



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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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 Amended

Rule Number(s): 8, 19, 20, 21, 25, 26 (Permits) 28 (Cleanliness) 27, 30, 32, 44

(Promotions/Advertising) 74 (Sales/Distribution)

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/___ rules (FYR? ___)

Amended/___X___ rules (FYR? _X_)

Rescinded/___ rules (FYR?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.

Permits

4301:1-1-8 applies to current and former permit holders and describes the circumstances and effective date when a permit can be issued, transferred, or renewed at a particular location, where a permit has been revoked for cause or rejected under specified regulations. The Commission has discretion to waive enforcement of Rule 8 when special circumstances are demonstrated. The proposed amendment would clarify when the provisions of the rule take effect.

4301:1-1-19 describes the duties of the licensing section within the Division of Liquor Control. The proposed amendment would remove the limitation to the Division's licensing section.

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 the reinstatement of their permit. The proposed amendment

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would amend the title of the rule, since the rule itself is not limited to manufacturers and distributors.

4301:1-1-21 requires permit holders to prominently post their permit, and in the event of a suspension, to display the suspension order. The proposed amendment would clarify when the rules provisions take effect.

4301:1-1-25 This rule deals with "H" permits and the transportation of alcoholic beverages within Ohio. The proposed amendments would make the rule consistent with the statute, what the Public Utilities Commission does with motor carriers, and what the Division does with H permit applicants in order to harmonize the process with PUCO's rules and regulations.

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. The proposed amendment would change "compliance officer" to "compliance agent", consistent with statutory changes.

Cleanliness

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. The proposed amendments would provide clarity to the rule by making clerical and organizational changes.

Promotions/Advertising

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. The proposed amendments focus on the "other devices" used by permit holders to identify to consumers what is available on tap. The proposed amendments would allow permit holders to use specifically-designed taps with chalk board or video screen to creatively identify the product being dispensed to the consumer without requiring the manufacturer or brand name being on the tap, provided consumers could still identify the product being dispensed.

4301:1-1-30 sets forth the procedures for conducting tastings of beer, wine, mixed beverage, or spirituous liquor to determine the quality and character of the product for marketing purposes, and requires that tastings receive prior written approval by the Division. The proposed amendments would provide clarity to the rule by making clerical and organizational changes.

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4301:1-1-32 describes how alcoholic beverage product samples may be distributed to wholesalers, retail permit holders or clergy. The proposed amendments would provide clarity to the rule by making clerical and organizational changes.

4301:1-1-44 defines the terms advertisement and sign, and describes the requirements for permitted and prohibited conduct when advertising alcoholic beverage products by manufacturers, suppliers, wholesale distributors and retail permit holders. The proposed amendment would remove the prohibition against providing links to a retail permit holder's website because improvements to technology now automatically provide them when a website address is given.

Wine

4301:1-1-74 describes the requirements for manufacturers and distributors who are selling less than a full case of wine to retailers. The proposed amendment would allow for the addition of the A-2f permit to those already identified in the rule as it is a wine manufacturing permit and the A-2 is already included in the rule.

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:

4301:1-1-08 -- 4301.03(G)
4301:1-1-19 – 4301.10(A)(2), 4303.29, 4303.292, 4303.293
4301:1-1-20 – 4301.03(B)
4301:1-1-21 – 4301.03(A), 4301.03(B)
4301:1-1-25 – 4301.03(J), 4303.22
4301:1-1-26 – 4301.03(J), 4303.22
4301:1-1-27 – 4301.03, 4301.22(G)
4301:1-1-28 – 4301.03, 4301.22
4301:1-1-30 – 4301.03
4301:1-1-32 – 4301.03(B), 4301.03(D)
4301:1-1-44 -- 4301.03(B), 4301.03(E), 4301.22, 4301.24
4301:1-1-74 – 4301.03, 4301.13

**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.**

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 general 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

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.

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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?

As a result of the email notifications and website postings, the following rules generated stakeholder input:

Rules 4301:1-1-8, 19, 20, 21, 26, 27, 28, 32, 44, 74

The Division of Liquor Control offered clarifying amendments to these rules.

Rule 4301:1-1-25

The Division of Liquor Control offered substantive changes to this rule for the purpose of harmonizing the process prescribed in the rule with the Public Utilities Commission's rules and regulations. Rule 25 deals with "H" permits and the transportation of alcoholic beverages within Ohio. The proposed amendments would make the rule consistent with the statute, what the Public Utilities Commission does with motor carriers, and what the Division does with H permit applicants in order to harmonize the process with PUCO's rules and regulations.

Rule 4301:1-1-30

The Division of Liquor Control offered clarifying amendments to this rule. However, on of those amendments allowed for the addition of "S permits" to the rule. The Wholesale Beer and Wine Association of Ohio submitted a letter to the Commission explaining why they did not support the addition of "S permits" to the rule, but agreed with all of the other proposed amendments. The Division agreed with WBWAO's recommendation to exclude the addition of "S Permits" from the proposed amendments. WBWAO's letter is attached.

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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. *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 general provisions of these rules 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

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- 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, 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?

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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

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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THE WHOLESALE BEER AND WINE ASSOCIATION OF OHIO

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WBWAO.ORG

November 9, 2020

VIA EMAIL

Chairman Deborah Pryce
Ohio Liquor Control Commission
77 S. High St., 18th Floor
Columbus, Ohio 43215

Dear Chairman Pryce, Vice Chairman Carnes and Member Stinziano:

On behalf of the members and Board of Directors of the Wholesale Beer and Wine Association of Ohio, I wanted to follow up in writing on my brief comments at the public hearing held via WebEx on October 23, 2020. Specifically, I wanted to reiterate that we support all of the changes proposed by the Division of Liquor Control as outlined in their memo to you of June 29, 2020, with one exception. That exception is to delete any reference to S permit holders in Rule 30 which deals with certain types of private tastings. We enclose a revised draft of Rule 30 which contains this deletion of the S permit from the rule.

We respectfully submit that the addition of the S permit to this rule constitutes a substantive addition to the privileges of the S permit and should not be made without the presentation of a clear and convincing rationale for doing so or, even better, such a change should be considered by the legislature as an additional privilege to that permit. S permits are a fairly recent addition to the traditional classes of permits and are available only to certain types of out-of-state suppliers to allow them access to Ohio consumers. This change in Ohio law was adopted in response to the U.S. Supreme Court's decision in *Granholm v. Heald* which required that direct shipping privileges of wine by out-of-state wineries and in-state wineries are on even-handed terms.

The fact that the S permit is one of the few Ohio permits that an out-of-state entity can acquire underscores the challenges for Ohio regulatory bodies to effectively monitor their activities and, we would argue, dictates against providing them, directly or indirectly, the ability to conduct tasting activities in Ohio.

Thank you for the consideration of these comments and please let me know if we can provide any further information in connection with this issue.

Sincerely,

Timothy J. Bechtold
Counsel for Regulatory Affairs

4301:1-1-30 Beer, wine, mixed beverage, or spirituous liquor tasting.

(A) As used in this rule, the term "tasting" means the distribution of small amounts of brands of beer, wine or mixed beverages, or spirituous liquor so that a person can determine the quality and character of the product. A tasting is not to be used for general consumption purposes. A tasting is for marketing purposes only, held by the person or entity holding the tasting for themselves or for other groups or organizations.

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(B) When conducting a tasting, a per the person serving is limited to the following amounts:

(1) in servings of not more than four ounces of beer per person;

(2) Not more than two ounces of wine or mixed beverages; or

(3) Not more than one ounce of in servings of not more than two ounces of spirituous liquor, in servings of not more than one ounce, to determine by tasting only the quality and character of the product, and not for general consumption purposes.

(B) Only Class A or B permit holders, or any person who is actively registered with the division as a solicitor pursuant to paragraph (1) of rule 4301-3-01 of the Administrative Code, the following permit holders or persons may conduct a tasting:

(1) B-1, B-2, B-4, B-5, A-1, A-16, A-2, A-3, or A-4 Class A or B permit holders; or

(2) manufacturers of spirituous liquor; and/or

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(3) any person who is actively registered with the division of liquor control as a solicitor issued credentials pursuant to paragraph (1) of rule 4301-3-01 of the Administrative Code;

(C) The beer, wine or mixed beverages, or spirituous liquor offered at a tasting must be product that:

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(1) is may conduct a tasting of beer, wine, mixed beverage, or spirituous liquor products, which have been qualified registered for sale in Ohio;

(2) and which That the permit holder, manufacturer, or registered solicitor is authorized to sell, for marketing purposes only, for themselves or for other groups or organizations; and

(3) is provided by the manufacturer or distributor person or permit holders or registered solicitor identified in paragraph (B) of this rule the product for the t no asting without charge to the attendees at the designatedtasting event, which includes location nNot charging fees shall bebeing charged or accepting donations in order accepted to attend or participate in atthe tasting.

(D) A tasting may be conducted at either the:

(1) Manufacturer's or distributor's place of business; or

(2) any designated place where provided that the tasting event is closed to the general public.

~~(E) except that No~~ tasting of spirituous liquor, as provided for under this rule, ~~will~~ shall take place on ~~the premises of a state liquor agency premises.~~ The manufacturer or distributor ~~conducting the tasting shall provide the product for the tasting without charge to the attendees at the designated location. No fees shall be charged or donations accepted to attend or participate in a tasting.~~

(GF) As defined under paragraph (B) of this rule, persons or permit holders or registered solicitors applying for a tasting must:

(1) ~~d~~Do so in writing to the division at least five working days prior to the tasting event, which excludes Saturdays, Sundays, or any state recognized holidays, prior to the tasting event; and

(2) ~~r~~Receive ~~Written notice of any beer, wine, mixed beverage, or spirituous liquor tasting must be submitted to the division of liquor control at least five working days, excluding Saturday and Sunday, before the tasting is to take place, and written approval must be received from the division before such any~~ tasting may be held.

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