



## 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):

2020 No Change

Rule Number(s): 4301:1-1-4 (Wine) 31(Cleanliness) 37, 38(Chem. Analysis) 12, 14, 34, 35, 36 (Permits) 45(Promotions/Advertising)

Date of Submission for CSI Review: 12.30.20

Public Comment Period End Date: 1.6.21

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/\_X\_ 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Rescinded/\_\_\_ rules (FYR?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.**

*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.

#### Cleanliness

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 upon demand for examination and chemical analysis testing.

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

#### 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.

4301:1-1-14 This rule sets forth the guidelines for transferring an interest in, location, or ownership of a permit, which may occur as a result of the sale of the business, death of the permit holder, bankruptcy, receiver or guardian appointment, seizure by the IRS or other federal entity, or from one family member to another.

4301:1-1-34 describes the information the Division of Liquor 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.

#### Promotions/Advertising

4301:1-1-45 describes the requirements for lawful contests, prizes, sales incentive programs, rebates and other promotions conducted by manufacturers and suppliers of alcoholic beverages.

### **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.**

4301.03 generally & the following amplifying statutes:

4301:1-1-04 -- 4301.03, 4301.23, 4301.13, 4303.08

4301:1-1-12 -- 4301.03, 4301.10(A)(6)

4301:1-1-14 -- 4301.03(G), 4301.03(F)

4301:1-1-31 -- 4301.03

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

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4301:1-1-45 -- 4301.22; 4301.24

- 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

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

N/A

- 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)?**

These rules reflect the policy and intent of the Commission to protect public health and safety, to maintain effective control over the manufacture, 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; to promote orderly markets by requiring transparent, accountable and stable distribution and pricing practices; and to prevent unfair competition.

- 7. 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 (DOLC) implements the permitting process, monitors the sale and distribution of alcoholic beverages in Ohio, and may initiate actions of “administrative” nature. The Department of Public Safety, Ohio Investigative Unit (OIU) also investigates and may initiate enforcement actions for violations of these provisions. Data related to consumption, sales, and violations, as well as related sanctions are routinely collected and reported. The Commission can measure the success of these regulations and Ohio’s regulated pricing structure by examining the existing compliance-related data. 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 rules and regulations.

- 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

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## **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 December 5, 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 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 March 2, 2020, June 12, 2020, September 11, 2020, September 14, 2020, October 23, 2020, and December 4, 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.

### **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 these rules. Upon review the Commission determined that designating them as "no change" rules was appropriate.

### **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?**

The Commission did not consider alternative regulations as the current regulations are meeting the state's intended policy goals

### **13. Did the Agency specifically consider a performance-based regulation? Please explain.**

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***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.

**14. 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.

**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.**

The provisions are currently in effect and do not require any change in order to implement existing regulations. The rules impact all Ohio liquor permit holders in each tier of the system (manufacturers, distributors, retailers) and are entirely consistent with the broader policy goals of the 3-tier system of alcohol beverage regulatory control. Any updates would be 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**

**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 potential scope is all classes of liquor permit holders – manufacturers, distributors, and retailers

**b. Identify the nature of all adverse impact (e.g., 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 liquor manufacturer, retailer and distributor is required to comply with the applicable regulations to ensure the public health and safety within establishments manufacturing,

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distributing, selling and serving alcoholic beverages. 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.

**17. 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 3-tier system is designed to provide a balanced, transparent, and accountable method for alcohol sales and for allowing entities and individuals to obtain and maintain liquor permits. 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**

**18. 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

**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 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 Commission Quarterly public hearings – March, June, September and December

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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The Ohio Department of Public Safety, Ohio Investigative Unit –

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

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

-Telephone: 614-644-2415

Alcohol beverage industry provided resources available to permit holders and their employees include the following training programs:

-TIPS Alcohol Training (Training for Intervention Procedures)

-TAM Alcohol Server Training (Techniques of Alcohol Management)

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