

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Liquor Control Commission

Regulation/Package Title: Permits, procedure where quota is filled

Rule Number(s): 4301:1-1-11

Date: 5/12/2014

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☐ Rescinded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.

4301:1-1-11 deals with all classes of quota permits and the procedure for the Division of Liquor Control for processing permit applications when the quota in a particular taxing district is filled.

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

ORC 4301.03 and 4301.03(G)

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)?

This rule provides orderly and regulated procedures utilizing a quota system, for issuing permits for the sale of alcoholic beverages, particularly in those geographic areas where the quota has been filled. The Rule requires submission of an application and application fee. It ensures that the applicant receives proper notification of the quota status. It also provides a means for applicants who submit their permit fee in anticipation of receiving a permit at some future date, to have that permit fee returned if desired, while their application is pending with the Division of Liquor Control.

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

The Commission believes that the Division of Liquor Control will see a decrease in the number of permit applicants who request that the Division maintain their permit fee on deposit until an opening in the quota is available. This means permit applicants will retain their money until such time as a permit is available, which can be a significant wait in some taxing districts.

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 with 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 Wine

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Producers Association, Southern Wine and Spirits Of Ohio, the Ohio Restaurant Association, the Ohio Council of Retail Merchants, Distilled Spirits Council of the US, Ohio Grocers and Ohio Grape Industries on rule reviews and amendments.

For the original 5-year review of Rule 11, the Commission utilized its website to solicit public comments by posting a Notice on December 20, 2012, under the heading News and a specific rule review link by calendar year under the heading Laws and Rules. Comments were due by January 30, 2013. The rule was also open to public comment at the Commission's public meetings. Following the original CSI review it became apparent that Rule 11 would benefit from clarification by way of an amendment. The Commission again solicited public testimony at a public meeting on December 5, 2013; there were no public appearances or comments submitted. The Commission sent email blasts to stakeholders throughout the rule filing process. The Commission also coordinated with the Division of Liquor Control to develop amended language reflecting the Division's processes.

In 2014, the Commission repeated the public comment process described above (email blast/website posting) regarding the amended language and held another public hearing to allow public testimony on April 11, 2014. There were no public appearances or comments on the amended language.

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

Input was provided by the Division of Liquor Control, the agency directly responsible for receiving permit applications, reviewing quota requirements and the orderly issuance of permits; that input was incorporated into the revised rule.

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?

N/A

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?

Liquor permit applicants have always been able to submit their permit fee at the time they submit an application for a permit. The applicant has two alternatives when there is no permit available and they choose to submit the fee simultaneously with their permit application. They can affirmatively inform the Division to keep the permit fee or ask the Division for the fee to be returned. Rule 11 previously required the Division to retain the permit fee on file unless the applicant requested that the Division return the fee. Amended Rule 11 now requires the Division to return the permit fee to the applicant, unless instructed by the applicant to retain the fee.

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- 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

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

A review of Chapter 4301 reveals there is no other regulation establishing the process a permit applicant must follow when submitting an application for a liquor permit where the quota is filled.

- 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 Commission plans on using the same process outlined above to communicate with industry stakeholders via email blast and the Commission's website to convey amended Rule 11. Additionally the Division of Liquor Control's correspondence with the permit applicant contains instructions and options as to the applicant's preference for the Division either holding or returning the permit fee where the quota is filled.

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 scope of the impacted business community is all applicants for liquor permits where the quota is filled and a waiting list is in place.

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

The impact on the permit holder is that now the permit holder must affirmatively inform the Division to keep its permit fee on file.

- 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

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“representative *business*.” Please include the source for your information/estimated impact.

Should an applicant fail to instruct the Division to retain the simultaneously submitted permit fee, the adverse impact could be that a permit applicant fails to get the permit fee to the Division in a timely manner and loses their place in line when a permit becomes available.

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

Applicants who wish to have their permit fee returned when no permit is available will not need to do anything – the fee will be returned and the applicant notified the quota is filled. The applicant will be added to the waiting list and notified if/when a permit becomes available. Alternatively, an applicant will have the opportunity to affirmatively request that the permit fee be retained by the Division during the time their application is pending.

Regulatory Flexibility

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

While the size of the business makes no difference to the implementation of the rule, small businesses may prefer the automatic return of their fees when no permit is available. If the business does not wish to have the permit fee returned while the application is pending, the business can request that the Division keep the permit fee on file until a permit becomes available.

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?

N/A

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 is also available to permit applicants via website, phone and paper correspondence.

The Commission website at: 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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