

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Liquor Control Commission

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Licensing Qualifications

5. Rule numbers or rule set range of numbers:

R 436.1101 to R 436.1151

6. Estimated time frame:

6 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The general purpose of these rules is to set forth certain qualifications and limitations on the issuance of specially designated merchant (SDM) and specially designated distributor (SDD) licenses. Since the latest updates of R 436.1129 and R 436.1135 in 2005, various statutory changes in the Michigan Liquor Control Code of 1998 (Code) supersede the approved type businesses and motor vehicle fuel pumps prohibitions contained in these rules.

The statutory changes in the Code to include SDD quota requirements under MCL 436.1533 supersedes those requirements contained in R 436.1141 and this rule should be rescinded. Additionally, the references to R 436.1141 in R 436.1142 should be changed to reference MCL 436.1533(4) in the Code.

The prohibition of the issuance of an SDD license within 2,640 feet of an existing SDD was rescinded in 2018. In order to promote the health, welfare, and safety of the general public and reduce liquor outlet density in those communities where the negative secondary effects have a significant impact, R 436.1135 should be amended to include this prohibition unless the local governmental unit approves the issuance of the SDD license.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

General rulemaking authority is conferred on the Michigan Liquor Control Commission by Section 215(1) of 1998 PA 58, MCL 436.1215(1), and Executive Reorganization Order No. 2011-4, MCL 445.2030.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

Section 215(1) of 1998 PA 58, MCL 436.1215(1), and Executive Reorganization Order No. 2011-4, MCL 445.2030.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Article IV, Section 40, of the Michigan Constitution (1963), permits the legislature to establish a Liquor Control Commission, which shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. MCL 436.1201(2) provides the Commission with 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 and MCL 436.1215(1) provides the Commission with general rulemaking authority.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rule does not conflict with or duplicate similar rules or regulations adopted by the state or federal government.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

No.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not exceed national or regional compliance requirements or other standards.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes. The Michigan Independent Retailers Association and various independent retailers have made comments at public hearings that the prohibition of the issuance of SDD licenses within 2,640 feet of an existing SDD license should be reestablished.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

R 436.1129 and R 436.1135 were last evaluated in 2005. R 436.1141 has not been evaluated since its promulgation in 1978. R 436.1142 has not been evaluated since its promulgation in 1990.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No