



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Rachel Herrmann, Ohio Liquor Control Commission

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: January 15, 2021

RE: **CSI Review – 2020 Five Year Review Amended Rules (OAC 4301:1-1-08, 4301:1-1-19, 4301:1-1-20, 4301:1-1-21, 4301:1-1-25, 4301:1-1-26, 4301:1-1-27, 4301:1-1-28, 4301:1-1-30, 4301:1-1-32, 4301:1-1-44, and 4301:1-1-74)**

On behalf of Lt. Governor Jon Husted, 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 Commission as provided for in ORC 107.54.

Analysis

This rule package consists of 12 amended rules proposed by the Ohio Liquor Control Commission (Commission). This rule package was submitted to the CSI Office on December 30, 2020, and the public comment period was held open through January 6, 2021. The Commission notified CSI on January 13, 2021 that due to technical Legislative Service Commission rule drafting requirements, a few rules in this package will be filed as rescind/new rules that replace the previous rules of the same rule number, rather than amended rules, when they are filed with JCARR. The Commission assured CSI that the nature of the proposed changes as submitted for CSI review will not change. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on December 30, 2020.

Ohio Administrative Code (OAC) Chapter 4301:1-1 establishes general provisions for the distribution and sale of liquor and alcoholic beverages. OAC 4301:1-1-08 establishes the conditions for which a liquor permit may be issued, transferred, or renewed after a permit has previously been revoked or refused. The rule is amended to reorganize the rule content to clarify

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the one-year requirement for issuing a permit to holders or applicants whose permit was revoked or denied, as well as the last date of having operating privileges. OAC 4301:1-1-19 and 4301:1-1-20 set forth requirements for the determination of permit eligibility and reinspection after a permit is suspended. The rules include amendments that limit the process of determination to the licensing section of the Commission and clarify the scope of reinspection. OAC 4301:1-1-21 concerns the posting of a permit on the premises and is amended to clarify the requirements for ensuring permits and suspensions are posted. OAC 4301:1-1-25 includes guidelines for permits to transport alcoholic beverages (H Permits) and is amended to align the language with Public Utilities Commission (PUCO) requirements for registration, including registration with the United States Department of Transportation and holding a certificate of public convenience and necessity. OAC 4301:1-1-26 requires vehicles used by H permit holders to carry identification and is amended to change the title of “Compliance Officer” to “Compliance Agent.” OAC 4301:1-1-27 concerns spigots and tap markers for the dispensing of alcoholic beverages and is amended to allow these markers to display information about the beverage being dispensed in more ways and to expand the requirements to cover all alcoholic beverages instead of just beer and wine. OAC 4301:1-1-28 provides guidelines for cleaning and sterilizing alcohol dispensers and receptacles, including requirements that ensure timelines for cleaning dispensers, the types of wash and rinse required for cleaning drinking receptacles, and tubing and hose construction. The rule is amended to reorganize the rule language and include reference to cleaning alcoholic beverage receptacles in the rule title. OAC 4301:1-1-30 concerns tastings of alcoholic beverages and includes requirements for serving sizes for the various types of beverages, product eligibility, and tasting applications to the Commission. The rule is amended to reorganize the content for clarity. OAC 4301:1-1-32 sets forth requirements for samples, which are provided at no cost and are distributed only by employees who are registered solicitors. The rule is amended to revise the language for clarity. OAC 4301:1-1-44 establishes requirements for advertising, including content and region prohibitions for print and electronic media, as well as prohibitions against manufacturers, suppliers, and wholesale distributors referring to businesses where their products can be purchased. The rule is amended to remove prohibitions against listing a retail permit holder’s website. OAC 4301:1-1-74 regulates the sale of wine to retail permit holders in cases that are not full. The rule is amended to include A-2f permit holders in the rule requirements.

During early stakeholder outreach, the Commission sent the rules to industry stakeholders for feedback, including professional associations representing the alcoholic beverage and restaurant industries, as well as public safety associations and agencies. During that time, stakeholders provided input that helped the Commission revise the language of the rules to ensure the requirements are clear and easy to follow. The Division of Liquor Control suggested changes to OAC 4301:1-1-25 that would align the requirements with PUCO registration requirements, which were implemented by the Commission. The Wholesale Beer and Wine Association of Ohio

suggested against the creation of an S Permit related to alcoholic beverage tastings. After reviewing the suggested change, the Commission removed S Permits from the proposed amendments. No comments were received during the CSI public comment period.

The business community impacted by these rules includes permit holders involved in the manufacture, distribution, and sale of alcoholic beverages. The adverse impact created by the rules includes the time and effort spent by permit holders to adhere to the requirements of the rules, which includes ensuring that beverage dispensers are sanitized, permits are properly posted, and guidelines for the provision of beverages to customers. The BIA notes that the variance in requirements and the scale of businesses can cause the cost of compliance to vary. The Commission states that the burden of the adverse impacts of the rules is necessary because of the need to ensure the health and safety of alcoholic beverage production and sale to the public.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Ohio Liquor Control Commission should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.