

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Liquor Control Commission

Regulation/Package Title: 2017 Change - wine case amendments

Rule Number(s): 4301:1-1-02, 4301:1-1-03, 4301:1-1-46

Date: _____

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☐ Rescinded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.

As a result of a recent statutory change, these amendments are proposed to simplify the administrative rules, aligning them with the amended statute, ORC 4301.13.

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Definitions:

4301:1-1-02 Definitions: defines several terms relating to alcohol manufacture, distribution or sales including the term “*wine case*”.

Proposed amendment: The Administrative Code section 4301:1-1-02(A)(9) defining the term “*wine case*” has been deleted, since that term is now incorporated into Revised Code 4301.13 (B)(1) and (2), as a result of a 2017 legislative amendment.

Sales Practices:

4301:1-1-03 Wine requirements: describes the requirements for pricing and selling wine by manufacturers, suppliers, importers, bottlers, wholesale distributors and retail permit holders in the state of Ohio, as part of the state implemented controlled system of pricing. In order to ensure that alcohol is offered for sale at a price that will not encourage excessive consumption and provides for consistent prices of alcohol purchases throughout the state, the rule sets forth the requirements for minimum prices, mandatory markups and price schedules.

Proposed amendment: To make this rule consistent with the new statutory provisions of ORC 4301.13 (B)(1) and (2), the administrative rule reference to the minimum selling price and ten percent discount contained in OAC 4301:1-1-03(3)(e)(iv) has been deleted.

4301:1-1-46 Miscellaneous restrictions: This rule describes a variety of requirements for alcohol sales practices. Specifically as it relates to the sale of wine, this rule referenced a ten percent price discount, which is now fully incorporated into the revised code, rendering that portion of the rule unnecessary.

Proposed Amendment: Deleting paragraph (F) of Rule 46 clarifies and aligns the rule with the recent legislative amendment to Revised Code 4301.13.

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

<u>Rule Number</u>	<u>Statutory Authority</u>	<u>Amplifies</u>
4301:1-1-02	4301.03(B)	4301.03 , 4301.01, 4301.12
4301:1-1-03	4301.03	4301.13
4301:1-1-46	4301.03	4301.01, 4301.13, 4301.14, 4301.22, 4301.23, 4301.041, 4301.58, 4301.60, 4301.62, 4301.64, 4303.22, 4303.27, and 4303.35

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

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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, sampling 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; 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 product. Finally, these regulations ensure the consistent, fair, and predictable permitting process.

The purpose for these three proposed changes is to avoid redundancy and ensure that these Administrative Code provisions are consistent with the newly enacted provisions of ORC 4301.13.

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

The practice referenced in these three rules of retailers offering a 10% wine-case discount already exists and has been in effect for many years. The proviso has simply been consolidated and codified by statute into Ohio Revised Code 4301.13. Therefore active state supervision has not changed and remains ongoing.

The Division of Liquor Control (DOLC) monitors the sale and distribution of wine in Ohio and may initiate actions of an “administrative” nature for violations of Ohio’s liquor laws or rules. Likewise the Ohio Investigative Unit (OIU) within the Department of Public Safety also investigates and may initiate enforcement actions for liquor violations.

The Commission can measure the success of these provisions by examining the existing compliance-related data. The cost/benefit of non-compliance by the regulated community is significant since the Commission may suspend or revoke an entity’s liquor permit for violations of state rules and regulations. Deleting these three unneeded provisions should make for easier compliance by retailers since all the information is now located in one place - ORC 4301.13.

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.

On November 16, 2016, the Commission initially sought public comment regarding its rules under five-year review by posting a Notice to the Commission’s website and by sending an email blast to a comprehensive list of stakeholders, including representatives from industry associations, such as the Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Assn., the Ohio Restaurant Assn., the Ohio Council of Retail Merchants, Ohio Grocers Assn., the Ohio Wine Producers Assn., Ohio Craft Brewers Assn.,

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Southern Wine and Spirits, the Distilled Spirits Council of the United States, Ohio Assn. of Chiefs of Police, the Drug Free Action Alliance, and the Ohio Township Assn., permit holders, and governmental entities such as the Departments of Agriculture, Commerce, and Taxation. The Commission also solicited comments from the Attorney General's Office - Liquor Unit, the Division of Liquor Control and the Department of Public Safety as the agencies directly impacted by the Commission Rules.

The Commission sought written comments from stakeholders by December 19, 2016, and invited public testimony at the Commission's public hearings on December 9, 2016, and on March 10, and June 16, 2017. Then, in light of the July 2017 Am. Sub. H. B. 49 (the budget bill) which included a revision of how a case of wine is defined, the Commission sought additional comment or testimony from stakeholders via notice and public hearings on August 18, September 14, and November 15, 2017.

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 regarding changes to these three rules. The Commission did receive comment from one stake holder supporting the Commission's rule review process, a copy of which is 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?

No scientific data was used.

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 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 regulations as these rules are 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 alcoholic beverages.

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 – Ohio 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.

The statutory provision relating to the 10% wine-case discount by a retail permit holder is currently in effect; the deleted rule provisions do not require any action in order to implement the discount. The statutory amendment and rule change impacts all Ohio wine retailers setting a minimum retail sales price beneath which no one else can sell.

Rule updates are made available to the various stakeholders and interested parties 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;

The potential scope is all classes of wine permit holders, particularly retailers.

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.

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 wine manufacturer, retailer and distributor is required to comply with the applicable regulations to ensure the public health and safety within establishments manufacturing, distributing, selling and serving wine.

While the Commission does not have data to provide a specific quantified potential impact for reasonable compliance costs associated with these rules, in general, the Commission can fine, suspend, or revoke an entity’s license for violations of Ohio laws and regulations.

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

Regulating the manufacture, distribution, retail sale and service of alcoholic beverages in Ohio has been longstanding. The regulatory intent of the rules justifies any potential adverse impact because overall, the sale of alcoholic beverages is a unique industry that requires strict regulation for the health, safety and protection of the public. The long standing, minimum pricing and 10% wine by the case discount provisions are designed to provide a level playing field for all wine retailers. The purpose of the rule changes is to avoid any conflict or confusion with the newly enacted statutory provisions contained in ORC 4301.13.

Regulatory Flexibility

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

No, these 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 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 regulations?

The Ohio Liquor Control Commission -

Website at: <http://lcc.ohio.gov>

Building location: 77 S. High Street, 18th Floor, Columbus, OH 43215

Telephone: 614-466-3132

Fax number at: 614-466-4564

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

The Ohio Department of Public Safety, Ohio Investigative Unit –

Alcohol Server Knowledge (ASK) Program, free for permit holders and their employees

Website at: <http://www.oiu.ohio.gov/>

Building location: 1970 West Broad Street, Room 429, Columbus, OH 43223

Telephone: 614-644-2415

Additional industry provided resources available to permit holders and their employees include the TIPS (Training for Intervention Procedures) and TAM (Techniques of Alcohol Management) alcohol training programs.