

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**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:

Dena Marks

Phone number of person filling out RIS:

517-335-3679

E-mail of person filling out RIS:

MarksD1@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2020-23 LR

Title of proposed rule set:

Occupational Code - Disciplinary 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 disciplinary procedures for violations of their state's occupational code, 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 to enable it to fulfill its role.

The rules are not mandated by any federal law.

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 proposed 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 Occupational Code Disciplinary Rules establish rules applicable to disciplinary matters administered by the Department. The proposed rules are consistent with the standards required in the Michigan 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 discipline of a licensee who violates the occupational code of that state through the State Attorney General's Office, a licensing board, or a State agency.

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

Each state in the Great Lakes region provides for a disciplinary process that includes complaint intake, investigation, and prosecution. 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, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

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, either the 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 and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(9) does not apply.

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

R 339.1702 This is a proposed new rule that will provide definitions for terms used in this rule set. The proposed revision will clarify the meanings of the terms for greater reader understanding.

R 339.1703 The current rule states that disciplinary proceedings will be conducted in compliance with applicable laws and rules. This rule is unnecessary and will be rescinded in the proposed rules.

R 339.1706 The current rule lacks clarity and will be amended to advise a licensee or registrant of the duty to report changes to his or her name, postal address, and electronic mail address until complaints against him or her are resolved and the individual has complied with any final order.

R 339.1708 This is a proposed new rule that will inform an unlicensed or unregistered individual that he or she is subject to disciplinary action and sanctions for acting in a manner that violates the Occupational Code.

R 339.1710 This is a proposed new rule that will advise a respondent that he or she may be served a complaint or notice of hearing by regular and certified mail and that service will be effective 3 business days after it is mailed, even if it was not delivered due to the respondent's refusal to take delivery.

R 339.1712 This is a proposed new rule that will permit the department to collect and retain information to assist the department in identifying misconduct by a licensee or registrant to ensure that an individual is safe to practice and of good moral character.

R 339.1714 This is a proposed new rule to advise a licensee or registrant that if an investigation is warranted, the department may investigate possible violations that were not apparent when the investigation was initiated.

R 339.1716 This is a proposed new rule to advise when a contested case begins and where and when pleadings should be filed after a complaint is issued.

R 339.1726 This rule pertains to settlement of complaints. This rule will be rescinded in the proposed rules because the substantive portions are statutory, MCL 339.508.

R 339.1731 This rule pertains to compliance conferences. The proposed rule will remove sections that are already provided for by statute, MCL 339.508, and revise the remaining information for clarity. The proposed rule will also advise the respondent that he or she may request an adjournment of a compliance conference for good cause.

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

The frequency of use is not expected to change.

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

R 339.1702 This is a proposed new rule that will provide definitions for terms used in this rule set. The desired behavior is better reader understanding and compliance with the rules.

R 339.1706 The proposed rule will advise a licensee or registrant of his or her duty to report changes to his or her name, postal address, and electronic mail address until complaints against him or her are resolved and the individual has complied with any final order. The desired behavior is improved compliance.

R 339.1708 This is a proposed new rule that will inform an unlicensed or unregistered individual that he or she is subject to disciplinary action and sanctions for acting in a manner that violates the Occupational Code. The desired behavior is compliance with the Occupational Code.

R 339.1710 This is a proposed new rule that will advise a respondent that he or she may be served a complaint or notice of hearing by regular and certified mail and that service will be effective 3 business days after it is mailed, even if it was not delivered due to the respondent's refusal to take delivery. The desired behavior is effective service of a formal complaint or order on the respondent.

R 339.1712 This is a proposed new rule that will permit the department to collect and retain information to assist the department in identifying misconduct by a licensee or registrant to ensure that the individual is safe to practice and of good moral character. The desired behavior is to ensure the welfare of Michigan citizens.

R 339.1714 This is a proposed new rule to advise a licensee or registrant that if an investigation is warranted, the department may investigate possible violations that were not apparent when the investigation was initiated. The desired behavior is to provide the department the opportunity to fully investigate all possible violations once an investigation has begun.

R 339.1716 This is a proposed new rule to advise when a contested case begins and where and when pleadings should be filed after a complaint is issued. The desired behavior is better understanding and compliance with the rule.

R 339.1731 This rule pertains to compliance conferences. The proposed rule will remove sections that are already provided for by statute, MCL 339.508, and revise the remaining information for clarity. The proposed rule will also advise the respondent that he or she may request an adjournment of the compliance conference for good cause. The desired behavior is to provide the respondent with an opportunity to resolve a complaint against him or her without proceeding to an administrative hearing.

C. What is the desired outcome?

R 339.1702 The desired outcome is better reader understanding and compliance with the rules.

R 339.1706 The desired outcome is to ensure that the department has valid contact information for a respondent until complaints and final orders are fully resolved.

R 339.1708 The desired outcome is that an individual be licensed or registered before providing a service requiring licensure or registration under the Occupational Code.

R 339.1710 The desired outcome is to provide notice to the respondent and provide for effective service of a formal complaint or order.

R 339.1712 The desired outcome is to protect the welfare of Michigan citizens by ensuring that a licensee or registrant is of good moral character.

R 339.1714 The desired outcome is to provide the department the ability to fully investigate all possible violations once an investigation has begun.

R 339.1716 The desired outcome is understanding and compliance with the rule.

R 339.1731 The desire outcome is to provide the respondent with an opportunity to resolve a complaint against him or her without proceeding to an administrative hearing.

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.

R 339.1702 This is a proposed new rule that will provide definitions for terms used in this rule set. Without the proposed rule, the meanings of the terms used in the rule set may not be clear, which may lead to noncompliance with the rules.

R 339.1703 The current rule states that disciplinary proceedings will be conducted in compliance with applicable laws and rules. This rule is unnecessary and may cause confusion.

R 339.1706 The current rule lacks clarity and will be amended to advise a licensee or registrant of his or her duty to report changes to his or her name, postal address, or electronic mail address until complaints against him or her are resolved and the individual has complied with any final order. The lack of clarity may lead to noncompliance.

R 339.1708 This is a proposed new rule that will inform an unlicensed or unregistered individual that he or she is subject to disciplinary action and sanctions for acting in a manner that violates the Occupational Code. The proposed rule is intended to ensure that an individual obtains his or her license or registration before rendering services regulated by the Occupational Code.

R 339.1710 This is a proposed new rule that will advise a respondent that he or she may be served a complaint or notice of hearing by regular and certified mail and that service will be effective 3 business days after it is mailed, even if it was not delivered due to the respondent's refusal to take delivery. The proposed rule is intended to ensure notice has been given to the respondent and that effective service of process is achieved.

R 339.1712 This is a proposed new rule that will permit the department to collect and retain information to assist the department in identifying any misconduct by a licensee or registrant. Without the proposed rule, the department would be limited in its ability to ensure the welfare of Michigan citizens.

R 339.1714 This is a proposed new rule to advise a licensee or registrant that if an investigation is warranted, the department may investigate possible violations that were not apparent when the investigation was initiated. Without the proposed rule, the welfare of Michigan citizens may be harmed because the department's ability to investigate potential violations would be limited.

R 339.1716 This is a proposed new rule to advise when a contested case begins and where and when pleadings should be filed after a complaint is issued. The proposed rule will ensure that all parties comply with the filing of pleadings so that the administrative process proceeds fairly and efficiently.

R 339.1726 The current rule pertains to settlement of complaints. This rule will be rescinded in the proposed rules because the substantive portions are statutory, MCL 339.508.

R 339.1731 This rule pertains to compliance conferences. The proposed rule will remove sections that are already provided for by statute, MCL 339.508, and revise the remaining information for clarity. The proposed rule will ensure that a respondent has the information needed to participate in the compliance conference and be provided the opportunity to resolve the complaint without proceeding to an administrative hearing.

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

R 339.1702 This is a proposed new rule that will provide definitions for terms used in this rule set. Clarification cannot be accomplished without changing the rule.

R 339.1706 The current rule lacks clarity regarding the respondent's duty to report changes to his or her name, postal address, or electronic mail address. Clarification cannot be accomplished without changing the rule.

R 339.1708 This is a proposed new rule that will inform an unlicensed or unregistered individual that he or she is subject to disciplinary action and sanctions for acting in a manner that violates the Occupational Code.

R 339.1710 This is a proposed new rule that will advise a respondent that he or she may be served a complaint or notice of hearing by regular and certified mail and that service will be effective 3 business days after it is mailed, even if it was not delivered due to the respondent's refusal to take delivery.

R 339.1712 This is a proposed new rule that will permit the department to collect and retain information to assist the department in identifying any misconduct by a licensee or registrant. Without the proposed rule, the department would be limited in its ability to ensure the welfare of Michigan citizens by verifying that the licensee or registrant is of good moral character.

R 339.1714 This is a proposed new rule to advise a licensee or registrant that if an investigation is warranted, the department may investigate possible violations that were not apparent when the investigation was initiated. Without the proposed rule, the welfare of Michigan citizens may be harmed because the department's ability to investigate would be limited.

R 339.1716 This is a proposed new rule to advise when a contested case begins and where and when pleadings should be filed after a complaint is issued. The proposed rule will ensure that all parties comply with the filing of pleadings so that the administrative process proceeds fairly and efficiently.

R 339.1726 This rule pertains to settlement of complaints. This rule will be rescinded in the proposed rules because the substantive portions are statutory, MCL 339.508.

R 339.1731 This rule pertains to compliance conferences. The proposed rule will remove sections that are already provided for by statute, MCL 339.508, and revise the remaining information for clarity. This cannot be accomplished without changing the rule.

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 the administration of disciplinary matters for a violation of the Occupational Code. To protect the public, it is important that a licensee or registrant adheres to the Occupational Code and applicable administrative rules.

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

R 339.1703 This rule states that disciplinary proceedings will be conducted in compliance with applicable laws and rules. This rule is unnecessary and will be rescinded in the proposed rules.

R 339.1726 This rule pertains to settlement of complaints. This rule will be rescinded in the proposed rules because the substantive portions of the rule are statutory, MCL 339.508.

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 establish rules applicable to disciplinary matters administered by the Department. There is no specific burden placed on an individual, other than what may result from his or her conduct in violation of the Occupational Code.

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.

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 a 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 a result of the proposed rules. No additional expenditures are anticipated or intended with the proposed rules.

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 impose requirements on individuals, regardless of his or her 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.

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

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

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

The proposed rules provide for the administration of disciplinary matters under the Occupational Code. Even if an individual's workplace qualifies as a small business, the Department could not exempt his or her business from such a matter because it would create a disparity in the regulation of occupational code professionals.

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 individual licensees and registrants.

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

Small businesses will not be affected by the proposed rules. The proposed rules will impact individuals 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.

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 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 impact small business. They impact an individual licensee or registrant. 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.

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

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.

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 have no cost impact on a small business, so no exemption was considered.

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

The proposed rules have no impact on a small business, so no exemption was considered.

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

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

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.

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

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

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

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

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? 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?

The number cannot be estimated because the rules affect any individual who failed, or may have failed, to comply with the Michigan Occupational Code.

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.

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 primary and direct benefit of the proposed rules is to the people in the State of Michigan because the rules provide for the administration of disciplinary matters against an individual who did or may have violated the Michigan Occupational Code. The public will be protected by ensuring that a violator will be subject to appropriate disciplinary action.

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.

Indiana: <https://www.in.gov/pla/3638.htm>

Illinois: <https://www.idfpr.com/FAQ/DPR/FAQs%20for%20Consumers.pdf>,
<https://www.idfpr.com/admin/DPR/DPRcomplaint.asp>

Kentucky: <https://kbc.ky.gov/Documents/201%20KAR%2012.190.pdf>; <http://kyrules.elaws.us/rule/201kar14>

Minnesota: <https://mn.gov/elicense/agencies/#/list/appId/0/filterType/Agency/filterValue/231073/page/1/sort//order/>

New York: <http://www.op.nysed.gov/opd/>

Ohio: <https://med.ohio.gov/Regulation/File-a-Complaint>

Pennsylvania: <https://www.dos.pa.gov/ProfessionalLicensing/FileaComplaint/Pages/default.aspx>

Wisconsin: <https://dsps.wi.gov/Pages/SelfService/FileAComplaint.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., which demonstrate a need for the proposed rules.

There were no estimates made because the rules impact individuals whose actions are subject to the Michigan Occupational Code. This may include individuals who are unlicensed or unregistered.

35. 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.

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

The Occupational Code would have to be amended to provide for administration of disciplinary matters outside of the Department.

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.

Under the current structure of the Michigan Occupational Code, there are no alternatives to the proposed rules as the Department is responsible for administering disciplinary matters when an individual has, or may have, violated the Michigan Occupational Code.

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.

There are no alternatives to the proposed rules as they are necessary to permit the Department to fulfil its function in administering disciplinary matters when an individual has, or may have, violated the Michigan Occupational Code.

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.