



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

Agency, Board, or Commission Name: Liquor Control Commission

Rule Contact Name and Contact Information: Dominic Panzera, dominic.panzera@lcc.ohio.gov, 614.995.2216

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

2024 Amended Rule 72

Rule Number(s): 4301:1-1-72

Date of Submission for CSI Review: 9/24/2024

Public Comment Period End Date: 10/1/2024

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? Y)

Rescinded/___ rules (FYR?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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CSIPublicComments@governor.ohio.gov

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.

4301:1-1-72 Minimum markup on beer: This rule describes the pricing requirements for the carryout retail sales of beer by Ohio manufacturers, wholesale distributors, and retail permit holders.

Proposed Amendment: A proposed amendment to paragraph (A) eliminates any reference to a specific type of liquor permit subject to minimum markup to account for the growing number of liquor permit holders authorized to make carryout retail sales of beer.

Another amendment would include a paragraph (D) that would allow permit holders to sell beer at below the minimum markup price under very limited circumstances. The permit holder must be going out of business or liquidating its business or decide to discontinue selling an item of beer that has been in its inventory for at least three months from the date of the last invoice purchasing such beer. A permit holder who decides to discontinue selling an item of beer and who has participated in a close-out sale (selling beer below minimum price) may not purchase the same item of beer for six months following the date of the close-out sale.

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.**

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-72	4301.03, 4301.041	4301.03

- 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 implements a federal requirement, but 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)?**

The rule reflects 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 this rule 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 public comment regarding rules under five-year review on November 2, 2023 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 Association, the Ohio Restaurant Association, the Ohio Council of Retail Merchants, the Ohio Grocers Association, the Ohio Wine Producers Association, Ohio Craft Brewers Association, Southern Wine and Spirits, the Distilled Spirits Council of the United States, Ohio Association of Chiefs of Police, the Drug Free Action Alliance, and the Ohio Township Association, permit holders, permit holders' legal counsel, and government entities such as the Departments of Agriculture, Commerce, and Taxation. 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.

The Commission sought additional written comments from stakeholders and invited public testimony at the Commission's public hearings on December 7, 2023, May 9, 2024, June 13, 2024, August 8, 2024, and September 12, 2024. All stakeholder comments and proposals, and Notices of Commission hearings are posted to the Commission's website.

- 10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The Commission received comment without any opposition from the Ohio Department of Commerce, Division of Liquor Control updating rule language to account for the growing number of liquor permit holders authorized to make carryout retail sales of beer. The Division's proposed change has been incorporated into the proposed amendments.

The Commission also received comment without opposition from the Wholesale Beer and Wine Association of Ohio (WBWAO) proposing to authorize the carryout sale of beer at less

than the minimum markup price only in very limited instances. These are known as close-out sales. To participate in a close-out sale, a permit holder must be going out of business or liquidating its business or have decided to discontinue selling a certain item of beer. A permit holder who decides to discontinue selling an item of beer must have had the item of beer in its inventory for at least three months from the last invoice date purchasing such beer and may not purchase the same item of beer for six months following the date of the close-out sale. The proposed amendment has been incorporated into Rule 72.

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? *Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.*

The Commission did not consider an alternative regulation as the current regulation is meeting the state's intended policy goals.

13. 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.

14. 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 exiting regulations. The rule impacts all Ohio liquor permit holders in each tier of the system (manufacturers, distributors, retailers) and is entirely consistent with the broader policy goals of the three-tier system of alcohol beverage regulatory control. Any updates would be made available to various stakeholders and interested parties via email blast and posting to the Commission's website.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). 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. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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.

No new costs or fees are being implemented with this rule.

Each alcohol manufacturer, distributor, and retailer are required to comply with the applicable regulation to ensure 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 the rule, in general, the Commission can fine, suspend, or revoke an entity's license for violations of Ohio laws and regulations.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

No, the proposed changes to the rule will not reduce any regulatory burden that may exist.

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 three-tier system is designed to provide a balanced, transparent, and accountable method of alcohol sales and for allowing entities and individuals to obtain and maintain liquor permits. The regulatory intent of the rule 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, this rule is 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 the rule as there is no penalty associated with paperwork necessary pursuant to the rule.

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

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 –

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

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

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

Telephone: 614-644-2415

Industry provided resources available to permit holders and their employees include the following alcohol training programs:

TIPS Alcohol Training (Training for Intervention Procedures)

TAM Server Training (Techniques of Alcohol Management)

4301:1-1-72

Minimum markup on beer.

This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of beer, an alcoholic beverage, and to prevent abuses caused by the disorderly and unregulated sale of beer. Mandatory price markups: prevent aggressive sales practices that improperly stimulate purchase and consumption, thereby endangering the state's efforts to promote responsible, and discourage intemperate, consumption of alcoholic beverages; eliminate discriminatory sales practices that threaten the survival of wholesale distributors and retail permit holders; preserve orderly competition; ensure fair prices over the long term; assure adequate consumer choice; and promote compliance with Ohio law and rule.

- (A) This rule shall apply to all retail sales of beer, not for consumption on the premises where sold and in sealed containers; by ~~A-1, A-1A, B-1, C-1, C-2X, D-1, D-2X or D-5~~ permit holders [authorized to sell beer](#).
- (B) The minimum retail selling price of beer, whether by the bottle, can, case, or keg, shall be determined in the following manner:
- (1) The minimum retail selling price for retail sales made by a manufacturer shall be computed by adding a minimum markup of not less than twenty-five percent to the wholesale invoice price for sales by the manufacturer to retail permit holders for the same product and brand in the same size container.
 - (2) The minimum retail selling price for retail sales made by a wholesale distributor shall be computed by adding a minimum markup of not less than twenty-five percent to the wholesale invoice price for sales by the wholesale distributor to retail permit holders for the same product and brand in the same size container.
 - (3) The minimum retail selling price for retail sales made by a retail permit holder shall be computed by adding a minimum markup of not less than twenty-five percent to the wholesale invoice price to them for that product and brand in the same size container,
 - (4) Deposit charges for the bottle, can, case, or keg shall not be included as part of the cost or included in any computation for determining the minimum retail selling price with respect to any class of liquor permit holders.
 - (5) The minimum retail selling price of beer packaged by the manufacturer to be sold as an individual sealed container shall be computed, to the nearest cent, by dividing the number of individual sealed containers in an original shipping carton or case into the minimum retail selling price, as computed herein, for that shipping carton or case.

(C) Except as otherwise provided in this paragraph, beer packaged by the manufacturer to be sold as part of a multiple-container package may not be repackaged or split apart by a retail permit holder into smaller, multiple-container packages of the same brand.

- (1) When not prohibited by the manufacturer, individual containers of beer purchased as part of a multiple-container package may be sold as individuals.
- (2) When not prohibited by the manufacturer, a retail permit holder may sell beer in packages containing two or more brands, otherwise known as “mix and match,” provided the products contained in the package are selected by the consumer and the minimum markup requirement is met for each container in the “mix and match” package.

(D) The following sales and purchases at prices below the minimum price prescribed by this rule shall not be deemed a violation of this rule:

- (1) Sales of beer made by the owner thereof for the purpose of going out of business or in liquidating the business.
- (2) Sales of beer made during a close-out sale. A sale of beer at less than the minimum retail selling price as set forth in division (B) of this rule may be made if an item of beer is discontinued by the permit holder that has been in the inventory of the permit holder for a period of at least three months from the date of the last invoice for the purchase of such beer. The permit holder must keep a price schedule and complete documentation of each close-out sale available for inspection upon demand by the division for a minimum of twelve months following the close-out sale. The permit holder may not repurchase the same item of beer for a period of six months from the date of the close-out sale.

PROPOSED AMENDMENT
SUBMITTED BY THE
DIVISION OF LIQUOR
CONTROL



**Department
of Commerce**

Mike DeWine, Governor
Jon Husted, Lt. Governor

Division of Liquor Control
Sheryl Maxfield, Director

MEMORANDUM

TO: Ron O'Brien, Chair, Liquor Control Commission
James E. Carnes, Vice Chair, Liquor Control Commission
Mike Stinziano, Member, Liquor Control Commission
Sarah Creedon, Executive Director, Liquor Control Commission
Dominic Panzera, Assistant Director, Liquor Control Commission

FROM: James V. Canepa, Superintendent, Division of Liquor Control

DATE: December 13, 2023

RE: Comments and Proposals for Commission Rules

On behalf of the Division of Liquor Control (Division), I would like to thank you for giving us the opportunity to participate through comments in the Ohio Liquor Control Commission's (Commission) 2023 rule review. The Division's recommendations and comments are submitted in accordance with Ohio Administrative Code 4301:1-1-66. Attached to the Division's e-mail transmission of this memorandum are the Division's proposed amendments in Word format.

The Division's proposed amendments are summarized below.

- 4301:1-1-17 The Division recommends adding the Farm Winery A-2f permit to the list of other manufacturers in subsection (F)(1). In addition the Division recommends deleting the word "retail" in 17(K), which would allow manufacturers to share restrooms in a common area if they do not have their own.
- 4301:1-1-72 The Division recommends removing the permit classes in 72(A). This change would not require future amendments when new permit classes are created.

If you have any questions about the Division's recommendations or comments, please do not hesitate to contact me at (614) 644-2472.

cc: ~~Sharon Mull, Chief Counsel, Division of Liquor Control~~
Abby Schafer, Legislative Director, Ohio Department of Commerce
Joseph Schmansky, AAG, Liquor Unit, Charitable Law-Liquor/Gaming Unit, OAG
Anne Vitale, Associate Legal Counsel, Ohio Department of Public Safety

Rule 4301:1-1-72 | Minimum markup on beer.

This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of beer, an alcoholic beverage, and to prevent abuses caused by the disorderly and unregulated sale of beer. Mandatory price markups: prevent aggressive sales practices that improperly stimulate purchase and consumption, thereby endangering the state's efforts to promote responsible, and discourage intemperate, consumption of alcoholic beverages; eliminate discriminatory sales practices that threaten the survival of wholesale distributors and retail permit holders; preserve orderly competition; ensure fair prices over the long term; assure adequate consumer choice; and promote compliance with Ohio law and rule.

(A) This rule shall apply to all retail sales of beer, not for consumption on the premises where sold and in sealed containers, by ~~A-1, A-1A, B-1, C-1, C-2X, D-1, D-2X or D-5~~ permit holders.

(B) The minimum retail selling price of beer, whether by the bottle, can, case, or keg, shall be determined in the following manner:

(1) ~~The minimum retail selling price for retail sales made by a~~ manufacturer shall be computed by adding a minimum markup of not less than twenty-five percent to the wholesale invoice price for sales by the manufacturer to retail permit holders for the same product and brand in the same size container.

(2) The minimum retail selling price for retail sales made by a wholesale distributor shall be computed by adding a minimum

markup of not less than twenty-five percent to the wholesale invoice price for sales by the wholesale distributor to retail permit holders for the same product and brand in the same size container.

(3) The minimum retail selling price for retail sales made by a retail permit holder shall be computed by adding a minimum markup of not less than twenty-five percent to the wholesale invoice price to them for that product and brand in the same size container,

(4) Deposit charges for the bottle, can, case, or keg shall not be included as part of the cost or included in any computation for determining the minimum retail selling price with respect to any class of liquor permit holders.

(5) The minimum retail selling price of beer packaged by the manufacturer to be sold as an individual sealed container shall be computed, to the nearest cent, by dividing the number of individual sealed containers in an original shipping carton or case into the minimum retail selling price, as computed herein, for that shipping carton or case.

(C) Except as otherwise provided in this paragraph, beer packaged by the manufacturer to be sold as part of a multiple-container package may not be repackaged or split apart by a retail permit holder into smaller, multiple-container packages of the same brand.

(1) When not prohibited by the manufacturer, individual containers of beer purchased as part of a multiple-container package may be sold as individuals.

(2) When not prohibited by the manufacturer, a retail permit holder may sell beer in packages containing two or more brands, otherwise known as "mix and match," provided the products contained in the package are selected by the consumer and the minimum markup requirement is met for each container in the "mix and match" package.

PROPOSED AMENDMENT
TO RULE 72 SUBMITTED
BY THE WHOLESALE BEER
AND WINE ASSOCIATION
OF OHIO

Rule 4301:1-1-72

This rule reflects the policy and intent of the commission to maintain effective control over the sale and distribution of beer, an alcoholic beverage, and to prevent abuses caused by the disorderly and unregulated sale of beer. Mandatory price markups: prevent aggressive sales practices that improperly stimulate purchase and consumption, thereby endangering the state's efforts to promote responsible, and discourage intemperate, consumption of alcoholic beverages; eliminate discriminatory sales practices that threaten the survival of wholesale distributors and retail permit holders; preserve orderly competition; ensure fair prices over the long term; assure adequate consumer choice; and promote compliance with Ohio law and rule.

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(3) The minimum retail selling price for retail sales made by a retail permit holder shall be computed by adding a minimum markup of not less than twenty-five percent to the wholesale invoice price to them for that product and brand in the same size container,

(4) Deposit charges for the bottle, can, case, or keg shall not be included as part of the cost or included in any computation for determining the minimum retail selling price with respect to any class of liquor permit holders.

(5) The minimum retail selling price of beer packaged by the manufacturer to be sold as an individual sealed container shall be computed, to the nearest cent, by dividing the number of individual sealed containers in an original shipping carton or case into the minimum retail selling price, as computed herein, for that shipping carton or case.

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(D) The following sales and purchases at prices below the minimum price prescribed by this rule shall not be deemed a violation of this rule:

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46 (2) Sales of beer made during a close-out sale. A sale of beer at less than the minimum
47 retail selling price of beer as set forth in division (B) of this rule may be made if an item of beer
48 is discontinued by the permit holder that has been in the inventory of the permit holder for a
49 period of at least three months from date of the last invoice for the purchase of such item of beer.
50 The permit holder must keep a price schedule and complete documentation of each close-out sale
51 available for inspection upon demand by the division for a minimum of twelve months following
52 the close-out sale. The permit holder may not repurchase the same item of beer for a period of six
53 months from the date of the close-out sale.