

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Commerce, Division of Liquor Control

Regulation/Package Title: 2016 Proposed Amended Rule

Rule Number(s): 4301-3-01

Date: October 26, 2016

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Rescinded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.

4301-3-01 Purchase of spirituous liquor by permit holder: The proposed amendment renames the “retail bottle shelf price” for spirituous liquor as the “retail selling price” to facilitate both the establishment of a universal price across the state, and the application of tax at the register rather than on the shelf. Additionally, the amendment removes the requirement to round up to the next five cent increment in computing the retail selling price per bottle of spirituous liquor. Additionally, the amendment removes the requirement to round up to the next five cent increment in computing the retail selling price of spirituous liquor.

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

R.C. 4301.021, 4301.10 and 4301.101 generally, and the following amplifying statutes:

| <u>Rule Number</u> | <u>Amplifying Statutes</u> |
|--------------------|----------------------------|
| 4301-3-01 | 4301.021, 4301.10, 4301.19 |

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)?

The Division's rules generally reflect the policy and intent of the Division of protect public health, and maintain effective control over the sale and distribution of alcoholic beverages. Because alcoholic 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. This particular amendment clarifies terms and removes a requirement to round up in computing the price of spirituous liquor, which benefits Ohio consumers, spirituous liquor manufacturers and suppliers, and the Division in its administration of the program. Finally, these regulations are necessary to ensure fair, orderly, and systematic permitting and enforcement processes.

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

The provision in this rule is already implemented, and active state supervision already exists. The Division of Liquor Control implements the permitting process, monitors the sale of alcoholic 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 alcoholic 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.

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.

The Division utilized the Department of Commerce's website and 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 Manufacturers Association, Ohio Wine Producers Association, and the Wholesale Beer & Wine Association of Ohio (WBWAO).

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

An initial email blast soliciting comment was sent to the above stakeholders on September 19, 2016, along with copies of the Division's proposed amendments. The Division solicited written comments and material regarding these rules until September 26, 2016.

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

The Division received one comment from a stakeholder, Philip Craig, Executive Director of the Ohio Spirits Association. Essentially, he recommended that the Division also remove taxes from the calculation of spirituous liquor prices. The Division's goal is to remove all state and local sales and excise taxes from the price of spirituous liquor, and have it computed at the point of sale register. The Division is currently developing the processes to account for these changes with its Liquor Modernization Project 2.0. This proposed rule change is essential to that process and goal.

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 to develop these amended rules.

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

No. This area of regulation requires adherence by all parties to the same method of implementation, monitoring, and compliance.

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

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 confirms that 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.**

These regulations have been implemented for several years, ensuring predictability. The updates will be made available to the various stakeholders via email blast and posting to the Department of Commerce’s website. The amended regulations are also available to the public via Lawriter.

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, and state liquor stores and state liquor agencies. The rule in this package, however, primarily deals with persons involved in sales other than retail.

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

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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 alcoholic 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 the Division's 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.

15. 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 alcoholic 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 alcoholic 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

16. 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.

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?

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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.

18. 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](#)

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

The Ohio Liquor Control Commission can be contacted at:

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