

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2015-009 LR

ORR rule set title:

Liquor Control Commission Beer

Department:

Licensing and Regulatory Affairs

Agency or Bureau/Division

Liquor Control Commission

Name and title of person completing this form; telephone number:

Julie Wendt, Director of Executive Services Division; 517-284-6282

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

Article IV, Section 40, of the Constitution of Michigan (1963), permits the legislature to establish a Liquor Control Commission (Commission), which exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. This section also allows the legislature to provide for an excise tax on such sales.

Section 201(2) of the Liquor Control Code of 1998 (Code), MCL 436.1201(2) grants the Commission the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation, and sale thereof.

Section 215(1) of the Code, MCL 436.1215(1) requires the Commission to adopt rules and regulations governing the carrying out of the Code and the duties and responsibilities of licensees in the proper conduct and management of their licensed businesses.

The Commission adopted the Beer rule set to provide business regulations applicable to all persons applying to the Liquor Control Commission for a wholesale, outstate seller, or manufacturer license that want to produce, import, sell, and deliver beer in this state. This rule set also provides regulations relative to tax reports, monthly operations reports, inspections, enforcement, and beer labels. The Beer rule set has not had a comprehensive review and update since 2000.

The proposed rule modifications are necessary to reflect the implementation of 2014 PA 48 amended Section 409 of the Code, which requires that beginning on and after February 1, 2015 the excise tax on beer manufactured outside of this state must be paid by the wholesaler assigned to distribute the product instead of the outstate seller of beer. It also describes provisions of the act that allows an instate beer manufacturer to either collect and pay the beer tax or designate a beer wholesaler to do this for them. The act also requires the Commission to establish by rule a method for the collection of the tax and reporting requirements for wholesalers and outstate sellers of beer.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

Most states (including Michigan) require that beer be sold through a “three-tier” distribution system, which requires that all sales into a state from licensed suppliers (brewers) must be made to licensed wholesalers in the state, and licensed retailers may purchase their product only from these licensed wholesalers. State and local taxes on beer as a commodity are of four types: 1) “gallonage” taxes that are imposed on a volumetric basis, similar to the federal beer excise tax, 2) a general sales tax applied to the retail sale of beer at the same rate as the sales tax applied to other taxable products, 3) a special retail tax are in lieu of or in addition to the general retail sales tax described above, and 4) any additional taxes on beer not elsewhere categorized. With the enactment of 2014 PA 48, Michigan now joins most of the other states in imposing the responsibility of both collection and remittance of gallonage beer taxes on the wholesaler. Among the states that require wholesalers to collect and pay these state taxes include Tennessee, North Carolina, Kentucky and Alabama. The nearby states of both Illinois and New

York similarly require gallonage taxes to be collected and paid monthly by wholesalers at the point of sale to retailers. Michigan's new rules do not impose standards that exceed those of Illinois or New York. The National Beer Wholesalers Association (NBWA) recently reported that both beer wholesalers and state liquor control administrators indicate that compliance with this regulatory framework does not impose a significant administrative burden. Furthermore, requiring wholesalers to collect and pay the state excise beer tax is widely perceived by public and private stakeholders as a framework that reduces the number of tax payers to regulate, simplifies the tax, and adequately allows for compliance verification through third-party reports.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has 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 the interest of ensuring that Michigan's regulatory environment remains simple, fair, efficient and conducive to business growth and job creation while maintaining public health and safety, the Commission has updated this rule set to ensure consistency with current statute, policies and processes.

R 436.1609 has been amended to ensure that Michigan brewers and outstate sellers of beer abide by the requirements set forth for basic permitting under the federal alcohol administration act, 27U.S.C. §201 et seq.

R 436.1621 has been amended in accordance with PA 48 of 2014, which requires designated Michigan licensed wholesalers and/or Michigan licensed brewers to pay and report on the total sales of beer made in this state, as well as the total amount of beer excise tax due.

R 436.1631 has been amended in accordance with PA 48 of 2014, which requires the Commission to establish rules for Michigan licensed brewers, outstate sellers of beer and licensed wholesalers to establish reporting requirements for the verification of taxes paid on beer sales.

All other proposed changes neither directly coordinate with, duplicate, overlap nor conflict with any other laws, rules or legal requirements.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

In accordance with PA 48 of 2014 (MCL 436.1409), the Commission has amended the aforementioned rules to not only develop a method for the collection of beer excise taxes, but to also establish reporting requirements to verify the remittance of taxes to the State for wholesalers, brewers, and outstate sellers of beer.

As required by MCL 436.1409 subsection (7), the Commission has designated monthly excise tax payment and reporting requirements due by the fifteenth day of each month for the preceding month's sales.

Aside from the rescissions outlined under item 7 below, the desired behavior/practice set forth by the amendments included herein, excise tax collection and reporting requirements, are those mandated by PA 48 of 2014.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

2014 PA 48 required the Commission to establish by rule a method for the collection of the tax and reporting requirements for wholesalers, and outstate sellers of beer. These rules establish the collection and reporting requirements to carry out the statutory requirement and protect the revenue stream. The amendments to the Code contained in 2014 PA 48 changed the taxpayer from the outstate seller of beer to the wholesaler; and changed the timing of the tax payments from when the beer is imported into the state to when the product is sold to retailers by the wholesaler assigned to distribute the product. The amendment to the Code requires that the rules be changed to reflect these changes.

(6) Describe how the proposed rule(s) 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.

In the interest of ensuring that Michigan's regulatory environment is simple, fair, efficient and conducive to business growth and job creation while maintaining public health and safety, the Commission has determined it is appropriate to review this rule set to update rule language and clarify the requirements of the rules to ensure that the rules are consistent with current policies, laws and processes.

The new rules propose a regulatory framework shared by most states. As described in item 2 above, stakeholders widely perceive distributors' collection and payment of state excise taxes as being a simple, fair, and efficient way of collecting beer taxes, and does not impose an undue regulatory burden.

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

R 436.1605 is proposed for rescission, as it unnecessarily requires beer manufacturers to possess the equipment needed to manufacture beer. Further, the portion of this rule that speaks to maintaining a sanitary environment is duplicative of R 436.1003.

R 436.1607 is proposed for rescission, as it is duplicative of the rules and laws of the Michigan Department of Agriculture and Rural Development.

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, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or 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 on the agency promulgating the rule).

The proposed amendments to the rules will have no additional cost increases or decreases on the agency.

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

As the Commission foresees no need for additional expenditures, no new funding source or appropriation has been identified or requested.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The proposed amendments to the rules are necessary because of the changes made to the Code by 2015 PA 48. The proposed rule amendments impose no higher fiscal or administrative burden than those required by statute.

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 on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

The proposed rules neither increase nor decrease revenues for other state or local governmental units.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules require no new programs, services, duties, or responsibilities imposed upon local governmental units.

(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 rule(s).

As the Commission foresees no need for additional expenditures, no funding source or appropriation has been identified.

Rural Impact:

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The revised rule set will have no impact on rural areas.

Environmental Impact:

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

The revised rule set will have no impact on the environment.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

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

The revised rule set will not have a disproportionate economic impact on small businesses and shall apply to all licensed businesses equally.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) 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 rule(s) 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 revised rule set will not have a disproportionate economic impact on small businesses and shall apply to all licensed businesses equally.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

The revised rule set applies to all licensed businesses. The Commission does not collect or have access to information that would allow the identification of licensed businesses as small businesses under MCL 24.240(1)(a)(b)(c)(d).

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

Where this revised rule set does not afford greater flexibility to the Commission's licensed population, it instead seeks to help licensees operate in accordance with law. As small businesses can often suffer greater economic burden as a result of unclear or unnecessary regulation, the revisions included herein will serve to protect small business licensees from undue harm by offering greater transparency and instruction on requirements set forth by statute.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

PA 48 of 2014 requires the Commission to establish, by rule, a method for collecting beer sales and tax information from wholesalers, brewers, and outstate sellers of beer. To simplify compliance, the Commission promulgated rules such that reporting requirements and tax payments are not made in less than monthly intervals. In addition, the Commission has provided licensees with two forms of reporting options: (1) a copy of each invoice, debit and credit memo for all sales, deliveries, and importation of beer in Michigan during the previous calendar month, or (2) a computer generated report that contains all of the same information. Finally, the Commission has provided licensees with two weeks (or fifteen days) to compile and submit reports for the prior month's sales activity.

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

The revised rule set does not impose performance standards on licensees.

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

The revised rule set does not have a disproportionate impact on licensees due to their size or geographic location.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

The revised rule set does not have a disproportionate impact on licensees due to their size or geographic location.

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

Since every business must track and maintain accurate sales records to effectively gauge inventory and staffing needs, the proposed amendments should not require an additional cost to small business owners whom already track this information.

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

Since every business must track and maintain accurate sales records to effectively gauge inventory and staffing needs, the proposed amendments should not require an additional cost to small business owners whom already track this information.

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

Since every business must track and maintain accurate sales records to effectively gauge inventory and

staffing needs, the proposed amendments should not require an additional cost to small business owners whom already track this information.

(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.

As excise tax must be paid under statute regardless of the size of one's business, the Commission has proposed no lesser standards for compliance by small businesses.

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

There was no need to reduce the economic impact of these rule changes on small businesses inasmuch as they either have no economic impact, have equal economic impact on businesses of all sizes, or have a positive economic impact for businesses overall.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

Small businesses were represented by the various industry groups representing their interests during the legislative process that lead to passage of PA 48 of 2014. The revised rule set merely provides a method for collecting and reporting sales and tax information as mandated by statute.

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

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). 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.

PA 48 of 2014 requires excise taxes to be paid by beer manufacturers, unless they designate the wholesaler to pay the tax on the manufacturer's behalf, for all beer manufactured in Michigan. In addition, the law requires excise tax to be paid by the wholesaler assigned to distribute all beer manufactured outside of Michigan instead of the outstate seller of beer. The rules have been amended to comply with the statutory requirements brought about by PA 48 of 2014. The rules do not impose additional compliance costs beyond what the statute requires.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

As the excise tax rates remain unchanged, the rule amendments have no fiscal impact on individuals.

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

As the excise tax rates remain unchanged, the rule amendments have no new fiscal impact on individuals, groups of individuals, or governmental units.

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

As the rule amendments merely establish a method for collecting taxes mandated by statute, there are

no primary or secondary benefits gleaned by the agency's chosen method.

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

As the rule amendments merely establish a method for collecting taxes mandated by statute, the agency's method of reporting and collecting excise tax has no impact on business growth or job creation.

(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 are no known groups that will be disproportionately affected.

(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 a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). 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 rule(s).

There are no known costs associated with promulgation; therefore, the revised rules did not require estimates or a cost-benefit analysis.

Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

Recently passed and signed into law by the Governor, the legislative process that resulted in PA 48 of 2014 took into account all reasonable alternatives to regulation. The proposed revisions to this rule set merely establish the necessary methodology to carry out the conditions of the new law.

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

The 21st amendment of the United States Constitution returned the regulation of alcohol to the states. Article IV, Section 40, of the Constitution of Michigan (1963), permits the legislature to establish a Liquor Control Commission, which exercises complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. This section also allows the legislature to provide for an excise tax on such sales. Section 201(2) of the Liquor Control Code of 1998 (Code), MCL 436.1201(2) grants the Commission the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the manufacture, importation, possession, transportation, and sale thereof.

The proposed rules provide a method of reporting and paying state excise taxes on beer as required by 2014 PA 48. Given the constitutional and statutory requirements surrounding the regulation of alcoholic beverages, it would not be feasible to establish a private market-based system to regulate and tax alcoholic beverages. Further, there are no states that delegate the regulation of alcohol or collection of excise taxes to an outside agency.

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

Recently passed and signed into law by the Governor, the legislative process that resulted in 2014 PA 48 took into account all reasonable alternatives to regulation. The proposed revisions to this rule set merely establish the necessary methodology to carry out the conditions of the new law.

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.

Frequently Asked Questions providing instructions on the statutory changes contained in 2014 PA 48 are available on the MLCC website. Instructions are also included on the MLCC tax report forms for beer, wine, and mixed spirit drink.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

2-3-2016

Date RIS approved:	February 23, 2016
ORR assigned rule set number:	2015-009 LR

Date of disapproval:	Explain:
More information needed:	Explain:

(ORR-RIS March 2014)