

**MEMORANDUM**

**TO:** Ellen Leidner, Ohio Liquor Control Commission

**FROM:** Paula Steele, Regulatory Policy Advocate

**DATE:** June 23, 2014

**RE:** **CSI Review – Rule 11 – Permits, Procedure Where Quota is Filled** (OAC 4301:1-1-11)

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This Ohio Liquor Control Commission's (Commission) rule package consists of one amended rule that prescribes how the Ohio Division of Liquor Control (Division) processes applications for permits in instances when the permit quota has already been filled. The draft rule is being submitted as a five-year review as required by ORC 119.032. The Commission previously included Rule 11 as a no-change rule in a larger package of other draft rules to the CSI Office on June 12, 2013. On September 25, 2013, Rule 11 was withdrawn from CSI review due to questions this office had concerning the return of deposits made by applicants for permits. Rule 11 was refiled on May 30, 2014 with a comment period ending June 16, 2014. No comments were received during the public comment period.

In the original no-change rule, if an applicant included the permit fee with the application and there were no permits available because the quota for that district was filled, the Ohio Division of Liquor Control held the permit fee unless the applicant specifically requested it be returned. In this amended rule, when there are no permits available, the fee is automatically returned to the applicant unless the applicant asks the Division to hold the fee. Once a permit becomes available, the applicant will be informed that the permit fee is due and must be paid in a timely manner or the applicant will risk losing place in queue for the permit.

Upon review of the proposed rule and the BIA, the CSI Office followed up with the Commission to request a revised BIA to include more specific references to statutory authority and to get a better understanding of the Commission's discretion in developing the application as well as to find out what the Division's plans were for previous permit fees collected but not used due to the lack of available permits known as "no opening" status. According to the Commission, the permit application design and development are in the Division's domain and the Commission exercises no discretion over the actual application or permit. The rule is simply housed with the Commission but the hands-on permit procedures and processes are the responsibility of the Division. According to the Division, it intends to contact liquor permit applicants who are in "no opening" status and request their preference about remaining on file or canceling their applications, and retaining or returning any fees on deposit.

After reviewing the proposed rules and revised BIA, the CSI Office has determined that the rule package satisfactorily meets the standards espoused by the CSI Office, and the purpose of the rule justifies the adverse impact identified in the BIA.

### **Recommendations**

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Commission should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Director of Regulatory Policy