

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Ohio Liquor Control Commission

Regulation/Package Title: Miscellaneous requirements concerning beer, wine and mixed beverages, consent for importing alcoholic beverages for resale, and limitations on advertising; permissible sponsorship of athletic events tournaments, concerts, shows and entertainment by a manufacturer of alcoholic beverages.

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

Date: 10-1-12

**Rule Type:**

☐ New

☒ Not 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☐ Rescinded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.*

Rule 4301:1-1-22 describes requirements for importing alcoholic beverages for resale in Ohio.

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Rule 4301:1-1-24 describes miscellaneous beer, wine, and mixed beverage requirements and establishes restrictions for securing and maintaining a license to distribute alcoholic beverages in Ohio.

Rule 4301:1-1-43 describes limitations on the furnishing of signs, equipment, advertising and return of merchandise as well as prohibited practices related to cash deposits or prepayment for alcohol beverages.

Rule 4301:1-1-71 describes circumstances under which rules governing advertising do not prohibit manufacturers of alcoholic beverages from sponsoring athletic events or tournaments and clarifies permissible sponsorship of events, concerts, shows and entertainment by manufacturers of alcoholic beverages.

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

Ohio Revised Code 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.

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

This question is not applicable to the rules.

**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 generally reflect 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, 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 products.

Rule 4301:1-1-22 requires consent for importing alcoholic beverages for resale in Ohio. The rule maintains the consistency and integrity of the 3-tier system in Ohio: manufacturers,

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wholesalers, and retailers. The rule ensures that taxes are collected and that alcoholic sales are not made to minors and also ensures the quality of products imported for public consumption.

Rule 4301:1-1-24 outlines requirements for securing and maintaining a license to distribute alcoholic beverages in Ohio. The rule ensures the qualifications for distributors of alcoholic beverages and serves to protect the public.

Rule 4301:1-1-43 helps implement Ohio Revised Code Sections 4301.22 (Rules for sales of beer and intoxicating liquor under all classes of permits and from state liquor stores ) and 4301.24 (Rules for manufacturers and wholesale distributors). The various marketing restrictions are designed to prevent aggressive marketing strategies that could promote higher consumption. Other regulations set strict limits on the interactions between and among the three tiers of the alcohol distribution system. The regulations are designed to ensure that one tier of the system is not able to put undue economic pressure on another tier to gain a competitive advantage, and that no one tier is allowed to grant favorable treatment of individual members of another tier. This ensures fair competition among manufacturers, wholesalers, and retailers. The cash laws are designed to prevent one level of the distribution system from being able to control another level through the issuance of denial of credit, which results in aggressive sales practices to the detriment of the public.

Rule 4301:1-1-71 helps implement Ohio Revised Code Sections 4301.03(E), which pertains to advertising concerning the sale of beer and intoxicating liquor, and establishes an exception to the general rule to allow manufacturers of alcoholic beverages to sponsor athletic events or tournaments at a particular retail premise. The rule also creates an exception to allow manufacturers of alcoholic beverages to sponsor events, concerts, shows and entertainment at a particular liquor permit premise provided that the primary purpose of the permit premise is to provide events, concerts, shows, and other entertainment to the general public, and is not to sell alcoholic beverages.

**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 monitors the sale and distribution of alcoholic beverages in Ohio. The Department of Public Safety, Investigative Unit, may investigate and enforce these provisions. Data related to consumption, sales, and violations, as well as

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related sanctions are routinely collected and reported. The Commission can measure the success of these regulations and Ohio's regulated pricing structure by examining 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.*

The Commission initially sought public comment by sending a letter on March 9, 2012 to a comprehensive list of stakeholders, including representatives from governmental agencies and industry such as the Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Association, the Ohio Restaurant Association, the Ohio Wine Producers Association, Southern Wine and Spirits of Ohio, the Ohio Council of Retail Merchants, the Ohio Licensed Beverage Association, and the Distilled Spirits Council of the United States. The Commission requested written comments from stakeholders by May 9, 2012. The Commission also solicited comments from the Division of Liquor Control and the Department of Public Safety as the two state agencies directly impacted by the Commission Rules. The Commission allowed public testimony at a public meeting on July 12, 2012.

**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 any changes to these rules.

The Commission received comment from one stakeholder which specifically requested that the rules not be changed.

Copies of the written comments received by the Commission are 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?**

This question does not apply to the proposed rule.

**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. Alternative regulations do not need to be considered 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 regulation as the rule is 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 alcohol beverages.

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

This rule does not duplicate any existing state regulation.

- 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 of the rule 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 and are entirely consistent with the broader policy goals of the 3-tier system of alcohol beverage regulatory control.

### **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 directly impacted business community includes all classes of liquor permit holders and all 3 tiers of the current system from manufacturers to wholesalers to retailers.

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

The adverse impact for Rule 4301:1-1-22 is that the rule requires that a party must first file an application for consent form with the Division of Liquor Control. The rule also requires the supplier to file an affidavit with the Division stating that the supplier will comply with all laws and rules of the state concerning alcoholic

beverages. Violations of any of the laws or rules may be cause for suspension or revocation of the authorization to import by the Commission.

The adverse impact for Rule 4301:1-1-24 is that the Commission may suspend or revoke the license or authorization to import or operate of any manufacturer, supplier, importer, bottler, wholesale distributor, or retail permit holder in Ohio for a violation of these rules or any part thereof.

Similarly, the adverse impact for Rule 4301:1-1-43 is that the Commission may suspend or revoke an entity's license for failure to comply with the rules or laws of the state. There are also reasonable compliance costs associated with the rule.

Alternatively, Rule 4301:1-1-71 actually establishes exceptions to more general prohibition and allows manufacturers of alcoholic beverages to sponsor athletic events or tournaments at a particular retail premise and to sponsor events, concerts, shows and entertainment at a particular liquor permit premise provided that the primary purpose of the permit premise is to provide events, concerts, shows, and other entertainment to the general public, and is not to sell alcoholic beverages.

**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 manufacturer, retailer and distributor is required to comply with these existing regulations. Generally, the Commission can suspend or permanently revoke an entity's license for violations of these rules. So, the adverse impact could ultimately be immeasurable. However, as for the reasonable compliance costs associated with the rules, the Commission does not have data to provide a quantified potential impact.

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

These rules are a significant part of the 3-tier system of regulatory control in Ohio. The system is designed to provide a balanced, transparent, and accountable method of allowing the state to regulate the sale of alcoholic beverages. The rules are designed to create balanced competition between and among manufacturers, wholesalers, and retailers. 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, 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.

**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 the proposed rule as there is no penalty associated with the paperwork necessary pursuant to the rule.

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

The Commission website at: <http://lcc.ohio.gov>

The Commission main office at: 77 S. High Street, 18<sup>th</sup> Floor, Columbus, OH 43215

The Commission phone number at: 614-466-3132

The Commission fax number at: 614-466-4564

Quarterly public hearings.