



OREGON LIQUOR CONTROL COMMISSION

The Commission proposes to amend the following
Oregon Administrative Rule:

OAR 845-007-0020(2) Restrictions (Happy Hour)

PUBLIC HEARING:

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

Date: February 9, 2010
Time: 10:00 am
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: Amendments to section (2) (happy hour) related to outside advertising of alcohol for on-premises consumption

This rule restricts the type of alcohol advertising that liquor licensees may use. Section (2) specifically regulates advertising outside a licensed premises of alcoholic beverages for on-premises consumption. Due to recent case history, staff is recommending amendment of section (2) of this rule in order to make it more enforceable and clearer to licensees. Staff recommends new language clarifying that for promotions that encourage excessive consumption, such as unlimited drinks for a fixed price and drinking contests, not only is the activity itself prohibited under our prohibited conduct rule (OAR 845-006-0345(10)), but the advertising of those practices is prohibited as well. The proposal also includes eliminating the prohibition against certain temporary price reduction terms such as "happy hour" and instead replacing it with a prohibition against both 1) a specified time period and 2) a price or discount, together in the same advertisement. Also recommended is new language prohibiting advertising where a consumer must purchase multiple drinks to receive a reduced price, such as "two for one".

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 "Happy Hour", and finally "Final Staff Rule Draft". 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 February 23, 2010. 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 February 23, 2010.

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 February 23, 2010.

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 471.030 & 471.730(1) & (5)

Other Authority: None

Statutes Implemented: ORS 471.730(7)

Need for the Rule(s): This rule restricts the type of alcohol advertising that liquor licensees may use. Section (2) specifically regulates advertising outside a licensed premises of alcoholic beverages for on-premises consumption. Due to recent case history, staff is recommending amendment of section (2) of this rule in order to make it more enforceable and clearer to licensees. Staff recommends new language clarifying that for promotions that encourage excessive consumption, such as unlimited drinks for a fixed price and drinking contests, not only is the activity itself prohibited under our prohibited conduct rule (OAR 845-006-0345(10)), but the advertising of those practices is prohibited as well. The proposal also includes eliminating the prohibition against certain temporary price reduction terms such as "happy hour" and instead replacing it with a prohibition against both 1) a specified time period and 2) a price or discount, together in the same advertisement. Also recommended is new language prohibiting advertising where a consumer must purchase multiple drinks to receive a reduced price, such as "two for one".

Documents Relied Upon, and where they are available: Minutes of Advisory Committee meeting of November 24, 2009 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) liquor licensees; (b) local government; (c) state agencies; and (d) the public.

(a) Liquor licensees. The Commission anticipates an overall positive fiscal impact for on-premises licensees from the proposed rule amendments. The proposed amendments are meant to address the public safety concerns of over-consumption while limiting the impact on business operations. This proposal will give these small businesses greater flexibility in promoting their business than what is currently allowed, and the proposed amendments should be easier for their employees to understand and thus comply with. No direct financial impact is anticipated for off-premises licensees.

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

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

(d) The public. The Commission can envision both positive and negative potential fiscal impact on the public from the proposed rule amendments. There is the potential for public safety benefits since regulatory staff time spent currently monitoring "happy hour" violations

could instead be spent on the Commission's core public safety concerns of minors in possession and visibly intoxicated persons. On the other hand, if overall consumption should increase, there is also the potential for increased over-consumption, which then translates into increased costs to society, including costs to families, and an increased need for already under funded law enforcement and treatment resources.

Cost of Compliance: There should be no additional costs for anyone to comply with these amendments. There are no new reporting or recordkeeping requirements required for compliance. There is no requirement for equipment, supplies, labor or administration.

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 November 24, 2009. 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 December 31, 2009)