

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Liquor Control Commission

Regulation/Package Title: 2018 No Change

Rule Number(s): 4301:1-1-05, 16, 68, 72, 73

Date: \_\_\_\_\_

**Rule Type:**

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

4301:1-1-05 Mixed Beverage Requirements, establishes the requirements for mixed beverages, and governs their manufacturing, distribution and pricing.

No amendment proposed.

4301:1-1-16 Closing Authority, establishes a temporary closing period for a permit location, and provides guidelines for permit holders desiring to close for a period greater than 30 days.

No amendment proposed.

4301:1-1-68 Sales Reports of B-1 Permit Holders, describes the reporting requirements for B-1 (beer distributor) permit holders.

No amendment proposed.

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4301:1-1-72 Minimum Markup on Beer, describes the requirements for pricing, manufacturing, distributing and selling beer in the state of Ohio.

No amendment proposed.

4301:1-1-73 Differential Pricing Practices: Manner and Frequency of Price Changes for Beer, describes the process to change prices for beer.

No amendment proposed.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301:1-1-05	4301.03	4301.03
4301:1-1-16	4301.03	4301.03
4301:1-1-68	4301.03, 4303.06	4301.03
4301:1-1-72	4301.03, 4301.041	4301.03
4301:1-1-73	4301.03	4301.03

**3. 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

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

n/a

**5. 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.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The 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

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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.

### **Development of the Regulation**

**7. 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.*

At its August 18, 2017 public hearing, the Commission initially sought comments regarding the rules under 5-year review 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 Assn., the Ohio Restaurant Assn., the Ohio Council of Retail Merchants, 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. The Commission also solicited comments from the Attorney General's Office - Liquor Unit, the Division of Liquor Control and the Department of Public Safety 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 September 14, and December 13, 2017; and March 9, June 13, August 18, and September 14, 2018.

**8. 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 comments that recommended changes to these rules. The Commission did receive comment from WBWAO supporting the Commission's re-adoption of the 2018 rules up for review, a copy of which is attached.

**9. 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

**10. 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?**

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The Commission did not consider alternative regulations as the current regulations are meeting the state's intended policy goals.

**11. 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.

**12. 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.

**13. 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 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**

**14. 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;**

The potential scope is all classes of liquor permit holders – manufacturers, distributors, and retailers,

**b. Identify the nature of the adverse impact (e.g., license 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.

**15. 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**

**16. 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.

**17. 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.

**18. What resources are available to assist small businesses with compliance of the regulations?**

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

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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://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)