

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Liquor Control Commission

Regulation/Package Title: Rule 17-Sanitation Requirements

Rule Number(s): 4301:1-1-17

Date: 9-25-12

**Rule Type:**

New

5-Year Review

Amended

Rescinded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.*

Rule 4301:1-1-17 describes the requirements for sanitary conditions at all liquor permit premises where retail sales of liquor or consumption of liquor occurs. The change proposed

to this rule is to allow for A1 and A2 permit holders, to offer beer or wine for sale on their premises provided they have at least one restroom available for the public. In other words, the proposed change provides an exception to the general rule that there must be separate facilities for men and women.

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

Revised Code 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.

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

This question is not applicable as the federal government does not regulate liquor permit premises in this State. As such, there are no federal regulatory requirements.

- 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)?**

In order to ensure the health and safety of consumers at liquor permit premises, the Commission has promulgated minimum sanitation requirements for each permit premise. The change in this rule is designed to meet a specific need for smaller permit holders offering beer or wine for consumption on the permit premise. With the proposed rule change, these smaller permit holders may offer sales for consumption without the added expense of adding separate restroom facilities for both men and women.

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

The Commission believes the proposed change to this rule will allow for A1 and A2 permit premises to offer sales for on-site consumption. The success of the change will be measured by the number of these permit premises that will now offer these sales on the permit premises.

### **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 Commission requested written comments from stakeholders by May 9, 2012. The Commission solicited comments from the Division of Liquor Control and Department of Public Safety as the two state agencies directly impacted by the Commission Rules. The Commission allowed public testimony at a public meeting on July 12, 2012.

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

The rule change was requested by the Division of Liquor Control to alleviate questions and concerns received by the Division regarding whether some small permit holders that manufacture alcohol products would be able to offer the consumption of their products on-site. The Division found that many were precluded from doing so due to the requirement to have separate facilities for men and women under this rule.

The Commission did not receive any comments from stakeholders opposing the rule change; however, the Commission did receive comments desiring an expanded exception to a larger class of permit holders. The Commission considered this wider exception, but determined that A1 and A2 permit holders were best suited to offer on-site consumption of their own products and would benefit from an exception to the rule without risking the health, safety or welfare of patrons of the permit premise.

The Commission also received stakeholder comment regarding the requirement that beverages be maintained in a potable condition, requesting that the Commission eliminate this requirement. The Commission rejected this proposal to ensure the health and safety of permit patrons and safe consumption of alcohol in Ohio.

**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?**

Not applicable.

**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?**

Please see the response to #8 above as to alternative regulations considered by the Commission.

**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 current rule is performance based, as it requires permit holders to maintain sanitary conditions on permit premises, but does not dictate the specific steps or procedures that must be followed to meet the requirements contained in the rule. Each permit premise is allowed

to establish their own policies and procedures to ensure compliance with the sanitation requirements.

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

The rule is designed to provide specific requirements regarding the sanitation of permit premises. The Commission is aware that other agencies may have minimum sanitation requirements for certain establishments, such as food service, however, the Commission is aware that liquor permit premises have additional sanitation and safety concerns. The Commission's rule is promulgated to provide additional minimum guidance to those businesses that engage in liquor sales in Ohio to ensure the safe consumption of alcohol in this state.

**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.**

This rule will be fully implemented upon final file. The changed portion of the rule will allow permit holders to not engage in activity; therefore, no further implementation will be required. The remainder of the rule has not changed and, as such, is already fully implemented.

**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 directly impacted business community includes all liquor permit holders that offer for sale or consumption alcoholic beverages.

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

The adverse impact is the staff time to ensure that proper sanitation requirements are met, and, in the case of certain permit holders, the cost of installing and maintaining separate restroom facilities for men and women.

**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.*

The Commission estimates that the additional time requirements to maintain facilities in a sanitary condition are a negligible increase in the amount of staff hours to ensure compliance. For those permit premises that are required to maintain separate facilities for men and women, the cost of installing a separate restroom facility would depend on the size of the facility needed and the costs of renovation; however, the cost could be several thousand dollars.

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

The Commission ensures that the temperate consumption of alcohol in Ohio is safe and healthy for consumers. The sanitation requirements ensure that liquor permit premises offering on-site consumption of alcohol maintain safe and healthy environment to protect the health and welfare of Ohioans.

**Regulatory Flexibility**

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

All permit premises offering on-site consumption are required to maintain most sanitary requirements contained in Rule 17; however, the Commission’s proposed change permits a certain class of small businesses in Ohio to offer on-site consumption of their products without the requirement of separate men and women’s restroom facilities.

**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?**

Revised Code 119.14 is not applicable to the proposed rules as there is no penalty associated with the paperwork necessary pursuant to the rule.

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

The Commission website at: <http://lcc.ohio.gov>

The Commission main office at: 77 S. High Street, 18<sup>th</sup> Floor, Columbus, OH 43215

The Commission phone number at: 614-466-3132

The Commission fax number at: 614-466-4564