



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Liquor Control Commission

Rule Contact Name and Contact Information:

Rachel Herrmann, Rachel.Herrmann@lcc.ohio.gov, 614-995-2216

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

2021 No Change Rules

Rule Number(s): 4301:1-1-02 (Definitions); 4301:1-1-15, 64, 67, 76, 78 (Permits);
4301:1-1-46, 47, 48, 49, 50, 55, 56, 58 (Sales); 4301:1-1-59 (Solicitation); 4301:1-1-65, 66,
77 (Commission Practice)

Date of Submission for CSI Review: 5/24/21

Public Comment Period End Date: 5/31/21

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Rescinded/___ rules (FYR?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

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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.

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.

Definitions:

4301:1-1-02 Definitions: This rule defines the following terms: alcoholic beverage, brand, commission, division, home use, quota, renewal, and state gallonage tax. No amendment proposed.

Permits:

4301:1-1-15 Permits, cancellation of: This rule authorizes the Division of Liquor Control, upon request by the permit holder, to cancel a liquor permit, and summarizes the cancellation procedures. It also allows the Commission to hear outstanding cases and issue orders concerning a proposed/cancelled permit. No amendment proposed.

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4301:1-1-64 Population estimates: This rule governs the method for determining the quota of liquor permits in a geographic area. No amendment proposed.

4301:1-1-67 Sales report 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: This rule 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. No amendment proposed.

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 rule clarifies that an F-2 permit holder cannot make purchases from a retailer and can only lawfully purchase products from a manufacturer or wholesale distributor. No amendment proposed.

Sales:

4301:1-1-46 Miscellaneous restrictions: This rule describes a variety of requirements for alcoholic sale practices. It prohibits the sale or service of beer or intoxicating alcohol to occupants of automobiles for consumption. It prohibits the sale of alcoholic beverages by a retailer to another permit holder for the purpose of resale. Upon receiving consent from the Division, this rule allows the transfer of alcoholic beverages between premises when the permit holder or principals are the same entity. It also requires that deliveries to retailers must be made by a bona fide employee of the distributor (B-1, B-2, B-4, B-5 permit holders) or manufacturer (A-1, A-2, A-4 permit holders) making the sale. The rule prohibits giving away alcoholic beverages with the purchase of merchandise, although it allows packaging an alcoholic beverage with a nonalcoholic item. Finally, the rule prohibits sale by wholesale distributors to retailers lacking an active, valid retail permit and places the burden for verification on the wholesaler. No amendment proposed.

4301:1-1-47 Ban of refilling bottles or selling brands not ordered: This rule bans retail permit holders from refilling any manufacturer's bottle that formerly contained alcoholic beverages. It also requires consent by the customer to sell or deliver to them an alcoholic beverage different from what they ordered or requested. Finally, this rule requires permit holders to label premixed alcoholic beverages kept in dispensers with the product brand name and percentage of alcohol. No amendment proposed.

4301:1-1-48 Service in hotel rooms: This rule sets forth the minimum requirements for alcoholic beverage service in hotel rooms. The rule authorizes D-1, D-2, D-3, D-5, and A1A permit holders, who are also owners of a hotel or motel license (or a D-5A permit holder), to service alcohol on the hotel/motel premises, in the guest rooms, or in a private conference center. No amendment proposed.

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4301:1-1-49 Hours of sale of alcoholic beverages: This rule sets forth the valid hours alcoholic beverages may be sold, consumed, or delivered for manufacturer, retail, distributor, restaurant/night club, and temporary permit holders. No amendment proposed.

4301:1-1-50 Limitations on happy hours and similar retail price reductions: This rule forbids a liquor permit holder to sell, furnish, or deliver more than two or more servings of alcohol when an order for one serving is placed during happy hour. This rule forbids the sale of an unlimited number of alcoholic beverages for a fixed price during a set period of time. The rule also forbids encouraging drinking games, awarding alcoholic beverages as prizes, and increasing the volume of alcoholic beverages without also proportionally increasing the price. Finally, this rule requires permit holders to maintain a schedule of happy hour prices effective for not less than one month and concludes happy hour by 9pm. No amendment proposed.

4301:1-1-55 Possession of spirituous liquor on certain premises prohibited: This rule limits permit holder, their employees or customer, who are authorized to sell only beer, wine, and mixed beverages, from keeping or possessing any spirituous liquor upon the permit premises. No amendment proposed.

4301:1-1-56 Employment of underage persons: This rule allows any person 18 years of age or older to handle sealed containers of wine, beer, or spirituous liquor in connection with wholesale or retail sales, and any person employed by any permit holder to handle the same in connection with manufacturing, storage, warehousing, placement, or delivery and in open containers in connection with cleaning or handling empty bottles or glasses. This rule also allows any person 21 years old to fully participate in any manner of the handling, sale, or delivery of beer, wine, or spirituous liquor and a person 19 years of age or older to do the same when working in the capacity of a waiter or waitress. No amendment proposed.

4301:1-1-58 Exceptions to giving away food: This rule sets for the exception regarding the giving away of food in liquor permit premises. This rule allows permit holders to provide hot or cold snacks (pretzels, nuts, popcorn etc.) when served in an open dish or receptacle placed in a location within the premises where a customer may help themselves. No amendment proposed.

4301:1-1-59 Solicitation of patrons: This rule prohibits permit holders, their agents, or employees, from soliciting a consumer to purchase beer, intoxicating liquor, money, or anything of value for the permit holder, agent, employee, or other person. This rule also prohibits permit holders from committing or allowing someone to commit the offense of soliciting or prostitution. No amendment proposed.

Commission Practice:

4301:1-1-65 Procedure for hearings before the liquor control commission: This rule governs the procedures for hearings and appeals before the Liquor Control Commission. It sets forth

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the timelines, notice and certified mail requirements, evidentiary rules, burden of proof and continuance procedures. It also addresses what happens in the case of a fraudulent statement or a mistake in proceedings before the Commission. The rule allows the Commission to order additional testimony and to appoint a referee or examiner to conduct a hearing. No amendment proposed.

4301:1-1-66 Advertising of proposed rules: This rule establishes the notification requirements and the 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.

4301:1-1-77 Notice of Meetings: This rule sets forth the method by which interested parties can obtain information regarding Liquor Control public meetings/hearings. No amendment proposed.

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.

Authorizing statute 4301.03 generally & the following amplifying statutes:

4301:1-1-02

Authorized By: 4301.03

Amplifies: 4301.03; 4301.01; 4301.12

4301:1-1-15

Authorized By: 4301.03

Amplifies: 4301.26; 4301.03

4301:1-1-46

Authorized By: 4301.03

Amplifies: 4301.01; 4301.13; 4301.14; 4301.22; 4301.23; 4301.041; 4301.58; 4301.60; 4301.62; 4301.64; 4303.22; 4303.27; 4301.35

4301:1-1-47

Authorized By: 4301.03

Amplifies: 4301.03; 4301.68

4301:1-1-48

Authorized By: 4301.03

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Amplifies: 4301.03; 4303.13; 4303.15; 4303.181; 4301.21

4301:1-1-49

Authorized By: 4301.03

Amplifies: 4301.22; 4301.32 through 4301.41; 4303.02 through 4303.23; 4303.29; 4305.14

4301:1-1-50

Authorized By: 4301.03

Amplifies: 4301.03; 4301.22; 4303.13 through 4303.20

4301:1-1-55

Authorized By: 4301.03

Amplifies: 4301.03; 4303.11; 4303.12; 4303.121; 4303.13; 4303.14; 4303.141; 4303.20; 4303.203; 4303.204; 4303.206

4301:1-1-56

Authorized By: 4301.03; 4301.22

Amplifies: 4301.22

4301:1-1-58

Authorized By: 4301.03

Amplifies: 4301.03; 4301.21

4301:1-1-59

Authorized By: 4301.03

Amplifies: 4301.22; 4301.24

4301:1-1-64

Authorized By: 4301.03

Amplifies: 4301.03; 4303.29

4301:1-1-65

Authorized By: 4301.03; 119.09

Amplifies: 4301.28; 119.09

4301:1-1-66

Authorized By: 4301.03

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Amplifies: 119.03; 127.18

4301:1-1-67

Authorized By: 4301.03

Amplifies: 4301.03

4301:1-1-76

Authorized By: 4301.03

Amplifies: 4303.183; 4303.262

4301:1-1-77

Authorized By: 4301.03

Amplifies: 121.22; 4301.04

4301:1-1-78

Authorized By: 4301.13; 4301.041; 4301.042

Amplifies: 4301.58; 4303.202

- 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.

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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.

The Commission initially sought comments at its January 22, 2021 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 12, 2021, April 16, 2021, and May 14, 2021.

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

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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.
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.

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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 Lawwriter 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, 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

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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

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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