

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Liquor Control Commission

Regulation/Package Title: Rule 45 – Contests, prizes, sales incentive programs, rebates, or other promotions

Rule Number(s): 4301:1-1-45

Date: 10-1-12

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Rescinded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.

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Rule 4301:1-1-45 describes the requirements for contests, prizes, sales incentive programs, and other promotions conducted by manufactures and suppliers of alcoholic beverages, as well as wholesale distributors and retail permit holders in Ohio.

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

Ohio 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 to the rule.

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)?

This rule generally reflects the policy and intent of the Commission to maintain effective control over the sale and distribution of alcoholic beverages and to prevent abuses caused by the disorderly and unregulated sale of such products. Alcoholic beverages are a unique product 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, to prevent unfair competition and to facilitate the collection of taxes related to the sale and consumption of such products.

This rule helps implement Ohio Revised Code Sections 4301.22 (Rules for sales of beer and intoxicating liquor under all classes of permits and from state liquor stores) and 4301.24 (Rules for manufacturers and wholesale distributors). The various marketing restrictions are designed to prevent aggressive marketing strategies that could promote higher consumption. Other regulations set strict limits on the interactions between and among the three tiers of the alcohol distribution system. The regulations are designed to ensure that one tier of the system is not able to put undue economic pressure on another tier to gain a competitive advantage, and that no one tier is allowed to grant favorable treatment of individual members of another tier. This ensures fair competition among manufacturers, wholesalers, and retailers. The cash laws are designed to prevent one level of the distribution system from being able to control another level through the issuance of denial of credit, which results in aggressive sales practices to the detriment of the public.

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The sale and distribution of alcoholic beverages is a highly regulated industry. These provisions reduce opportunity for aggressive marketing and establish a level playing field between manufacturers and distributors and retailers of different sizes.

The Commission ensures that manufacturers and wholesale distributors comply with Ohio laws governing prohibitions against those entities from aiding or assisting the holder of any permit for sale at retail by giving gifts, money, any thing of value or by giving premiums or rebates. The Commission also ensures the temperate and responsible consumption and sale of alcohol in this state. To this end, the Commission places restrictions on contests and other promotions to prohibit giving away alcohol in violation of Ohio law, reducing the price of alcohol at the point of sale, and requiring a purchase of alcohol to participate in a contest. The Commission also ensures that the contests are not conducted in such a manner as to encourage excessive drinking and ensures that any such contests and promotions are conducted with a view to the maintenance of public decency, sobriety, and good order in any permit premise.

The purpose of the proposed changes to the rule is to stop abuses of the current rule and to codify the Division of Liquor Control's long-standing policy concerning rebates and other promotions. Specifically, the Division has long held that a rebate is a return of a portion of the purchase price of an item. As such, a manufacturer cannot rebate the amount paid by the consumer, or more than the amount paid, to purchase the alcoholic beverage item. To do so would effectively be giving away alcoholic beverages in violation of Ohio law. Because numerous promotions have offered rebates in excess of the purchase price of the alcoholic beverages, the Division's long-standing policy should be codified.

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. The Division of Liquor Control monitors the sale and distribution of alcoholic beverages in Ohio. The Department of Public Safety, Investigative Unit, may investigate and enforce these provisions.

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.

On June 22, 2012, the Commission sent a notice of a public hearing to its stakeholders. The Commission requested written comments and/or any public comment or testimony

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concerning the rule. The Commission also solicited comments from the Division of Liquor Control and the Department of Public Safety as the two state agencies directly impacted by the Commission's 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 Commission received a request from the Division of Liquor Control to add the rule to its list of rules under review. The Commission received comments from the Division of Liquor Control requesting that the rule be changed in order to codify the Division's long-standing policy concerning rebates and other promotions.

The Commission received comment from a stakeholder which indicated that it had no objection to the proposed changes and urged the Commission to favorably consider them.

No stakeholders objected to the proposed changes.

Copies of the written comments received by the Commission are 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?

This question does not apply to the proposed rule.

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?

The Commission did not consider alternative regulations. Alternative regulations do not need to be considered as the current regulations are meeting the state's intended policy goals, except that the proposed changes simply codify the long-standing policy of the Division of Liquor Control concerning rebates and other promotions.

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 regulation as the rule is 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 alcohol beverages.

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

This rule does not duplicate any existing state regulation.

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 majority of the provisions of this rule are already fully implemented. The Commission will engage the regulated community regarding the changes to the rule. The Division of Liquor Control and the Department of Public Safety, Investigative Unit, are aware of the proposed changes to ensure a uniformity of enforcement.

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 classes of liquor permit holders and all 3 tiers of the current system from manufacturers to wholesalers to retailers.

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

There is no adverse impact from the regulation, except a limited adverse impact such as reasonable compliance costs. However, the Commission does not have data to provide a quantified potential impact.

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 manufacturer, retailer and distributor is required to comply with these existing regulations.

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

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These rules are a significant part of the 3-tier system of regulatory control in Ohio. The system is designed to provide a balanced, transparent, and accountable method of allowing the state to regulate the sale of alcoholic beverages.

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.

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 the proposed rule 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, 18th Floor, Columbus, OH 43215

The Commission phone number at: 614-466-3132

The Commission fax number at: 614-466-4564

Quarterly public hearings.