

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Professional Licensing

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2020-68 LR

Title of proposed rule set:

Barbers - General Rules

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.

Each state establishes its own requirements with respect to barbers, 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 rules required by state law or federal mandate?

MCL 339.205 requires the department to promulgate rules that are necessary and appropriate for it to fulfill its role.

MCL 339.308 requires the board to promulgate rules that are necessary and appropriate for it to fulfill its role.

MCL 339.1110 requires the department to promulgate rules to establish the criteria for determining whether an hour of instruction at a state school of cosmetology is substantially similar to an hour of instruction at a barber college.

MCL 339.1112 requires the board to promulgate rules setting forth standards for sanitation in barbershops and barber colleges.

The rules are not required by federal mandate.

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.

The rules do not exceed a federal standard.

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 are consistent with the standards required by the Occupational Code and are largely consistent with the requirements of other states in the Great Lakes Region. Every state in the Great Lakes region provides for the regulation of the profession.

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

The standards pertaining to licensure, education and examination requirements, and sanitation 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 rules.

There are no other 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.

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

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

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

The purpose of the proposed rules is set forth below:

R 339.6002: This is a new proposed rule to provide definitions for terms used in the rule set.

R 339.6022: This is a new proposed rule to provide the requirements for licensure by endorsement. It is intended to assist an applicant for licensure by endorsement in meeting the requirements for licensure.

R 339.6023: This is a new proposed rule to provide the requirement for relicensure. It is intended to assist an applicant for relicensure in meeting the requirements to be relicensed in Michigan.

R 339.6031: This rule pertains to the premises used by a licensee. The rule currently requires that 180 days after promulgation of the rule that a washbasin used to satisfy sanitation requirements not be located in a restroom or out of view of the work area where services are performed. The 180 days has passed, so the rule will be amended so it is clear that this is now a current requirement under the rule.

R 339.6040: This proposed new rule provides the criteria to be used by a barber college to determine whether instruction completed at a Michigan-licensed cosmetology school is substantially similar instruction to course work required in a barber student's program of instruction. It also sets out the school's duties to notify the department of the substantially similar hours the student was permitted to substitute. The rule is designed to comply with statute and to provide schools and students the criteria needed to determine what previous instruction was substantially similar to coursework required in a barber college program.

R 339.6047 This rule pertains to the barber college curriculum. The proposed change is intended to better identify that the exam preparation previously identified as the state board examination is the examination required for licensure.

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

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

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

Barbers are regulated by statute. Clarifying definitions, licensure by endorsement requirements, relicensure requirements, and prelicensure education requirements will make compliance easier for applicants and licensees.

C. What is the desired outcome?

A person who wishes to be licensed as a barber, barbershop, or barber college are regulated. By improving and clarifying the rules, students, applicants, and licensees should find compliance easier. This should result in fewer questions, fewer regulatory problems, and greater protection of the public.

7. 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 statutes pertaining to barbers were amended to permit a barber college to accept substantially similar instruction hours earned in a state-licensed school of cosmetology to satisfy required instruction in a student's barber college curriculum, but standards have not yet been established by rule. Additionally, there are no rules currently provided for an applicant for licensure by endorsement or for relicensure. The proposed rules will provide standards for barber colleges accepting substantially similar instructor hours and will provide greater clarity for applicants and the department concerning licensure by endorsement and relicensure.

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

The current rules lack licensure requirements for those applying for licensure by endorsement and relicensure. Additionally, the rules lack the standards to be used by a barber college in determining whether hours of instruction earned in a state-licensed school of cosmetology are substantially similar instruction hours that may be used to satisfy required instruction in a student's barber college curriculum.

8. 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 provide a regulatory mechanism for barbers, barbershops, and barber colleges. To protect the public, it is important that members of the profession adhere to professional standards.

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

There are no current rules that are obsolete or unnecessary and can be rescinded.

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.

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

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

No agency appropriation has been made or a funding source provided because there are no expenditures associated with the proposed rules.

12. 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 required by statute to provide regulatory requirements barbers, barbershops, and barber colleges. The proposed rules are written to impose no more burden on individuals than is necessary to accomplish the statutory requirements and to provide for the public health and safety. There is no financial or administrative burdens on individuals as a result of the proposed rules.

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

There is no identified burden imposed by the proposed rules.

Impact on Other State or Local Governmental Units

13. 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 are no anticipated increases or reductions for other state or local governmental units as result of the proposed rules.

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

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, town, 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 rules. 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 the proposed rules.

15. 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.

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

Rural Impact

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

The proposed rules are not expected to impact rural areas. The proposed rules apply to individuals licensed under the Occupational Code as a licensed barber, regardless of the individual's location.

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

The proposed rules will not impact public or private interests in rural areas.

Environmental Impact

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

The proposed rules will not have any impact on the environment.

Small Business Impact Statement

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

The department did not consider exempting small business because they are not impacted by the proposed rules.

19. 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 rules cannot exempt small businesses because the rules do not directly regulate small businesses. The rules regulate licensees. Further, the Michigan Occupational Code requires barbers, barbershops, and barber colleges to be licensed.

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

There are approximately 5,928 barbers, barber colleges, and barbershops in Michigan.

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

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 agency did not establish separate compliance or reporting requirements for small businesses. The proposed rules will apply to all 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 for small businesses with the proposed rules because the proposed rules do not directly impact small businesses.

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

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

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

The proposed rules do not directly impact small business. They impact a licensee. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules affect applicants applying for licensure and renewal, regardless of whether they are or work in a small business. The proposed rules do not require any report, and there is no separate cost to a small business to comply with the proposed rules.

22. 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 no expected costs for equipment, supplies, labor, or administrative costs that a small business would incur in complying with the proposed rules.

23. 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 costs for legal, consulting, or accounting services that a small business would incur in complying with the proposed rules.

24. 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. To the extent that a license is required to operate a small business, it is required by statute.

25. 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 licensees rather than directly on a small business. Even if a licensee's business or workplace qualifies as a small business, the department could not exempt the 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.

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

The proposed rules impose requirements on licensees rather than a small business. Even if a licensee's workplace qualifies as a small business, the department could not exempt the 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.

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

The department worked with the Michigan Board of Barber Examiners in the development of the proposed rules. The Board is composed of members of the profession and public members.

A. If small businesses were involved in the development of the rules, 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)

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

It is estimated that the proposed rules will not impose any new compliance costs 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 rules.

Barber college licensees may be affected or benefitted by proposed rule R 339.6040 because, by statute, MCL 339.1110, a barber college may allow a student who is a Michigan-licensed cosmetologist to substitute up to 1,000 hours of substantially similar instruction obtained from a Michigan-licensed cosmetology school for hours of instruction required by the barber college. It is not anticipated that any other businesses or groups will be affected or benefitted by the proposed rules. No additional costs will be imposed on any businesses or groups by 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.

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

29. 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.

It is estimated that there will be no new compliance costs imposed on individuals as a result of the proposed rules.

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

All licensees and applicants are affected by the proposed rules.

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

There is no qualitative or quantitative impact on individuals as a result of the proposed rules because the proposed rules are not expected to increase or decrease costs for education, training, experience, application fees, examination fees, or licensure fees.

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

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

31. 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 update standards and eliminate ambiguous and outdated language to provide greater clarity to licensees and assist them with understanding and complying with the requirements under the rules. The clear and concise language allows the public and licensees to better understand the requirements for the profession.

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

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

33. 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.

The department does not expect any individuals or businesses to be disproportionately impacted by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

34. 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.

Illinois: <https://www.idfpr.com/profs/barber.asp>

Indiana: <https://www.in.gov/pla/professions/state-board-of-cosmetology-and-barber-examiners/>

Minnesota: <https://mn.gov/boards/barber-examiners/>

New York: <https://dos.ny.gov/system/files/documents/2019/04/barberlawmanual.pdf>;
<https://dos.ny.gov/barber#:~:text=%20To%20apply%20for%20a%20Barber%20license%2C%20you,5%20Successfully%20complete%20the%20NYS%20practical...%20More%20>

Ohio: <https://cos.ohio.gov/>

Pennsylvania:

<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/BarberExaminers/Pages/default.aspx>

Wisconsin: <https://dsps.wi.gov/pages/Professions/barber/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.

Since the rules are required by statute, no estimates were made.

Alternative to Regulation

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

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

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

Since the rules are required by statute, a statutory change would be needed to provide an alternative.

36. 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.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. States regulate barbering by statute, regulation, or both. Private market-based systems are not used for licensing and regulation. The licensing and regulation are state functions, so a regulatory program independent of state intervention cannot be established.

There are professional associations that establish criteria for membership, 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 his or her competency or hold him or her accountable.

37. 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.

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

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

The instructions for compliance are included in the rules.