



OREGON LIQUOR CONTROL COMMISSION
The Commission proposes to amend the following
Oregon Administrative Rules:

OAR 845-013-0050 Point of Sale Material
OAR 845-013-0060 Items of Nominal Value

PUBLIC HEARING:

Commission staff will hold a public hearing on this proposed action:

Date: February 24, 2009
Time: 10:00 am - Noon
Location: Oregon Liquor Control Commission
9079 SE McLoughlin Boulevard
Portland, OR 97222

Phone: (503) 872-5004 (toll free within Oregon 1-800-452-6522)
Fax: (503) 872-5110

Presiding Officer: Jennifer Huntsman

(Auxiliary aids for persons with disabilities are available upon advance request)

CAPTION: Amending financial assistance rules expanding allowed point of sale and items of nominal value

The proposed rule amendments include specific recommendations from a Business Partners Joint Steering Committee workgroup. The original industry concerns raised were that the current rules limit suppliers in their advertising possibilities and also focus the Commission's limited enforcement resources on the regulation of items like coasters and napkins. The industry goal was to amend our rules to more closely reflect the standards in the Federal regulations. The proposed amendments are specifically targeted to only two discrete areas of the larger set of financial assistance regulations. Staff believes that the proposed amendments to the regulation of point of sale advertising materials and consumer take-aways address industry advertising concerns while also maintaining and clarifying the regulations that are most important in keeping industry from unduly influencing retail licensees.

You can obtain a copy of the proposed amendments by calling Laura Paul at 503-872-5105, or the toll-free number listed above. Rule drafts are also available on the OLCC web site: <http://oregon.gov/OLCC/> - go to the "Liquor Laws and Rules" button, then follow the link to "OLCC Proposed Rulemaking", then "Point of Sale/Items of Nominal Value Rulemaking", and finally "Final Staff Draft Rules". If you wish to give your views, arguments, or information on this matter, you may do so at the public hearing, or you can submit comments by March 10, 2009. You can also email your comments to: jennifer.huntsman@state.or.us.

Documents faxed, mailed or emailed must be received by 5:00 pm on March 10, 2009.

ORS 183.335(2)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. That comment must also be received by 5:00 pm on March 10, 2009.

The Commission reserves the right to request and receive additional comments at any time on or before the date the Commission takes final action on the proposed rule.

Statutory Authority: ORS 471, including ORS 471.030, 471.730(1) & (5)

Other Authority: None

Statutes Implemented: ORS 471.398(4)

Need for the Rule(s): This package contains two of the Commission's rules from our Division 13 Financial Assistance rules; this division of rules implements our statutes governing "Tied-House" prohibitions. OAR 845-013-0050 describes the point of sale (POS) materials that a supplier (manufacturer or wholesaler) is allowed to provide to a retailer, while OAR 845-013-0060 describes the items of nominal value that a supplier is allowed to provide to a retailer. The proposed rule amendments include specific recommendations from a Business Partners Joint Steering Committee workgroup. The original industry concerns raised were that the current rules limit suppliers in their advertising possibilities and also focus the Commission's limited enforcement resources on the regulation of items like coasters and napkins. The industry goal was to amend our rules to more closely reflect the standards in the Federal regulations. The proposed amendments are specifically targeted to only two discrete areas of the larger set of financial assistance regulations. Staff believes that the proposed amendments to the regulation of point of sale advertising materials and consumer take-aways address industry advertising concerns while also maintaining and clarifying the regulations that are most important in keeping industry from unduly influencing retail licensees.

Documents Relied Upon, and where they are available: Minutes of Advisory Committee meeting of October 24, 2008 available from the Commission's rules coordinator, Jennifer Huntsman, at 9079 SE McLoughlin Boulevard Portland, OR 97222.

Fiscal and Economic Impact, including Statement of Cost of Compliance: This statement takes into account the fiscal impact on (a) Alcohol Suppliers (manufacturers/wholesalers); (b) Retail Liquor Licensees; (c) local government; (d) state agencies; and (e) the public.

(a) Alcohol Suppliers (manufacturers/wholesalers). The Commission anticipates the potential for some negative fiscal impact on smaller suppliers due to the possibility of increased expense associated with competing with larger national suppliers on an expanded list of items. This potential would be greater for beer and wine suppliers than for distilled spirits suppliers because of the differences in how these products are advertised and marketed. Small Oregon brewers feel that it could cost them as much as six figures more annually if these new items are allowed to be given to retailers rather than only sold to them. However, some positive fiscal impact is also foreseen. Because the nature of marketing any product is to focus on larger accounts, this change could give smaller businesses, at every level of the alcohol distribution system, more equal access to advertising. A potential positive impact for Oregon's micro-distilleries for example could be more affordable marketing avenues than paying for radio, television, or print advertising.

(b) Retail Liquor Licensees. No significant fiscal impact is anticipated for retail licensees. While some differences in impact could exist amongst retailers, the overall impact to this segment of the industry is anticipated to be neutral.

(c) Local government. The Commission does not anticipate any fiscal impact on local government from the proposed rule amendments.

(d) State agencies. The Commission does not anticipate any fiscal impact on state agencies from the proposed rule amendments.

(e) The public. The Commission does not anticipate any significant fiscal impact on the public from the proposed rule amendments. However, some stakeholders representing moderation groups and public safety expressed concern over any potential effect on marketplace domination and underage drinking. As with any marketing, forward-looking businesses try to capture the hearts of young consumers as future customers. However, with alcohol that would mean marketing to an underage audience where alcohol is already a major problem. Underage drinking leads to increased costs to society, including costs to families, and increased needs for already under funded law enforcement and treatment resources.

Cost of Compliance: There should be no costs for anyone to comply with these amendments. There are no reporting or recordkeeping requirements required for compliance. There is no requirement for equipment, supplies, labor, or administration. Because of the proposed simplification to the regulations, some Advisory Committee members actually saw the potential for lower compliance costs for the distilled spirits industry as a whole.

Because there is not adequate information available to accurately project the fiscal impact, the Commission is unable to calculate the potential fiscal impacts.

How were small businesses involved in the development of this rule? The Commission assumes the majority of its licensees are small businesses. We invited licensees, industry representatives, and public safety representatives, including moderation groups, to the Advisory Committee meeting where this matter was discussed.

Administrative Rule Advisory Committee consulted? Yes. An Advisory Committee met on October 24, 2008. Members included industry representatives, licensees, and members representing moderation and public safety concerns. The Committee assisted in writing this Fiscal Impact Statement.

(This notice mailed February 2, 2009)