

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Liquor Control Commission

Regulation/Package Title: : 2015 Proposed Amended & No Change Rules

Rule Number(s): 4301:1-1-02 (Definitions); 15 (Permits); 46, 47, 48, 49, 50, 55, 56, 58 (Sales); 59 (Solicitation); 61 (Violations)

Date: 9/30/15

Rule Type:

☐ New

☒ 5-Year Review

☒ Amended

☐ Rescinded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.

Definitions:

4301:1-1-02 Definitions: defines the following terms: alcoholic beverage, brand, commission, division, home use, quota, renewal, state gallonage tax, and wine case.

The proposed amendment from the Division of Liquor Control is to update section 4301:1-1-02 (A) (5) to include the "A1c" permit class (smaller brewers producing less than 31 million gallons) to the existing list of permit classes of manufacturers who are statutorily authorized to sell for "home use" under revised code 4303.22.

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(Note: The A1c permit category was added to create parity with wine permits for the micro breweries -- all that existed prior was an A1 permit used by the large brewers (more than 31 million gallons) and has a \$3906 permit fee, while the winery annual permit fee was only \$76. (<http://com.ohio.gov/liqr/permitClasses.aspx>) The A1c brewers start out small and build up their brand by selling directly to consumers - by growler or by the glass much as wineries have done. The A1c sales are for on premises consumption, and these small brewers can also sell beer products to retail and wholesale permit holders.)

Permits:

4301:1-1-15 Permits, Cancellation of: authorizes the Division of Liquor Control, upon request by the permit holder, to cancel a liquor permit, and summarizes the cancellation procedures. It also allows the Commission to hear outstanding cases and issue orders concerning a proposed/cancelled permit. No amendment proposed.

Sales Practices:

4301:1-1-46 Miscellaneous restrictions: This rule describes a variety of requirements for alcohol sales practices. It prohibits the sale or service of beer or intoxicating alcohol to occupants of automobiles for consumption. It prohibits the sale of alcoholic beverages by a retailer to another permit holder for the purpose of resale. Upon receiving consent from the Division, this rule allows the transfer of alcoholic beverages between premises when the permit holder or principals are the same entity. It also requires that deliveries to retailers must be made by a bona fide employee of the distributor (B-1, B-2, B-4, B-5 permit holders) or manufacturer (A-1, A-2, A-4 permit holders) making the sale. The rule prohibits giving away alcoholic beverages with the purchase of merchandise, although it allows packaging an alcoholic beverage with a nonalcoholic item. Finally, the rule prohibits sales by wholesale distributors to retailers lacking an active, valid retail permit and places the burden for verification on the wholesaler.

The proposed amendment from the Division of Liquor Control to paragraph (C) is a technical update the rule to allow A1c (smaller breweries) permit holders' employees' to make deliveries to retail permit holders.

4301:1-1-47 Ban of refilling bottles or selling brands not ordered: This rule bans retail permit holders from refilling any manufacturer's bottle that formerly contained alcoholic beverages. It also requires consent by the customer to sell or deliver to them an alcoholic beverage different from what they ordered or requested. Finally this rule requires permit holders to label premixed alcoholic beverages kept in dispensers with the product brand name and percentage of alcohol.

The proposed amendment takes into consideration stakeholder comments and concerns; it applies to retail establishments for “on premises consumption”. The change is to clarify content identification and labeling requirements for dispensers of premixed alcohol products. It requires the establishment to either continue to individually identify the beverage contents or maintain on the premises a document showing the brand and percentage of alcohol used in the beverage. (Note: Premixed is construed as an alcohol beverage item made by the retailer, prior to being ordered by a customer, for on premises consumption. A mixed beverage is a bottled prepared drink, made by a manufacturer, delivered to the retailer in a sealed container, prior to being ordered by a customer.)

4301:1-1-48 Service in hotel rooms: Rule 48 sets forth the minimum requirements for alcohol beverage service in hotel rooms. The rule authorizes D-1, D-2, D-3, and D-5 permit holders, who are also owners of a hotel or motel license, to serve alcohol on the hotel/motel premises, in the guest rooms, or in a private conference center.

The proposed amendment from the Division of Liquor Control simply adds in the A1A permit class allowing these permit holders to sell for on premises consumption at a hotel or motel. The Division suggested this change to benefit the growing number of breweries and wineries in Ohio.

4301:1-1-49 Hours of sale of alcoholic beverages: This rule sets forth the valid hours alcoholic beverages may be sold, consumed or delivered for manufacturer, retail, distributor, restaurant/night club, and temporary permit holders.

The proposed amendment from the Division of Liquor Control updates the rule to include several new permit classes in the A, D and F categories, which have been statutorily created since the last time this rule was amended in 2000.

4301:1-1-50 Limitations on happy hours and similar retail price reductions: This rule forbids a liquor permit holder to sell, furnish, or deliver more than two or more servings of alcohol when an order for one serving is placed during happy hour. This rule forbids the sale of an unlimited number of alcoholic beverages for a fixed price during a set period of time. The rule also forbids encouraging drinking games, awarding alcoholic beverages as prizes, and increasing the volume of alcoholic beverages without also proportionally increasing the price. Finally, this rule requires permit holders to maintain a schedule of happy hour prices effective for not less than one month and concludes happy hour by 9pm.

The proposed amendments from the Division of Liquor Control are to make the pricing requirements of this rule more user-friendly to permit holders, without changing the meaning of the rule. The amendments clarify the common understanding of the rule by inserting in paragraph (A) the words “authorized to sell for on premises consumption”; and in paragraph (B), reformatting the language addressing the requirement for liquor permit holders to establish and follow a monthly price schedule.

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4301:1-1-55 Possession of spirituous liquor on certain premises prohibited: This rule limits permit holders, their employees or customers, who are authorized to sell only beer, wine and mixed beverages, from keeping or possessing any spirituous liquor upon the permit premises. No amendment proposed.

4301:1-1-56 Employment of underage persons: This rule allows any person 18 years of age or older to handle sealed containers of wine, beer, or spirituous liquor in connection with wholesale or retail sales, manufacturing, storage, warehousing, placement, or delivery and in open containers in connection with cleaning or handling empty bottles or glasses. This rule also allows any person over the age of 21 to fully participate in any manner of the handling, sale, or delivery of beer, wine, or spirituous liquor.

The proposed amendment from the Division of Liquor Control is to provide clarity, by adding in the words “or older” when referring to the age of a 21 and 19 year old.

4301:1-1-58 Exceptions to giving away food: This rule sets forth the exception regarding the giving away of food in liquor permit premises. This rule allows permit holders to provide hot or cold snacks (pretzels, nuts, popcorn etc.) when served with the purchase of alcohol in an open bowl or receptacle placed on a table, where a customer may help themselves.

The proposed amendment from the Division of Liquor Control deletes the words “with the purchase of alcoholic beverages” and clarifies that provision by a permit holder of hot or cold bar snacks is not contingent upon the purchase of alcoholic beverages.

4301:1-1-59 Solicitation of patrons This rule prohibits permit holders, their agents or employees, from soliciting a consumer to purchase beer, intoxicating liquor, money, or anything of value for the permit holder, agent, employee or other person. This rule also prohibits permit holders from committing or allowing someone to commit the offense of soliciting or prostitution. No amendment proposed.

Violations:

4301:1-1-61 Violation – identification and notification: Rule 61 currently provides that upon witnessing a violation and completing an investigation, OIU enforcement agents and Division compliance officers are required to identify themselves and notify permit holders or their agents in writing of the violation. The exception to this rule is if the enforcement agent or compliance officer is conducting an investigation at the express order of the superintendent of the Division or the executive director of OIU. (This may also be informally referred to as a “long term undercover investigation”).

The proposed amendments come from the Department of Public Safety. At times paragraph (A) of Rule 61 has been narrowly interpreted to mean that when a violation is witnessed the investigation is completed. However, in some cases additional steps are needed to complete

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an investigation after the violation is witnessed. Therefore, the amendment clarifies 4301:1-1-61(A), that witnessing a violation and concluding an investigation are not simultaneous events. The amendment to section (B) is a technical update to the rule reflecting the Department's reorganization by replacing the term "executive director" with the words "director of public safety or the director's designee".

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

4301.03 generally & the following amplifying statutes:

Rule Number Amplifies

4301:1-1-02 – 4301.01, 4301.12

4301:1-1-15 – 4301.26

4301:1-1-46 – 4301.01, 4301.13, 4301.14, 4301.22, 4301.23, 4301.041, 4301.58, 4301.60, 4301.62, 4301.64, 4303.22, 4303.27, 4303.35

4301:1-1-47 -- 4301.68

4301:1-1-48 -- 4303.13 ; 4303.15 ; 4303.181 ; 4301.21

4301:1-1-49 -- 4301.22, 4301.32 through 4301.41, 4303.02 through 4303.23, 4303.29, 4305.14

4301:1-1-50 -- 4301.22, 4303.13 through 4303.20

4301:1-1-55 -- 4303.11, 4303.12, 4303.121, 4303.13, 4303.14, 4303.141, 4303.20, 4303.203, 4303.204, 4303.206

4301:1-1-56 – 4301.22

4301:1-1-58 – 4301.21

4301:1-1-59 – 4301.22 & 4301.24

4301:1-1-61 – 4301.03

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)?

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These rules generally reflect the policy and intent of the Commission to protect public health, and maintain effective control over the sale and distribution of alcoholic beverages. Because alcoholic beverages are unique products they warrant strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive and excessive consumption by adults.

Further, these regulations are necessary to ensure fair, orderly and systematic permitting and enforcement processes.

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 implements the permitting process, monitors the sale of alcoholic beverages in Ohio and may initiate actions of an “administrative” nature, while the Department of Public Safety, Ohio Investigative Unit (“OIU”) may initiate “enforcement” actions for illegal conduct by permit holders.

The Commission will measure the success of these rules by continuing to place restrictions on the sale of alcoholic beverages, strictly prohibiting sales which encourage excessive drinking and will ensure that all permit holders conduct their businesses with a view toward the maintenance of public decency, sobriety, and good order.

Finally, all citation hearings for violations are conducted before the Commission. Therefore, data related to the type and number of permit violations, as well as related sanctions are routinely collected and reported as between the Division of Liquor Control, Department of Public Safety or the Commission. The Commission can measure the success of these regulations by examining the compliance related data.

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.

The Commission routinely utilizes the Liquor Control Commission website and an “email blast” for communication on rule reviews and amendments, with a comprehensive list of stakeholders, including representatives from governmental agencies including the Ohio Department of Commerce - Division of Liquor Control, the Ohio Department of Public Safety – Ohio Investigative Unit, and industry representatives such as the Wholesale Beer and Wine Association of Ohio (WBWAO), the Ohio Licensed Beverage Association, the Ohio Wine Producers Association, Southern Wine and Spirits Of Ohio, the Ohio Grape Industries Committee, the Ohio Restaurant Association, the Ohio Council of Retail Merchants, Distilled Spirits Council of the US, and the Ohio Grocers Association.

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The email blast “Notice” was sent to a comprehensive list of stakeholders on September 16, 2014, listing the 2015 administrative rules subject to 5 year review. The Notice of the 2015 administrative rule review was also posted to the Commission website on September 16, 2014. The first of several public meetings regarding these rules was held on October 10, 2014. Subsequent public meetings to discuss and receive testimony regarding these rules were conducted on November 7, 2014, and February 6, 2015. Stakeholders also had the opportunity to provide additional written materials throughout the year and to speak at the quarterly Commission hearings held in 2014 and 2015.

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

As a result of the email notifications and website postings, the following rules generated stakeholder input:

Rules 4301:1-1-02, 46, 48, 49, 50, 56, and 58

The Division of Liquor Control offered clarifying amendments to these rules.

4301:1-1-47 Ban on refilling bottles or selling brands not ordered

In the fall of 2014, the Ohio Licensed Beverage Association (OLBA) and JCARR, Representative Mike Duffy proposed revising Rule 47 to clarify language in paragraph (C), addressing the issue of certain “prepared in advance” alcoholic items such as Jell-O shots and the term dispensers. After several public hearings, written submissions and discussions with stakeholders’ representatives of the alcoholic beverage industry, the Division of Liquor Control and the Department of Public Safety, the Commission proposes amending Rule 47. The amendment would allow a permit holder to prepare and maintain a document on premises showing the brand and percentage of alcohol used in a premixed alcoholic beverage without having to label each individual item.

4301:1-1-61 Violation – identification and notification

In 2014 the Department of Public Safety proposed modifying Rule 61 to reflect their internal organizational restructuring and changes concerning long-term investigations (commonly referred to as 61B investigations).

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 to develop these amended rules.

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?

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The Commission did not consider alternative regulations beyond what has been discussed above, 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.*

No, this area of regulation requires adherence by all permit holders to the same method of implementation, monitoring and compliance.

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

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

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.

These regulations have been implemented for several years, ensuring predictability. The updates will be made available to the various stake holders via email blast and posting to the Commission's website. The amended regulations are also available to the public via LA writer.

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, although most of the rules in this package deal with alcohol sales practices.

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

No new costs or requirements are being implemented with these rules. The labeling requirement in Rule 47 has been modified to be less burdensome to permit holders while still offering the necessary explanation of beverage contents and protection to consumers.

In general, a permit holder's liquor license or authorization to operate may be subject to fine, suspension or revocation for violation of these rules.

c. Quantify the expected adverse impact from the regulation.

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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 entity holding a state liquor permit is required to comply with these existing regulations to ensure the public health and safety within establishments manufacturing, distributing, selling or serving liquor.

As for the reasonable compliance costs associated with the rules, the Commission does not have the data to provide a quantified potential impact.

While the ultimate adverse impact for a violation of these rules could be a fine, suspension or revocation of an entity’s license, the Division of Liquor Control works to assist and educate permit holders. Likewise the Department of Public safety offers free training to liquor permit holders and their employees through the ASK program.

Additional industry provided training is available to permit holders and their employees through web based “TIPS” (Training for Intervention Procedures) and “TAM” (Techniques of Alcohol Management) alcohol training programs.

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

The regulation of the manufacture, distribution, retail sale (commonly referred to as the 3-tier system) of alcoholic beverages in Ohio has been longstanding. These rules are designed to provide a balanced, transparent, and accountable method of allowing individuals and entities to obtain and maintain liquor permits. The regulatory intent of the rules justifies the 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 compelling interest in promoting 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, the rules are intended to create a level playing field for all market participants regardless of size. Therefore, all applicants and permit holders for the same type of permit(s) are subject to the same requirements.

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?

While the Division of Liquor Control takes great effort to assure permit applicants, renewers and transferees submit the correct documentation, ORC 119.14 is not applicable to these rules as there is no penalty associated with the paperwork necessary pursuant to these rules.

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

In addition to all of the Commission contacts listed below, the Division of Liquor Control, the entity responsible for issuing, renewing and monitoring liquor permits and regulating the manufacturing, distribution and retail sale of alcohol beverages, is also available to permit holders via website (<http://www.com.ohio.gov/liqr/>), phone and paper correspondence.

The Ohio Investigative Unit (OIU) also provides guidance via internet updates, twitter and facebook:

<http://www.investigativeunit.ohio.gov/index.stm>

https://twitter.com/ohio_oiu

<https://www.facebook.com/ohioOIU>

The Commission website: lcc.ohio.gov

The Commission main office at: 77 S. High Street, 18th floor, Columbus, Ohio 43215

The Commission phone number: 614/466-3132

The Commission fax number: 614/466-4564

Quarterly public hearings

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