



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Liquor Control Commission

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Rule 11 Permits, procedure where quota is filled

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

Date of Submission for CSI Review: May 8, 2020

Public Comment Period End Date: May 15, 2020

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_1\_ rules (FYR? \_X\_)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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### **Reason for Submission**

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule(s):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

### **Regulatory Intent**

2. **Please briefly describe the draft regulation in plain language.**

4301:1-1-11 concerns 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.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

ORC 4301.01 and 4301.03(G)

4. **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

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

NA

6. **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.

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

This process has already been implemented. The Commission can continue to measure the success of this rule by monitoring the number of applicants who request that the Division maintain their permit fee on deposit until an opening in the quota is available. Continuing decline in those numbers means that permit applicants are able to retain their money until such time as a permit is available, which can be a significant wait in some taxing districts.

8. **Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No

### **Development of the Regulation**

9. **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 comments at its June 14, 2019 public hearing, regarding the rules subject to 5-year review by posting a Notice to the Commission's website and by sending an email blast to a comprehensive list of stakeholders and permit holders' counsel, including representatives from industry associations, such as the Wholesale Beer and Wine Association of Ohio, the Ohio Licensed Beverage Assn., the  
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Ohio Restaurant Assn., the Ohio Council of Retail Merchants, the Ohio Grocers Assn. the Ohio Wine Producers Assn., Ohio Craft Brewers Assn., 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. Stakeholders were provided with additional opportunities to submit written and public comment when the Commission held public hearings on September 13, 2019, October 11, 2019, December 5, 2019, and March 13, 2020.

The Commission also solicited comments from the Attorney General's Office, Charitable Law Liquor/Gaming Units, the Department of Public Safety, Ohio Investigative Unit, and the Department of Commerce, Division of Liquor Control as the agencies directly impacted by the Commission Rules. (Copied from 52/53 BIA)

**10. 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 recommendations regarding Rule 11, so the Commission has designated Rule 11 as a “no change” rule.

**11. 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.

**12. 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. Prior to the amendment in 2014, Rule 11 required the Division to retain the permit fee on file unless the applicant requested that the Division return the fee. Rule 11 now requires the Division to return the permit fee to the applicant, unless instructed by the applicant to retain the fee.

**13. 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.***

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No, the Commission did not consider performance-based regulations as this rule is not for performance but rather to maintain an orderly and regulated procedure for issuing permits by utilizing a quota system.

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

The Commission sought input from the Department of Commerce, Division of Liquor Control, the Department of Public Safety, Ohio Investigative Unit, and the Attorney General's Office, Charitable Law Liquor/Gaming Units, and conforms to duplication has occurred.

Also, 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.

**15. 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.**

This procedure outline in this rule has already been implemented, as this is a no change rule. However, the Commission will use the same process outline above to communicate with stakeholders and permit holders that Rule 11 will remain in effect. Additionally, the Division of Liquor Control's correspondence with permit applicants will continue to include instruction 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**

**16. 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; and**

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 all adverse impact (e.g., fees, fines, employer time for compliance,); and**

The rule, as amended in 2014, requires that permit holders affirmatively request that the Division retain the permit fee while the permit holder's application is pending.

**c. Quantify the expected adverse impact from the regulation.**

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*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.*

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.

**17. 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 Division retain the permit fee while their application is pending.

**Regulatory Flexibility**

**18. 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.

**19. 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.

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

The Ohio Liquor Control Commission-

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

Building Location: 77 S. High Street, 18<sup>th</sup> Floor, Columbus, OH 4321

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Telephone: 614-466-3132

Fax Number: 614-466-4564

The Ohio Division of Liquor Control-

Website: <https://com.ohio.gov/liqr/>

Building Location: 6606 Tussing Road, Reynoldsburg, OH 43068

Telephone: 614-644-2360

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