

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Liquor Control Commission

Regulation/Package Title: 2017 No Change

Rule Number(s): 4301:1-1-01, 22, 24, 33, 43, 62, 71

Date: \_\_\_\_\_

**Rule Type:**

☐ New

☐ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

**Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

4301:1-1-01 Title and validity addresses the title, severability and validity of the Liquor Control Commission's administrative rules.

No amendment proposed.

4301:1-1-22 Consent for importing alcoholic beverages for resale in Ohio requires consent by the Division of Liquor Control for importing alcoholic beverages for resale in Ohio. The rule maintains the consistency and integrity of the 3-tier system in Ohio: manufacturers, wholesalers, and retailers. The rule ensures that taxes are collected and that alcohol sales are not made to minors. The rule also ensures the quality of products imported for public consumption.

No amendment proposed.

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4301:1-1-24 Miscellaneous beer, wine, and mixed beverage requirements outlines the requirements for securing and maintaining a Division of Liquor Control issued license to distribute alcoholic beverages in Ohio. The rule ensures the qualifications for distributors of alcoholic beverages, serves to protect the public and authorizes the Commission to suspend or revoke a permit for a violation of the rules.

No amendment proposed.

4301:1-1-33 Consumer tasting activities and sampling at retail permit premises sets forth the requirements for consumer tasting activities to take place at retail permit premises. The rule sets the parameters for enforcement by the Ohio Department of Public Safety, Investigative Unit.

No amendment proposed.

4301:1-1-43 Furnishing signs, fixtures, equipment, advertising materials, and advertising specialties, return of merchandise: limitations thereon: prohibited practices and prohibition of cash deposits or prepayment describes limitations on the furnishing of signs, equipment, advertising and the return of merchandise, as well as prohibited practices related to cash deposits or prepayment for alcoholic beverages.

No amendment proposed.

4301:1-1-62 Inspection of permit premises – hindering or assaulting forbidden grants Division of Liquor Control compliance officers, Public Safety enforcement agents and any officer of the law access to the permit premises at all times with proper identification and lawful purpose. It also protects these officials from assault or interference during an inspection or investigation.

No amendment proposed.

4301:1-1-71 Sponsorship of athletic events or tournaments, concerts, shows, or entertainment provides guidance to alcohol beverage manufacturers who seek to sponsor concerts, shows, entertainment events, as well as sporting events or tournaments and sets forth the requirements of such sponsorship. The rule describes the circumstances under which rules governing advertising do not prohibit manufacturers of alcoholic beverages from sponsoring these events and clarifies permissible sponsorship by manufacturer of alcoholic beverages.

No amendment proposed.

## **2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-01	4301.03	4301.03
4301:1-1-22	4301.03	4301.03
4301:1-1-24	4301.03, 4301.13	4301.03
4301:1-1-33	4303.251	4301.03, 4303.251
4301:1-1-43	4301.22, 4301.24	4301.03
4301:1-1-62	4301.03, 4301.66	4301.03
4301:1-1-71	4301.03, 4301.041	4301.03

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3. **Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No and No

4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

n/a

5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

These rules reflect the policy and intent of the Commission to protect public health and safety, to maintain effective control over the sale, sampling and distribution of alcoholic beverages, and to prevent abuses caused by the unregulated sale of such products.

Alcoholic beverages are unique products that require strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults; to promote orderly markets by requiring transparent, accountable and stable distribution; to prevent unfair competition; and to facilitate the collection of taxes related to the sale and consumption of such product. Finally these regulations ensure the consistent, fair, and predictable permitting process.

6. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The provisions in these rules are already implemented, and active state supervision already exists. The Division of Liquor Control (DOLC) implements the permitting process, monitors the sale and distribution of alcoholic beverages in Ohio, and may initiate actions of “administrative” nature. The Department of Public Safety, Ohio Investigative Unit (OIU) also investigates and may initiate enforcement actions for violations of these provisions. Data related to consumption, sales, and violations, as well as related sanctions are routinely collected and reported. The Commission can measure the success of these regulations and Ohio’s regulated pricing structure by examining the existing compliance-related data. The cost-benefit of non-compliance by the regulated community is significant because the Commission may suspend or revoke an entity’s liquor license for violations of state rules and regulations.

#### **Development of the Regulation**

7. **Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

On November 16, 2016, the Commission initially sought public comment regarding rules under 5-year review by posting a Notice to the Commission’s website and by sending an email blast to a comprehensive list of stakeholders, including representatives from industry associations, such as the

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Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Assn., the Ohio Restaurant Assn., the Ohio Council of Retail Merchants, Ohio Grocers Assn., the Ohio Wine Producers Assn., Ohio Craft Brewers Assn., Southern Wine and Spirits, the Distilled Spirits Council of the United States, Ohio Assn. of Chiefs of Police, the Drug Free Action Alliance, and the Ohio Township Assn, permit holders, and governmental entities such as the Departments of Agriculture, Commerce, and Taxation. The Commission also solicited comments from the Attorney General's Office - Liquor Unit, the Division of Liquor Control and the Department of Public Safety as the agencies directly impacted by the Commission Rules.

The Commission sought written comments from stakeholders by December 19, 2016, and invited public testimony at the Commission's public hearings on December 9, 2016, March 10, 2017, June 16, 2017, and August 18, 2017.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Commission did not receive any comments that recommended changes to these rules. The Commission did receive comment from one stake holder supporting the Commission's process, a copy of which is attached.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was used

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The Commission did not consider alternative regulations as the current regulations are meeting the state's intended policy goals.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

The Commission did not consider performance based regulations as these rules are not for performance, but rather to ensure compliance with existing Ohio law and to continue a system of regulation that exists to ensure effective control over the manufacturing, distribution, and sale of alcoholic beverages.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The Commission coordinated with the Department of Commerce – Division of Liquor Control, the Department of Public Safety – Ohio Investigative Unit, and the Attorney General's Office – Liquor Unit, and confirms no duplication has occurred.

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**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The provisions are currently in effect and do not require any change in order to implement existing regulations. The rules impact all Ohio liquor permit holders in each tier of the system (manufacturers, distributors, retailers) and are entirely consistent with the broader policy goals of the 3-tier system of alcohol beverage regulatory control. Any updates would be made available to the various stakeholders and interested parties via email blast, posting to the Commission's website and via Lawriter which is internet accessible.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

The potential scope is all classes of liquor permit holders – manufacturers, distributors, and retailers,

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

No new costs or fees are being implemented with these rules.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

Each liquor manufacturer, retailer and distributor is required to comply with the applicable regulations to ensure the public health and safety within establishments manufacturing, distributing, selling and serving alcoholic beverages.

While the Commission does not have data to provide a specific quantified potential impact for reasonable compliance costs associated with these rules, in general, the Commission can fine, suspend, or revoke an entity's license for violations of Ohio laws and regulations.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Regulating the manufacture, distribution, retail sale and service of alcoholic beverages in Ohio has been longstanding. The 3-tier system is designed to provide a balanced, transparent, and accountable method for alcohol sales and for allowing entities and individuals to obtain and maintain liquor permits.

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The regulatory intent of the rules justifies any potential adverse impact because the sale of alcoholic beverages is a unique industry that requires strict regulation for the health, safety and protection of the public. The state has a well-recognized and compelling interest in promoting the safe and temperate consumption of alcohol.

#### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No, these rules are intended to create a level playing field for all market participants, regardless of size.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Ohio Revised Code 119.14 is not applicable to these rules as there is no penalty associated with the paperwork necessary pursuant to the rules.

**18. What resources are available to assist small businesses with compliance of the regulations?**

The Ohio Liquor Control Commission -

Website at: <http://lcc.ohio.gov>

Building location: 77 S. High Street, 18th Floor, Columbus, OH 43215

Telephone: 614-466-3132

Fax number at: 614-466-4564

The Commission Quarterly public hearings – March, June, September and December

The Division of Liquor Control Offices -

Website at: <http://www.com.ohio.gov/liqr>

Building location: 6606 Tussing Road, Reynoldsburg, OH 43068

Telephone: 614-644-2360

The Ohio Department of Public Safety, Ohio Investigative Unit –

Alcohol Server Knowledge (ASK) Program, free for permit holders and their employees

Website at: <http://www.oiu.ohio.gov/>

Building location: 1970 West Broad Street, Room 429, Columbus, OH 43223

Telephone: 614-644-2415

Additional industry provided resources available to permit holders and their employees include the TIPS (Training for Intervention Procedures) and TAM (Techniques of Alcohol Management) alcohol training programs.

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Statement in Support of Liquor Control Commission

Consideration of Rules up for Review in 2017

Chairman Pryce, Vice-Chairman Carnes and Commissioner Stinziano:

On behalf of the Board of Directors and members of the Wholesale Beer and Wine Association of Ohio, I wanted to thank you, and your staff, for the ongoing hard work and dedication in carefully reviewing the Commission rules every year. The Chairman's article (see copy attached) that was published last month in the Ohio Tavern News succinctly outlined the amount of time and effort that goes into this process every year. Beyond thanking you for past efforts, we also wanted to comment generally on the 2017 rules up for review that are the subject of today's hearing-Rules 1,3,22,24,33,43,62 and 71-and to offer our assistance in any way that the Commission deems necessary and appropriate in connection with their review and re-adoption.

We do not have any specific suggestions for change at this time but did feel that it was important to point out that these rules comprise critical elements of the overall alcohol beverage regulatory framework in Ohio. They help ensure a level-playing field for all members of the industry and provide the foundation for the benefits that flow to all of the citizens of our state from the maintenance of control over the sale of alcoholic beverages. The unique nature of alcohol beverages as a consumer product are sometimes overlooked and we wanted to highlight the rationale for regulating them as evidenced by the preamble to Rule 43, the trade practice rule, that is one of the significant rules up for review in 2017.

It states that: " This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of alcoholic beverages and to prevent abuses caused by the disorderly and unregulated sale of such products. Alcoholic beverages are a unique product that require strict regulation to: promote temperance by preventing consumption by underage persons and by discouraging abusive consumption by adults, promote orderly markets by requiring transparent, accountable and stable distribution and the prevention of unfair competition and facilitate the collection of taxes related to the sale and consumption of such products. "

Thanks again for your attention to the rules up for review in 2017 and we stand ready to provide whatever information that may be helpful.

Respectfully submitted,



Timothy J. Bechtold  
Counsel for Regulatory Affairs  
WBWAO

# OHIO TAVERN NEWS

NOVEMBER 15, 2016

## Commission Rule Review Is Ongoing Process

Ohio's requirements governing liquor permit holders have two components: statutes enacted by the legislature and administrative rules developed by state agencies such as the Ohio Liquor Control Commission, the Department of Public Safety and the Division of Liquor Control.

Administrative rules provide details to clarify and implement provisions of the Ohio Revised Code regarding the manufacture, distribution and sale of alcoholic beverages in Ohio. The commission's rules have the full force and effect of law, and can be found in Chapter 4301 of the Ohio Administrative Code.

Like all state agencies, the commission is required to review its rules every five years. The commission conducts its five-year rule review process on a staggered, rotating basis so that each year the commission reviews some of its rules. The commission may initiate rule-making of its own accord or may be required to write new or modify existing rules due to the passage of new legislation. Issues also come to the attention of the commission from permit holders, attorneys, agency staff and the public.

This rule-making process is designed to offer the public and interested and affected parties opportunities to provide input regarding the content of any rule being considered. Parties are encouraged to contribute in writing (in compliance with OAC 4301:1-1-66), online by visit-

The commission conducts its five-year rule review process on a staggered, rotating basis so that each year the commission reviews some of its rules.

ing [www.lcc.ohio.gov](http://www.lcc.ohio.gov), or by appearing at a public hearing. The commission holds four scheduled public hearings per year and additional rules review hearings as needed; the dates are listed on the commission's website.

As comments are received, the commission reviews and considers the testimony. The commission may decide to proceed with the rules unchanged, to withdraw a proposed rule, or to make changes to the rule based on the testimony received.

Once rules are opened for review or creation, two other state entities are involved in the process: the Common Sense Initiative and the Joint Committee on Agency Rule Review.

The Common Sense Initiative is managed by the lieutenant governor's office

and reviews commission rules to determine whether the rules' regulatory intent justifies any potential adverse impact on business. CSI review occurs for all agency rules requiring a license or permit to operate a business, imposing a penalty for failure to comply or requiring expenditures or reporting of information.

Due to the nature of the alcohol beverage industry, the commission's rules typically receive CSI review, which offers establishments an additional opportunity to provide comments. CSI's review and recommendation are available on the web pages for both CSI and the commission.

Once the CSI review is completed, the commission formally files the rules with the Joint Committee on Agency Rule Review, consisting of a 10-member legislative panel and staff. As part of the JCARR review process, while a hearing is not necessary for the no-change rules under review, the commission holds another public hearing for any new or proposed amended rules, allowing for additional public input. Hearing notices and copies of the proposed or amended rules are also available on the Register of Ohio's website: [www.registerofohio.state.oh.us/](http://www.registerofohio.state.oh.us/).

JCARR completes its final review of the rules looking at several factors, such as determining if the rules conflict with the legislative intent, other statutes or rules, or if the rules exceed the scope of the statutory authority. JCARR holds a

## Commission Communiqué

By Deborah Pryce



public hearing regarding the rules at the Statehouse. Once all of these reviews are complete, the proposed rule becomes effective and the final language is posted in the Register of Ohio.

The commission relies upon public input to guide its rule-making activities and encourages feedback and comments on its rules. Please visit the commission's website at [www.lcc.ohio.gov](http://www.lcc.ohio.gov) for notice of all meetings and hearings of the commission.

*Deborah Pryce is chair of the Ohio Liquor Control Commission.*