



# Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

## Business Impact Analysis

**Agency, Board, or Commission Name:**

Ohio Department of Commerce, Division of Liquor Control

**Rule Contact Name and Contact Information:**

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

2021 Five Year Rule Review

**Rule Number(s):** 4301-1-01, 4301-1-02, 4301-1-04, 4301-2-01, 4301-3-01, 4301-5-01, 4301-7-01, 4301-9-01, 4301-9-02

**Date of Submission for CSI Review:** May 18, 2021

**Public Comment Period End Date:** May 25, 2021

**Rule Type/Number of Rules:**

New/___ rules	xNo Change/ <u>4</u> rules (FYR? <u>Y</u> )
xAmended/ <u>5</u> rules (FYR? <u>Y</u> )	Rescinded/___ rules (FYR?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

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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 rules for CSI review.**

**Which adverse impact(s) to businesses has the agency determined the rule(s) create?**

**The rule:**

- 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.*

4301-1-01 Definitions. Defines broker, solicitor, and supplier. No changes proposed.

4301-1-02 Expansion and diminution of permit premises. The proposed amendments are intended to: clarify that requests should be made on a Division form; clarify who can file a proposed expansion or diminution of a permit premises on behalf of a partnership; and codify the Division policy that an expansion of a permit premises must be contiguous to the existing permit premises.

4301-1-04 Citation review board. No changes proposed.

4301-2-01 Registered solicitors. The proposed amendments include trade marketing companies in the types of entities that may register solicitors.

4301-3-01 Purchases of spirituous liquor by permit holders. The proposed amendment authorizes a state liquor agency to deliver spirituous liquor to personal consumers consistent with the provision of Am. Sub. H.B. 674 that was effective April 12, 2021.

4301-5-01 State liquor stores and state liquor agencies. The proposed amendment clarifies that amendments to the federal Americans with Disabilities Act of 1990 are considered in the evaluation of state liquor agency applicants.

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4301-7-01 Public notice of proposed rules. Outlines the procedure for the Division to publish notice of proposed rulemaking. No changes proposed.

4301-9-01 Wholesale purchases of beer, wine, and mixed beverages: Requirements and prohibitions. The proposed amendment is merely to the title of the rule to reflect the actual subject of the rule, Electronic Funds Transfers.

4301-9-02 Electronic Data interchange. Encourages the exchange of electronic information and mandates requirements for engagement. No changes 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.**

<u>Rule Number</u>	<u>Amplifies</u>	<u>Statutory Authority</u>
4301-1-01	4301.021, 4301.10, 4303.25	4301.021, 4303.25
4301-1-02	4301.10(C)	4301.10(C)
4301-1-04	4301.10	4301.021
4301-2-01	4301.021, 4301.10, 4303.25	4301.021, 4303.25
4301-3-01	4301.021, 4301.10, 4301.19, 4301.101	4301.021, 4301.19, 4301.101
4301-5-01	4301.101, 4301.17	4301.021, 4301.101, 4301.17
4301-7-01	4301.021, 4301.10, 4301.101	119.03
4301-9-01	4301.10, 4301.24	4301.021
4301-9-02	4301.10	4301.021

**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)?**

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These rules generally reflect the policy and intent of the Division to protect public health and maintain effective control over the sale and distribution of alcohol beverages. Because alcohol beverages are unique products, they warrant strict regulation to promote temperance by preventing consumption by underage persons and by discouraging abusive and excessive consumption by adults. Finally, these regulations are necessary to ensure fair, orderly, and systematic permitting and enforcement processes.

**7. 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 implements the permitting process, monitors the sale of alcohol beverages in Ohio, and may initiate actions of an “administrative” nature.

Additionally, the Ohio Liquor Control Commission (Commission) continues to place restrictions on the sale of alcohol beverages, strictly prohibiting sales that encourage excessive drinking and ensures that all permit holders conduct their businesses with a view toward the maintenance of public decency, sobriety, and good order. All citation hearings for violations are conducted before the Commission.

Finally, the Department of Public Safety, Ohio Investigative Unit, may initiate enforcement actions for illegal conduct by permit holders.

**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 Division sent an “email blast” for communication on rule reviews and amendments with a comprehensive list of stakeholders. This list included the following private entities:

National Alcohol Beverage Control Association, Inc. (NABCA); Ohio Council of Retail Merchants; Ohio Craft Brewers Association; Ohio Distillers Guild (micro-distilleries) Ohio Grocers Association; Ohio Hotel & Lodging Association; Ohio Licensed Beverage Association; Ohio Restaurant Association; Ohio Spirits Association (OSA); Ohio Wine Producers Association; Prevention Action Alliance; Wholesale Beer & Wine Association of Ohio (WBWAO); and Distilled Spirits Council of the U.S., Inc.

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Additionally, the Division notified the following public entities: Ohio Department of Public Safety, Ohio Investigative Unit; Ohio Department of Public Safety; Ohio Attorney General, Liquor Unit; Ohio Grape Industries Committee; and Ohio Liquor Control Commission.

Finally, the Division notified the following individuals: Rebecca A. Schey, Calfee, Halter & Griswold LLP; and Josh Sanders, Calfee, Halter & Griswold LLP.

An initial email blast soliciting comment was sent to the above stakeholders on April 12, 2021, listing the 2021 administrative rules subject to five-year review. The Notice of the 2021 administrative rule review was also sent to several media outlets that same date. The Division solicited written comments and materials regarding these rules from April 12 to April 26, 2021.

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

The Division received no comments regarding the No Change rules in this package. As a result, the Division intends to file those rules as No Change rules.

The Division received no comments regarding the proposed amendments to 4301-1-02, 4301-2-01, 4301-5-01, and 4301-9-01.

The Division received comments from three organizations and one state agency regarding 4301-3-01, which allows state liquor agencies to deliver spirituous liquor to personal consumers. One comment was received prior to the start of the comment period. That comment came from the Prevention Action Alliance, and included nine recommendations for implementation of spirituous liquor delivery including a robust ID checking process, responsible vendor training, and an increase in the H permit fee.

The Ohio Retail Merchants Association asked whether written consent for delivery would be required annually or more often, and whether third party delivery services would be allowed to make deliveries on behalf of a liquor agency store.

The Distilled Spirits Council of the United States recommended referencing current requirements to ensure that sales are not made to underage or intoxicated persons. They also suggest that the written consent of the Division be done on an annual or other periodic basis.

The final comment, received after the comment period, was from the Ohio Department of Public Safety, which recommended that the Division include language to require contract liquor agencies make a bona fide effort to ensure the personal consumer is at least 21 years old.

The Division determined that it would not make any of the changes to the proposed rule as many of the recommendations were either already codified in law or would be incorporated into the Division's Agency Operations Manual, which all liquor agents must abide by in order to retain their agency contract. As contract liquor agents, they are held to the provisions of their contract

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with the Division and the provisions of the Agency Operations Manual. Failure to abide by contract and manual provisions can result in the loss of the contract, which is not subject to appeal.

**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 to develop these rules.

**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 Division did not consider alternative regulations beyond what has been discussed above, 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.***

No. This area of regulation requires adherence by all permit holders and contract liquor agents to the same method of implementation, monitoring, and compliance.

**14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

These regulations have been implemented for several years. At initial implementation, the Division coordinated with the Ohio Liquor Control Commission, the Department of Public Safety – Legal/Investigative Unit, and the Ohio Attorney General's Office – Liquor Unit, and confirmed that no duplication occurred. No new regulations have been implemented that duplicate the Division's existing regulations.

**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.**

These regulations have been implemented for several years, ensuring predictability. Updates will be made available to the various stakeholders via email blast and posting to the Department of Commerce's website. The amended regulations will also be available to the public via the Legislative Service Commission's publication of the Ohio Administrative Code.

**Adverse Impact to Business**

**16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

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**a. Identify the scope of the impacted business community; and**

The potential scope is all classes of liquor permit holders, and state liquor stores and state liquor agencies. Most of the rules in this package, however, are applicable to persons involved in sales other than retail.

**b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

No new costs or requirements 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 entity licensed, registered, or on contract with the Division is required to comply with these existing regulations to ensure the public health and safety within establishments manufacturing, distributing, selling, or serving alcohol beverages.

The Division does not have data to provide a quantified potential impact for the reasonable compliance costs associated with compliance with the rules, beyond the statutorily mandated fees.

While the ultimate adverse impact for a violation of these rules could be a fine, suspension, revocation, or rejection of an entity’s license, registration, or contract, the Division works to assist and educate all of these entities to avoid such repercussions. Likewise, the Department of Public Safety offers free training to liquor permit holders and their employees through the “ASK” (“Alcohol Server Knowledge”) program.

Additional industry-provided resources are available to permit holders and their employees through web-based “TIPS” (“Training for Intervention Procedures”) and “TAM” (“Techniques of Alcohol Management”) alcohol training programs.

**17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The regulation of the manufacture, distribution, and sale of alcohol beverages in Ohio has been longstanding. This Three-Tier System is designed to provide a balanced, transparent, and accountable method of allowing individuals and entities to obtain and maintain liquor permits. The regulatory intent of the rules justifies the adverse impact because the sale of alcohol beverages is a unique industry that requires strict regulation for the health, safety, and protection of the public. The State has a compelling interest in promoting safe and temperate consumption of alcohol.

**Regulatory Flexibility**

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**18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No. The rules are intended to create a level playing field for all market participants, regardless of size. Therefore, all applicants, permit holders, and contract entities for the same type of permit registration, or contract are held to the same requirements.

**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?**

While the Division of Liquor Control takes great effort to assure that applicants submit correct documentation, ORC 119.14 is not applicable to these rules as there is no penalty associated with the paperwork necessary pursuant to these rules.

**20. What resources are available to assist small businesses with compliance of the regulation?**

The Division can be contacted via multiple sources:

The Division website: <http://www.com.ohio.gov/liqr>

The Division offices are located at: 6606 Tussing Road, Reynoldsburg, Ohio 43068

The Division phone number: 614-644-2360

The Division fax number: 614-995-4047

The Division can also be contacted via twitter and Facebook:

Tweets by @OhioLiquor and <https://twitter.com/OhioLiquor>

Additionally, the Ohio Liquor Control Commission and Ohio Investigative Unit (OIU) provide guidance via internet updates, twitter, and Facebook:

The Ohio Investigative Unit can be contacted at:

<http://www.oiu.ohio.gov/>

<http://www.investigativeunit.ohio.gov/>

[https://twitter.com/ohio\\_oiu](https://twitter.com/ohio_oiu)

<https://www.facebook.com/ohioOIU>

The Ohio Liquor Control Commission can be contacted at: <http://www.lcc.ohio.gov/>

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