or duplicate similar rules, compliance requirements, or other standards on the state, regional, or federal level. As to state regulations, these rules neither exceed nor conflict with the requirements laid out in Article 18 of the Occupational Code, MCL 339.1801 through 339.1812, or Part 138 of the Public Health Code, MCL 333.13801 through 333.13832; As to federal regulations, the Federal Trade Commission’s Trade Regulation Rule Concerning Funeral Industry Practices (“Funeral Rule”) does not conflict with these rules.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

Yes. The department's website for the Board of Examiners in Mortuary Science (www.mi.gov/mortuaryscience), features under the header, "Quick Links", links and instructions to obtain, renew, and verify a license and links to relevant statutes and existing rules. The link to obtain a license is labelled "MiCLEAR – Licensing – Apply/Renew". To verify a license, there is a link labelled "Verify a License". The administrative rules and statutes applicable to mortuary science may be viewed by clicking the following links: "Administrative Rules", "Article 1-6 of the Occupational Code", "Article 18", "Occupational Code – Disciplinary Proceedings", and "Occupational Code – Renewals". Under the header "Spotlight", there are additional links to review related materials to the subject matter of the rules.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules will not exceed similar regulations. Many of the new rules aim to bring Michigan's regulation of mortuary science licensees more into line with other states in the Great Lakes region. Specifically, the continuing education requirements of Ohio's State Board of Embalmers and Funeral Directors informed the decisions the department and Board made in drafting new continuing education requirements for licensees in Michigan. Similarly, the standards of conduct required of mortuary science licensees in Minnesota, Ohio, and Wisconsin were reviewed by the department and Board in drafting new standards of conduct and minimum requirements for physical funeral establishments.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

The proposed rules were written in consultation with a subcommittee of the Board of Examiners in Mortuary Science, whose members are non-department representatives of the occupation and the general public. The full Board was also offered the opportunity to offer comments and questions to the subcommittee following review of the proposed rules. In addition to relying on their subject matter expertise, the momentum to draft these proposed rules emerged after discussions during regularly scheduled public Board meetings and were further informed by citizen complaints received by the department since the rules were last evaluated. In addition to relying on their subject matter expertise, the momentum to draft these proposed rules emerged after discussions during regularly scheduled public Board meeting and were further informed by citizen complaints received by the department and the results of the enforcement actions resulting from the investigation of those complaints since the rules were last evaluated. The proposed rules reflect the subject matter expertise of professional mortuary science members of the Board concerning minimum requirements for licensure and resident trainees, the recommendations received by those Board members to ensure that the new continuing education requirements are feasible for mortuary science licensees to locate and complete and for providers to seek department approval to offer and address issues discovered through the investigation of citizen complaints over the course of many years beginning in 2015 during the investigation of Swanson's Funeral Home, Inc. in Flint.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The last full evaluation of the rules was in 2014. Since then, statutory requirements were updated in 2021 to clarify the role of the appointed manager of a funeral establishment, to allow for the waiver of the one manager to one funeral establishment requirement. The statutory requirements were further updated to require that individual mortuary science licensees complete continuing education beginning on October 31, 2025.

Technology, economic conditions, or other factors that have changed the regulatory activity covered by the rules since the last evaluation include: a continued rise in the number of cremations compared to burials; a growing movement towards green burial options and alternatives to burial, such as alkaline hydrolysis; and the ongoing COVID-19 pandemic, which resulted in changes for the industry, such as the MDHHS Epidemic Order under MCL 333.2253.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

There have been no changes or developments that demonstrate that there is no longer a continued need for the rules.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No