

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Liquor Control Commission

Regulation/Package Title: 2014 No Change



Rule Number(s): 4301:1-1-4, 74 (Wine) 28, 31 (Cleanliness) 37, 38 (Chem. Analysis)

27, 32 (Advertising) 12, 19, 20, 21, 26, 34, 35, 36 (Permits)

Date: 11/25/2014

Rule Type:

- ☐ New
☐ Amended

X 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☐ Rescinded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.

Wine:

4301:1-1-4 defines "sacramental wine" to be used solely for the purposes of religious rites in accordance with ecclesiastical codes and describes the sales, verification and record keeping process for permit holders who sell this wine.

4301:1-1-74 describes the requirements for manufacturers and distributors who are selling less than a full case of wine to retailers.

Cleanliness:

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4301:1-1-28 requires permit holders to follow certain **minimum cleaning and sterilizing protocols for beer and wine dispensing apparatus and equipment, and to keep appropriate records.**

4301:1-1-31 describes the definitions and deposit amounts required for re-usable containers utilized in the manufacture, distribution or sale of beer, wine or mixed beverages.

Chemical Analysis:

4301:1-1-37 requires permit holders who distill, bottle, compound, manufacture or distribute wine, beer or mixed beverages to submit samples upon demand for examination and chemical analysis testing.

4301:1-1-38 describes the evidentiary process at Liquor Control Commission hearings for the use of chemical analysis reports.

Advertising/Marketing:

4301:1-1-27 describes the labeling requirements for the product delivery system for beer and wine in a retail premises; the manufacturer's or product brand name must be attached to the spigot or dispensing apparatus and to the lines or containers used for dispensing wine and beer.

4301:1-1-32 describes how alcoholic beverage product samples may be distributed to wholesalers, retail permit holders or clergy.

Permits:

4301:1-1-12 describes the inspection process required for all premises before a permit can be issued by the Division of Liquor Control.

4301:1-1-19 describes the duties of the licensing section within the Division of Liquor Control.

4301:1-1-20 requires the holder of a suspended permit to allow the Division of Liquor Control to re-inspect their premises prior to reinstatement of their permit.

4301:1-1-21 requires permit holders to prominently post their permit, and in the event of a suspension, to display the suspension order.

4301:1-1-26 requires drivers who possess an H permit to carry a copy of the H permit in the cab of their vehicle.

4301:1-1-34 describes the information the Division of Liquor Control requires of an applicant for a temporary permit.

4301:1-1-35 requires the recipient of a temporary F permit to be the holder of the special function event and to not direct the event proceeds for the profit or gain of any person.

4301:1-1-36 describes the requirements of a nonprofit entity utilizing a temporary liquor permit for an event.

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

The authorizing statute and amplifying statute are as follows:

4301:1-1-04 -- 4301.03, 4301.23, 4301.13, 4303.08
4301:1-1-12 -- 4301.03, 4301.10 (A) (6)
4301:1-1-19 -- 4301.03, 4301.10(A) (2), 4303.29, 4303.292, 4303.293
4301:1-1-20 -- 4301.03, 4301.03(B)
4301:1-1-21 -- 4301.03(A), 4301.03(B)
4301:1-1-26 -- 4301.03, 4301.03(J), 4313.22
4301:1-1-27 -- 4301.03, 4301.22 (G)
4301:1-1-28 -- 4301.03, 4301.22
4301:1-1-31 -- 4301.03
4301:1-1-32 -- 4301.03 (B) and (D)
4301:1-1-34 -- 4301.03, 4303.20, 4303.201, 4303.202, 4303.203, 4303.204, 4303.205, and 4303.26
4301:1-1-35 -- 4301.03, 4303.20
4301:1-1-36 -- 4301.03, 4303.201, 4303.202, 4303.203, 4303.204, 4303.205, 4304.206
4301:1-1-37 -- 4301.03
4301:1-1-38 -- 4301.04, 4301.03
4301:1-1-74 -- 4301.03, 4301.13

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)?

While the overall purpose is to regulate the distribution of alcohol beverages in Ohio, this is accomplished by protecting the integrity of the three-tier system. The three-tier system is a term that refers to the interactions between the manufacturers/suppliers, the wholesale distributors, and the retailers. This system is designed to provide a sensible, stable and transparent method of controlling alcohol beverage sales. The provisions also help to

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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 to individual members of another tier. This ensures fair competition among the manufacturers, wholesalers, and retailers.

Wine:

4301:1-1-4 maintains the integrity of the unique quality of the sanctified wine product and creates an exception allowing a B-3 (wholesale distributor of wine) permit holder to sell directly to the religious entity/consumer.

4301:1-1-74 ensures the integrity of the 3-tier system in Ohio by preventing unlawful inducements in the sale of mixed cases of wine; it compensates manufactures or distributors for the additional labor costs involved to prepare mixed cases for sale, holds manufacturers or distributors accountable for documenting the mixed case charges separately from the minimum markup so that all sizes of manufacturers or distributors have an equal chance at selling to a retailer, and guarantees an equal amount of profit to all manufacturers regardless of size.

Cleanliness:

4301:1-1-28 ensures the health and safety of consumers at liquor permit premises by establishing the minimum requirements for scheduled sanitizing of the beer and wine dispensing and serving equipment.

4301:1-1-31 ensures the health and safety of consumers with regards to properly sterilized, re-usable containers for beer, wine or mixed beverages, which are returned to the manufacturer or supplier, and are identified by brand for product integrity.

Chemical Analysis:

4301:1-1-37 ensures the integrity of the contents and labeling of every alcoholic beverage product sold or distributed in Ohio by authorizing on demand, scientific testing of each brand of beer, wine or mixed beverage in its original container.

4301:1-1-38 provides an orderly and legally defensible process for presenting scientific testimony of chemical analysis reports generated by authorized laboratories.

Advertising/Marketing:

4301:1-1-27 assures the public that the beer or wine requested and paid for is the product dispensed from the tap handle, since there is no individually sealed and labeled product container.

4301:1-1-32 ensures the integrity of the 3-tier system and protects public health by establishing controlled circumstances when alcohol may be provided at no charge to employees of wholesale distributors, retailers or clergy for the limited purpose of product

sampling and ensures that sampling activities are not conducted in such a manner as to encourage excessive drinking.

Permits:

4301:1-1-12, 19, 20, 21, 26, 34, 35, and 36 provide protection of the health and safety of the public by establishing fair, orderly and systematic procedures for issuing and monitoring permits for the sale and transport of alcoholic beverage products throughout the state of Ohio.

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 distribution and sale of alcoholic beverages and aspects of cleanliness at permit holder establishments and also implements the permitting process. The Division may initiate citation actions of an “administrative” nature such as a permit holder presenting a bad check for a renewal application. The Department of Public Safety, Ohio Investigative Unit (“OIU”) may also investigate and enforce the aspects of these provisions. Citation hearings for violations are conducted before the Commission. Data related to the type and number of permits issued, consumption, sales and violations as well as related sanctions are routinely collected and reported. The Commission can measure the success of these regulations by examining the compliance related data and by the infrequency of violations and citations.

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. The email blast is circulated to a comprehensive list of stakeholders, and is updated regularly. It includes representatives from governmental agencies: the Ohio Department of Commerce - Division of Liquor Control, the Ohio Department of Public Safety – Ohio Investigative Unit; and industry such as the Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Association, the Ohio Wine Producers Association, Southern Wine and Spirits Of Ohio, the Ohio Restaurant Association, the Responsible Alcohol Policy Coalition, the Ohio Council of Retail Merchants, Distilled Spirits Council of the US, Ohio Grocers and Ohio Grape Industries.

The email blast “Notice” was sent to the stakeholder list on February 28, 2014, clearly identifying all of the rules subject to 5 year review and seeking comments or submissions. The Notice of the 2014 administrative rule review was also posted to the Commission

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website on March 4, 2014, seeking comments and submissions from stakeholders who visited the Commission website. Notice of the June 5, 2014, public meeting was emailed to the stakeholder list and posted on the Commission website. That public meeting was conducted and **no comments or submissions were received regarding these rules.**

Subsequently on September 30, 2014, another email blast was circulated to all interested parties regarding the 2014 rules under review. The Notice of Public Hearing was also posted to the Commission's website. A public hearing was held on October 10, 2014 and again on November 17, 2014. **No comments or submissions were received regarding these rules.**

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

No input was generated or received from any stakeholders regarding the rules identified in this packet.

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?

As these are no change rules, no scientific data was used to develop these 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?

No alternative regulations were considered as these rules have been in existence for several years and no changes were found to be warranted.

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.*

Rules 28 and 31 are performance based to some extent as they generally require the permit holder to maintain sanitary conditions on the permit premises and to establish their own policies and procedures to ensure compliance with these health and safety requirements; the rules also dictate the minimum efforts on the part of the permitted establishment.

As to the remaining rules, the Commission did not consider performance-based regulation as these rules are not for performance, but rather ensure compliance with existing Ohio laws, ensure effective control over the manufacture, distribution and sale of alcoholic beverages, and sets forth the evidentiary practices at Commission hearings. This area of regulation requires adherence by all permit holders within the three-tier system, to the same form of advertising, pricing, sales and sampling regulations and to the same method of permit application and monitoring by the Division of Liquor Control to ensure consistency, fairness and impartiality regarding all permit holders.

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

The Commission routinely coordinates with the Division of Liquor Control – Permit/Legal Section, the Department of Public Safety – Legal/Investigative Unit and the Attorney General’s Office – Liquor Unit, when conducting rule reviews and confirms that no duplication has occurred.

Additionally as to Rules 28 and 31, while other governmental entities may have minimum sanitation requirements for certain types of establishments such as food service or production, liquor permit premises have additional sanitation and food safety concerns. These Commission rules are promulgated to provide additional minimum guidance to those businesses engaged in liquor sales to ensure the safe consumption of alcohol in this state.

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 are in effect and fully implemented. The rules impact all Ohio liquor permit holders in the various tiers 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, wholesalers, distributors and retailers. As to the permit provisions, the potential scope is applicants seeking new, renewal or temporary permits for their establishment, transport vehicle or event.

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

In general, the adverse impact for the permit holders is that the Commission may fine, suspend or revoke an entity’s license or authorization to operate for failure to comply with the rules or laws of the state.

Specifically, the adverse impact is the application fee paid to the State of Ohio and staff time for the following activities: to collect fees, reallocate deposits and maintain records 4301:1-1-4, 4301:1-1-31; to ensure that proper sanitation requirements are met 4301:1-1-28; to provide 25 ounces of a product sample and a container 4301:1-1-

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37; to complete paperwork and be available for inspections 4301:1-1-12, 19, 20, 21, 26, 34, 35, 36; to ensure the correct product name is affixed to the spigot 4301:1-1-27, and to properly record and provide tasting samples as part of a sanctioned and closed to the public, industry marketing event 4301:1-1-32.

Rule 4301:1-1-74 recognizes the tiered approach to the pricing and sale of wine in Ohio. The adverse impact is that retailers are required to pay at least an additional 25 cents for each single bottle received to compensate for the additional labor and packing costs incurred by manufactures or distributors when selling a mixed case (less than a complete case of the same wine); manufacturers and distributors are required to charge all retailers the split case fee and will incur staff time to appropriately document the split case surcharge on the sales invoice.

There is no adverse impact for Rule 4301:1-1-38 as it merely describes the proper rules of procedure to be followed in a Commission hearing for the presentation of scientific evidence.

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.

While the Commission can issue a fine, the ultimate adverse impact for a violation of these rules could be suspension or revocation of an entity’s license. However, the Division of Liquor Control works closely with existing permit holders and permit applicants to assist with all aspects of the application process, advertising, cleanliness, packaging, sampling, and tasting events. Each retailer or entity holding a permit and certain vehicle drivers are required to comply with these existing permit requirements to ensure the public health and safety within establishments which manufacture, distribute, sell, serve or transport liquor. There will be staff time required to complete and review permit applications in connection with certain permit categories, and to fulfill tasting and packaging requirements which are undertaken by the licensee as part of promoting their products. As for the reasonable compliance costs associated with these rules, the Commission does not have the 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?

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The Commission's rules are a significant part of the 3-tier system of alcoholic beverage production and sales in Ohio. The regulation of the manufacture, distribution, retail sale (commonly referred to as the 3-tier system) and transport of alcoholic beverages in Ohio has been longstanding. The system is designed to provide a balanced, predictable, transparent and accountable method of allowing the state to regulate the sale of alcoholic beverages. The rules are designed to create equitable and stable competition between and among all sizes of manufacturers, wholesalers/distributors and retailers. The consistent regulatory intent of the rules outweighs any perceived adverse impact because the sale of alcoholic beverages in Ohio 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.

Additionally Rule 74 is designed to maintain effective control over the sale and distribution of less than a full case of wine and prevent abuses caused or tempted by unlawful sales inducements by waiver of the split case charge and thereby showing preference to one retailer, manufacturer or distributor over another.

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?

While the Division of Liquor Control takes great effort to assure permit applicants 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 the 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 Ohio Division of Liquor Control is routinely available to permit holders 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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