

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Liquor Control Commission

Regulation/Package Title: 2016 No Change & Proposed Amended Rules

Rule Number(s): 4301:1-1- 64, 65, 66, 67, 76, 77, 78, 79

(Permits: 64,67,76,78; Commission Practice: 65,66,77; Inspections & Violations: 79)

Date: 3 /28 /2016

**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☐ Rescinded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.**

4301:1-1-64 Population estimates: governs the method for determining the quota of liquor permits in a geographic area.

The proposed amendment updates the agency name reference to "Ohio Development Services Agency".

4301:1-1-65 Procedure for hearings before the liquor control commission: governs the practice of permit holders and/or their attorneys in appearing at hearings before the Commission. The rule

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incorporates the Liquor Control Act and the rules of the Commission.

The proposed amendments from the Division of Liquor Control include in paragraph (A) the Division of Liquor Control rules as a basis for issuing a citation (DOLC authority pursuant to ORC 4303.25) and in paragraph (B) the word “refusal” regarding failed delivery of certified mail.

4301:1-1-66 Advertising of proposed rules: establishes the notification requirements and format the Commission must follow when proposing new or amended rules, and sets forth the procedure for interested parties to propose changes to Commission rules.

No amendment proposed.

4301:1-1-67 Sales reports of A-1 permit holders: This rule governs sales for home use by A-1 permit holders (large beer manufacturers) and requires them to maintain records of such sales.

No amendment proposed.

4301:1-1-76 D-7 permit: designates certain parts of the state as resort areas for the purpose of issuing D-7 permits (for on premises consumption at a resort) and establishes a quota of permits for each resort area.

The proposed amendment updates the agency name reference to “Ohio Development Services Agency”.

4301:1-1-77 Notice of meetings: This rule sets forth the method by which interested parties can obtain information regarding Liquor Control public meetings/hearings.

The proposed amendment to paragraph (E) deletes the \$5.00 annual fee requirement, offers interested parties the opportunity to provide the Commission with an email address for receipt of meeting notices, and notes the Commission’s website as an additional source of hearing and meeting information.

4301:1-1-78 Auctions by qualifying permit holders: this rule governs the sale of beer, wine or mixed beverages at auction by qualifying F-2 permit holders.

The proposed amendment from the Division of Liquor Control clarifies that an F-2 (temporary) permit holder cannot make purchases from a retailer and can only lawfully purchase products from a manufacturer or wholesale distributor.

4301:1-1-79 Restrictions on warrantless administrative inspections: this rule governs warrantless administrative inspections of liquor permit premises.

No amendment proposed.

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

4301.03 generally & the following amplifying statutes:

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-64	<u>4301.03, 4303.29</u>	<u>4301.03</u>
4301:1-1-65	<u>4301.28, 119.09</u>	<u>4301.03(A), 119.09</u>
4301:1-1-66	<u>119.03, 127.18</u>	<u>4301.03</u>
4301:1-1-67	<u>4301.03</u>	<u>4301.03</u>
4301:1-1-76	<u>4301.03</u>	<u>4303.183, 4303.262</u>
4301:1-1-77	<u>121.22, 4301.04</u>	<u>4301.03</u>
4301:1-1-78	<u>4301.58, 4303.202</u>	<u>4301.13, 4301.041, 4301.042</u>
4301:1-1-79	<u>4301.10(A)(1) (4) (6) (7) (9)</u>	<u>4301.03</u>

**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 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. Finally these regulations ensure the consistent, fair and predictable permitting and hearing processes.

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

These rules address aspects of the liquor permitting, hearing and rule making processes. The provisions in these rules are already implemented, and active state supervision already exists. The Division monitors the sale and distribution of alcoholic beverages in Ohio. The Department of Public Safety, Investigative Unit ("OIU") may investigate and enforce these provisions. Data related to consumption, sales, and violations, as well as related sanctions are routinely collected and reported.

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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 liquor statutes 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 routinely utilizes the Liquor Control Commission website for permit holder and stakeholder notifications of hearing dates, deadlines and rulemaking information. Additionally the Commission has an outgoing "email blast" to a comprehensive list of interested parties for communication on rule reviews and amendments. This list includes representatives from governmental entities including the Ohio Department of Commerce – Division of Liquor Control, Ohio Department of Public Safety – Ohio Investigative Unit, Ohio Department of Taxation and Ohio Attorney General's office 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.

A comprehensive early stakeholder outreach process was utilized. On December 21, 2015, a Notice seeking stakeholder comment was emailed to all interested parties and posted to the Commission's website. The initial stakeholder comment period concluded January 15, 2016. The only comments received were from the Division of Liquor Control. A second Notice of Public Hearing and request for comments was published February 11, 2016. A public hearing was held on March 2, 2016 with no comments concerning these rules.

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

Besides the Division of Liquor Control, no input was generated by or received from any other stakeholders regarding these rules.

**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 minimal changes are for clarity and to update terms, no scientific data was used or required.

**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 these rules have been in existence for several years and no changes were found to be warranted.

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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, to ensure consistency among permit holders, this area of regulation requires adherence by all permit holders to the same methods of implementation, monitoring, reporting and compliance. This improves protection of the public and fairness to permit holders. It also allows the Commission, the Division of Liquor Control and the Department of Public Safety to perform appropriate oversight and regulation.

**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 – Legal and Investigative Unit, and the Attorney General's Office – Liquor Unit, and confirms 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 in place for several years, ensuring familiarity and predictability for the permit holders. The updates will be made available to the various stake holders 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;**

While the potential scope is all classes of liquor permit holders, several of the rules in this package deal with aspects of alcohol permitting and procedures for hearings or meetings.

**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 and the amendment to Rule 77 eliminates a potential cost to permit holders.

**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. In general, the Commission can fine, suspend or revoke an entity's license for

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violations. So, the while the adverse impact from a violation could ultimately be immeasurable, for the reasonable compliance costs associated with these 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?**

Regulating the manufacture, distribution, and retail sale (commonly referred to as the 3- tier system) of alcoholic beverages in Ohio has long been in place. These rules are designed to provide a balanced, transparent, and accountable method for alcohol sales and of allowing individuals and entities to obtain and maintain liquor permits. These rules also allow individuals and businesses to have a say in their government and regulatory rulemaking process, and to have access to a fair and impartial hearing process. 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. 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?**

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

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

The Commission phone number at: 614-466-3132

The Commission fax number at: 614-466-4564

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

And 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

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