

State Budget Office
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT (RIS)
and COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

Under 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 department 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 approval by the ORR, the agency shall make copies available to the public at the public hearing (MCL 24.245(4)).

1. ORR-assigned rule set number:

2017-025 LR

2. ORR rule set title:

Licensing Qualifications

3. Department:

Licensing and Regulatory Affairs

4. Division/agency/bureau:

Liquor Control Commission

5. Name, title, and phone number of person completing this form:

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

6. 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** which shall contain specific information (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, 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.

There are no federal requirements or standards set by a state or national licensing agency related to any mandatory distances between businesses licensed to sell spirits and mixed spirit drink for consumption off the premises.

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.

Delaware and the District of Columbia have limitations on the distance between off-premises retailer’s licenses. **Pennsylvania** has restrictions on the location of retail outlets within 200 feet of any other premises licensed by the Pennsylvania Liquor Control Board. In **Alabama, Minnesota and Wisconsin** the number and location of off-premises licenses are left to the authority of municipalities. **Indiana, Maine, Ohio, and Wyoming** do not have any proximity restrictions for the distance between off-premises outlets but operate on a quota system. The rescission of R 436.1133 will remove the proximity restrictions for the distance between off-premises outlets in **Michigan** but the quota system will remain in place.

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 federal or state laws, rules, or other legal requirements that duplicate or overlap with the proposed rescission of R 436.1133. If any local governmental units have land use regulations that conflict with R 436.1133, the rescission of this rule will alleviate that issue.

The rescission of R 436.1133 will remedy a statutory conflict with MCL 436.1533 of the Michigan Liquor Control Code of 1998. The language of a statute expresses the Legislature’s intent; the omission of a provision is considered intentional. Statutory changes effective 8/24/2016 left intact the only existing location criteria: the Commission’s express authority in MCL 436.1533(4) to waive the number of licenses based on the population quota, to issue more licenses than allowed by that quota, “if there is no existing specially designated distributor licensee within 2 miles of the applicant, measured along the nearest traffic route”.

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?

MCL 436.1533 limits the number of specially designated distributor licenses to one for every 3,000 population or fraction thereof.¹ R 436.1133 limits the distance between specially designated distributor licenses to not less than 2,640 feet, except under certain conditions the Commission may waive this prohibition. The primary purpose for the existence of this rule is to avoid an over concentration of specially designated distributor licenses within a given geographic or package liquor service area. The rescission of R 436.1133 will allow businesses and communities to determine the best placement of quota specially designated distributor licenses to maximize package liquor service to the surrounding geographical area.

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) instead of leaving them as currently written?

This rule serves to ensure a reasonable distribution of specially designated distributor licenses, with the paramount consideration being convenient and safe service to the public. Over the years, local governments have focused considerable attention on the development of land use regulations that protect the overall appearance of the community, protect the natural features the residents value, and minimize the cost of local governmental services. This is primarily done through zoning ordinances that regulate land development and focus on segregating incompatible land uses. In recent years many communities have moved away from land use segregation primarily focusing on mixed residential and commercial land uses to promote walkable communities and foster more social interaction. The rescission of R 436.1133 will allow local governments more flexibility in developing land use regulations.

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.

The rescission of R 436.1133 will promote a regulatory environment that is the least burdensome for businesses making their determination on the most feasible location because the 2,640 foot proximity restriction will be removed. Additionally, as noted previously, the rescission of this rule will allow local governments more flexibility in developing land use regulations, which promote the health, safety, and welfare of the residents in the community.

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

There are no other rules in the affected rule set that can be rescinded at this time.

Fiscal Impact on the Agency:

¹ Prior to the enactment of the quota for specially designated distributor licenses in MCL 436.1533 in 1998, the limitation on the number of specially designated distributor licenses was found in R 436.1141.

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 for the agency promulgating the rule).

The rescission of R 436.1133 will eliminate the time Liquor Control Commission Enforcement Division investigators spend on measuring the distance between proposed and existing specially designated distributor locations. This will provide efficiencies in the licensing investigations and positively impact economic development. There is no fiscal impact to the agency other than the current operational costs.

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).

The rule rescission will not result in additional costs to the agency; therefore, there is no need for an agency appropriation or a funding source for this rule rescission.

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

The rescission of R 436.1133 will remove the proximity restriction between specially designated distributor businesses, thereby eliminating the burden placed on individuals in determining their business location.

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 for 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.

There may be minimal increases in revenue to the state and local governmental units through the distribution of licensing fees under MCL 436.1543(1) as the rescission of R 436.1133 may allow the issuance of more available quota licenses in communities where none of the existing waivers to the proximity restriction exist.

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 rescission of R 436.1133 does not impose a program, service, duty or responsibility on any county, city, township, village, or school district.

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 are no additional expenditures to state or local governmental units associated with the rescission of R 436.1133; therefore, there is no need for a state or local unit of government appropriation or a funding source for this rule rescission.

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 rescission of R 436.1133 may allow the issuance of more available quota licenses in rural communities where none of the existing waivers to the proximity restriction exist.

Environmental Impact:

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

The rescission of R 436.1133 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 rule(s).

The provisions of R 436.1133 applied equally to all proposed licensed specially designated distributor businesses and the rescission of this rule will eliminate the proximity restriction from all proposed specially designated distributor licensed businesses, including small businesses.

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 had no compliance, reporting, or record-keeping requirements under R 436.1133 and none are imposed as a result of the rescission of this rule.

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

The rescission of R 436.1133 will apply to all specially designated distributor licensed businesses. The Commission does not collect or have access to information that would allow the identification of which licensed businesses are small businesses under MCL 24.207a.

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 had no compliance, reporting, or record-keeping requirements under R 436.1133 and none are imposed as a result of the rescission of this rule.

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

The rescission of R 436.1133 imposes no reporting requirements on any specially designated distributor licensed business.

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

Performance standards cannot replace design or operation standards because none will be imposed as a result of the rescission of R 436.1133.

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

It is unknown the impact the rescission of R 436.1133 will have on small businesses because of their size or geographic location.

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

The rescission of R 436.1133 imposes no report to be prepared by any specially designated distributor licensed business.

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.

There are no costs for compliance associated with the rescission of R 436.1133.

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).

There are no legal, consulting, or accounting costs to licensees associated with the rescission of R 436.1133.

22. 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 legal, consulting, or accounting costs to licensees associated with the rescission of R 436.1133.

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.

There are no known costs to the agency associated with the rescission of R 436.1133.

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

There are no requirements or standards of compliance imposed on specially designated distributor licensed businesses as a result of the rescission of R 436.1133.

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

Numerous appeal hearings, concerning license denials based on R 436.1133, have included complaints and comments regarding the rule, many of these received from small businesses. Otherwise qualified license applicants have been denied a license solely based on location under R 436.1133.

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.

No known compliance costs to licensees will be incurred as a result of the rescission of R 436.1133.

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?

No known costs to licensees or the public will be incurred as a result of the rescission of R 436.1133.

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

No known cost reductions to licensees or governmental units will be incurred as a result of the rescission of R 436.1133.

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 rescission of R 436.1133 will eliminate the time Liquor Control Commission Enforcement Division investigators spend on measuring the distance between proposed and existing specially designated distributor locations. This will also eliminate the necessity of an appeal hearing for applicants that do not qualify for an existing waiver or that were denied a waiver for other reasons. As a result, this will provide efficiencies in the licensing investigations and positively impact economic development.

Applicants and licensees will be able to select proposed specially designated distributor licensed business locations without the concern of an existing specially designated distributor license within one half-mile of the proposed location.

The rescission of this rule may also allow new businesses to open in communities where there are currently no waivers of the proximity restriction that apply to the proposed specially designated distributor licensed location. This may affect an existing business' income due to an increased number of specially designated distributor outlets in the area.

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

The rescission of R 436.1133 may allow the issuance of more available specially designated quota licenses in communities where none of the existing waivers to the proximity restriction exist and may allow existing specially designated distributor licensed businesses to transfer location and expand their businesses more easily without the proximity restriction in place.

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.

It is unknown the impact the rescission of R 436.1133 will have on **b** businesses because of their size, geographic location, or number of specially designated distributor licenses currently operating in the area. The rescission of this rule has the potential to affect existing specially designated distributor businesses income due to an increased number of outlets.

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 the rescission of R 436.1133. Therefore, the rescission of this rule 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.

There are no reasonable alternatives to the rescission of R 436.1133.

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 rescission of R 436.1133 does not establish a regulatory program.

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.

There were no significant alternatives to the rescission of R 436.1133 discussed by the agency.

Additional Information

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

There are no instructions required to comply with the rescission of R 436.1133.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

7-7-2017

Date RIS approved:	07/19/2017
ORR assigned rule set number:	2017-025 LR

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