

Michigan Department of Licensing and Regulatory Affairs  
**Office of Regulatory Reinvention**  
611 W. Ottawa Street; 2nd Floor, Ottawa Building  
PO Box 30004; Lansing, MI 48909  
Phone: (517) 335-8658 FAX: (517) 335-9512

**REGULATORY IMPACT STATEMENT (RIS)**  
**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:**

R 325.2651-R 325.2659

**ORR rule set title:**

Test for Breath Alcohol

**Department:**

Michigan Department of State Police

**Agency or Bureau/Division**

State Services Bureau

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

Sgt. Perry Curtis 517-636-0217

**Reviewed by Department Regulatory Affairs Officer:**

Lt. Aimee Maike

## 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.

The proposed rules require evidential and preliminary breath alcohol test instruments to be tested by, and meet, the existing model specifications for evidential breath alcohol analysis as established by the United States Department of Transportation, National Highway Traffic Safety Administration. There are no parallel federal rules or standards that compare to the proposed rules with respect to evidential and preliminary breath alcohol test instrument accuracy, repair and service, operator techniques and procedures, or operator certification and training. The proposed rules are similar to the standards established by other states. These rules are required by the Aeronautics Code of the State of Michigan, 1945 PA 327, specifically MCL 259.190, and the Michigan Vehicle Code, 1949 PA 300, specifically MCL 257.625a(6)(g).

(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.

These proposed rules were compared to the surrounding states of Ohio, Indiana and Illinois. The content of the proposed rules regarding the equipment selection process, equipment accuracy testing, officer operator training, service and maintenance, and record keeping standards of the comparison states are similar and some of the standards of comparison states exceed the standards in the proposed rules.

(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.

There are no known laws, rules, or other legal requirements that may duplicate, overlap, or conflict with the proposed rules. The proposed rules require evidential and preliminary breath alcohol test instruments to be tested by, and meet, the existing model specifications for evidential breath alcohol analysis as established by the United States Department of Transportation, National Highway Traffic Safety Administration. Other than this, there are no known federal, Michigan, or local laws applicable to the same activity or subject matter of the proposed rules. Pursuant to MCL 259.190 and 257.625a(6)(g), the department has exclusive authority in the State of Michigan to promulgate rules for the administration of breath tests for purposes of the Aeronautics Code of the State of Michigan, 1945 PA 327, and the Michigan Vehicle Code, 1949 PA 300. The Michigan State Police Alcohol Enforcement Unit continually reviews the Tests for Breath Alcohol rule set in an effort to ensure there are no duplications.

#### **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?

The proposed rules are designed to provide individuals with the correct address for the department to request a copy of the existing evidential and preliminary breath alcohol test instruments model specifications for evidential breath alcohol analysis as established by the United States Department of Transportation, National Highway Traffic Safety Administration, or a current conforming products list. The change in the frequency of the targeted behavior expected from the proposed rules will depend on the number of individuals that request these documents from the department. At this time, these documents are rarely requested and if they are requested, the documents usually are obtained through the department's Freedom of Information Unit.

Additionally, the proposed rules are designed to have law enforcement officers attending training for the appropriate number of hours, based on the type of certification course attended, and removing an operator class because the state no longer utilizes the equipment this class of operator is certified to operate. The frequency of the behavior that the proposed rules are designed to alter depends on the number of law enforcement officers who attend the training courses. There are numerous training courses offered to law enforcement officers each year, resulting in the training of approximately 1,000-1,500 law enforcement officers.

The desired outcome is to provide individuals with the correct address for the department when requesting a copy of the existing evidential and preliminary breath alcohol test instruments model specifications or conforming products list and have the rule reflect the correct number of hours that must be provided in each training course.

(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?

The rules are designed to provide uniform rules to be utilized throughout the state by all law enforcement officers for the administration of chemical tests for purposes of determining a person's breath alcohol content. Without uniform rules, there may be a lack of consistency in the administration of chemical tests and evidentiary issues during the criminal justice process. If the rules remain as written, citizens may not be able to obtain a copy of the existing evidential and preliminary breath alcohol test instruments model specifications or conforming products list. Additionally, the training courses provided to law enforcement officers will not be in accordance with the rules which could result in evidentiary issues during the criminal justice process.

(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.

These proposed rules protect the health, safety, and welfare of Michigan citizens by requiring certain equipment be used for the administration of chemical tests for purposes of determining a person's breath alcohol content and operators of such equipment attend certain training courses in order to be able to operate the equipment in the appropriate manner. These rules limit the amount of training time required to an amount of time that will allow law enforcement officers to receive the appropriate training without requiring needless extra hours in order to regulate the activity in the least burdensome manner.

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

None of the rules in the affected rule set are obsolete, unnecessary, or 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, 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).

There is no fiscal impact on the agency because all expenditures associated with the cost of rule imposition will be paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h. The Drunk Driving Prevention Equipment and Training Fund was established pursuant to MCL 257.625h and is funded mainly by operator's and chauffeur's license reinstatement fees imposed pursuant to MCL 257.320e.

(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).

An agency appropriation has not been made for any expenditures associated with the proposed rules. The expenditures associated with compliance with the proposed rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h.

(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 rules are necessary in order to establish uniform rules to be utilized throughout the State of Michigan by all law enforcement officers for the administration of chemical tests for purposes of determining a person's breath alcohol content. There is no fiscal burden because all expenditures associated with compliance with the proposed rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h. The administrative burden is de minimis and consists mainly of administrative tasks associated with scheduling employees to attend training.

**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 expenditures associated with compliance with the proposed rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h. Accordingly, there are no increases or decreases in revenues to other state or local governmental units as a result of the rule.

(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.

Law enforcement officers of any city, county, town, village, or school district will be required to comply with the proposed rules when administering chemical tests for purposes of determining a person's breath alcohol content. In order to comply with the rules, law enforcement officers of governmental units must use approved equipment, verify equipment accuracy, repair and service the equipment as required by the department, utilize the prescribed techniques and procedures, and complete a required training course in order to utilize the equipment.

(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).

There is no appropriation to state or local governmental units. The expenditures associated with compliance with the proposed rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h

**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).

Law enforcement agencies in rural areas may be impacted to the extent their law enforcement officers attend training courses covered by the rules or utilize equipment covered by the rules; however, there will be no cost to rural agencies because all expenditures associated with compliance with the rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h.

**Environmental Impact:**

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

The proposed rules do not impact 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.

Small businesses will not be affected by the proposed rules.

(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.

Small businesses will not be affected by the proposed rules.

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

Small businesses will not be affected by the proposed rules.

(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.

Small businesses will not be affected by the proposed rules.

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

No entity has to report any compliance requirements to the department.

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

Performance standards cannot replace design or operation standards required by the proposed rules due to the nature of the activity regulated by the proposed rules.

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

Small businesses will not be affected by the proposed rules.

(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).

Small businesses are not required to report or prepare any reports in order to comply with the proposed rules. Small businesses will not be affected by the proposed rules.

(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.

Small businesses are not required to comply with the proposed rules so there is no cost of compliance for small businesses.

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

Small businesses are not required to comply with the proposed rules so there is no legal, consulting, or accounting services that small businesses could incur in complying with the proposed rules nor any cost associated with such services.

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

Small businesses are not required to comply with the proposed rules so there is no cost of compliance for small businesses to absorb.

(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.

Small businesses are not required to comply with the rules so there is no cost to the department for administering or enforcing a rule that exempts or sets 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.

Small businesses are not required to comply with the rules so there is no exempting or setting lesser standards of compliance for small businesses.

(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).

The department did not involve small businesses in the development of the proposed rules because small businesses are not required to comply with the rules nor are they affected by the proposed rules.

**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.

Law enforcement officers are required to comply with the rule amendments; however, expenditures associated with compliance with the rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h so there are no statewide compliance costs of the rule amendments on businesses or groups.

(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?

Law enforcement officers are required to comply with the rule amendments; however, expenditures associated with compliance with the rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h so there are no statewide compliance costs of the proposed rules. Additionally, the proposed rule changes may result in a reduction in the amount of time spent by law enforcement officers in training and reduced training costs being expended from the Drunk Driving Prevention Equipment and Training Fund. Approximately 1,000 - 1,500 law enforcement officers per year may be affected by the reduced time spent at training.

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

Expenditures associated with compliance with the rules are paid for out of the Drunk Driving Prevention Equipment and Training Fund in accordance with MCL 257.625h; however, law enforcement officers may have their training time reduced by approximately 1-2 hours as a result of the proposed rules.

(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.

The proposed rules will correct the amount of training time required for training courses, the department's address, and provide up-to-date language.

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

The proposed rules will not have any impact on business growth or job creation (or elimination) in Michigan.

(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.

Law enforcement officers are the only individuals required to comply with the rules and no law enforcement agency will be disproportionately affected by the rules.

(32) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of 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).

The department researched administrative rules, standards, and statutes of the federal government and other states when compiling the regulatory impact statement. Estimates made were based on the average number of law enforcement officers who attend the training courses covered by the proposed rules in previous years. The cost-benefit analysis determined that the reduced hours of training for law enforcement officers will result in less expenditures for training out of the Drunk Driving Prevention Equipment and Training Fund.

#### **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.

No reasonable alternatives to the proposed rules were identified that would achieve the same or similar goals.

(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.

There is no private market-based mechanism that exists to operate the conduct governed by the rules.

(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.

The department had discussions with attorneys regarding the proposed changes to the rules and no significant alternatives were developed during the discussions.

#### **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.

There are no instructions regarding the method of complying with the rules.

**PART 4: REVIEW BY THE ORR**

**Date Regulatory Impact Statement (RIS) received:**

3-15-2017

<b>Date RIS approved:</b>	<b>3/16/2017</b>
<b>ORR assigned rule set number:</b>	<b>2016-039 SP</b>

<b>Date of disapproval:</b>	Explain:
<b>More information needed:</b>	Explain:

**DEPARTMENT OF STATE POLICE  
TRAINING DIVISION**

**TESTS FOR BREATH ALCOHOL  
Rule Set 2016-039 SP**

**NOTICE OF PUBLIC HEARING  
Tuesday, September 19, 2017  
7426 N Canal Road, Dimondale, Michigan  
9:00 AM**

The Department of State Police, Training Division, will hold a public hearing on Tuesday, September 19, 2017, at the Michigan State Police Training Academy, 7426 N Canal Road, Dimondale, Michigan, at 9:00 a.m. The hearing will be held to receive public comments on proposed changes to the Tests for Breath Alcohol rules set.

The proposed rule set (2016-039 SP) will amend the current rules to correct outdated information and to make revisions to the certification classes and the training required for operator certification.

These rules are promulgated by authority conferred on the department of state police by section 190 of 1945 PA 327, MCL 259.190, and section 625 of 1949 PA 300, MCL 257.625a. These rules will take effect immediately upon filing with the Secretary of State.

The rules (2016-039 SP) are published on the Office of Regulatory Reinvention's website at [http://w3.lara.state.mi.us/orr/Files/ORR/1648\\_2016-039SP\\_orr-draft.pdf](http://w3.lara.state.mi.us/orr/Files/ORR/1648_2016-039SP_orr-draft.pdf) and in the September 1, 2017 issue of the *Michigan Register*. Comments may be submitted by mail or email to the following address and must be received by 5:00 P.M. on Monday, September 18, 2017. Copies of the draft rules may also be obtained by mail or email at the following address:

Department of State Police  
Sgt. Perry Curtis, Career Development Section  
Training Division  
7426 N. Canal Road  
Lansing, MI 48913  
Phone: 517-242-1599  
Fax: 517-636-6560  
E-mail: [curtisp1@michigan.gov](mailto:curtisp1@michigan.gov)

The hearing site is accessible, including handicap parking. People with disabilities requiring additional accommodations in order to participate in the hearing (such as information in alternative formats) should contact the Division at 517-242-1599 at least 14 days prior to the hearing date.