

MINUTES OF OLCC ADVISORY COMMITTEE MEETING

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

Friday, October 24, 2008 at 9:00 AM in Room 103A,
Commission Offices, Portland

Present: Pamela Erickson (Public Action Management); Greg Sellers (Beam's Global Spirits and Wine); Bette Worcester (Craft Brewers Alliance); Stephanie Soares Pump (Governor's Council on Alcohol & Drug Abuse Programs); Brian Butenschoen (Oregon Brewers Guild); Paul Romain (OBWDA); Jay Nelson (Youngs Market Company of Oregon); Kara Thallon (ORA); Paul Cosgrove (DISCUS); Judy Cushing (Oregon Partnership); Laura Paul, Jennifer Huntsman, Linda Ignowski, Donna Vandall, Lynne Johnson, Rudy Williams, Steve Pharo, Martin Watson (OLCC Staff).

Invited but not Present: Shawn Miller (NW Grocers Association); Brian Flemming (Albertsons); Chris Girard (Plaid Pantries / ONSA); Brian McMEnamin (McMenamin's); Erica Hagedorn (7-11/A-B); Janice Krem (Attorney); Rob VanVolkinburg (Hood River Distillers); Hasina Squires (Hood River Distillers/Western Counsel for Wine Institute); Bill Perry (ORA); Judy Craine (Holman Bar & Grill); Ted Farthing (Oregon Winegrowers Association); Officer Sara Clark (Portland Police Bureau); Joseph Ehrheart (MADD); Jeff Ruscoe (Mental Health & Addictions Services); Gretchen McKenzie (ODOT); Lt. Willie Bose (Washington County Sheriff's Department); Theresa Marchetti (Office of Neighborhood Involvement); Anna Davis (OLCC)

The meeting began at approximately 9:00 a.m. in Room 103A of the OLCC's Milwaukie office. Jennifer Huntsman, OLCC Rules Coordinator, moderated the discussion and opened the meeting with a review of the process, history of how this rulemaking came about and introductions of those in attendance and their interest in this rule. Ms. Huntsman reminded everyone of the purpose of this meeting.

Ms. Huntsman explained that the Legislature has said (through Oregon's Administrative Procedures Act) that it wants agencies to involve interested parties in policy development. Rulemaking is one way agencies develop policies and Advisory Committees are a good way to hear from people or groups likely to have an interest in a particular issue - or who are likely to be impacted by a policy or change an agency is considering. She explained that Advisory Committees are just that: advisory. The purpose of an Advisory Committee is to give everyone a chance to express their thoughts on issues. The Commissioners are not bound by what we

discuss or decide in these meetings. They are the policy-makers, and will make the final decision on whether to adopt the proposed amendments. Under Oregon's Public Meeting Law, this meeting is open to the public. We will take and retain minutes of the meeting. The discussion today will be informal; the minutes will reflect the main points that are made. We do not identify who said what, except for Ms. Huntsman. Everyone on the mailing list for this rule will be sent a copy of the minutes; attendees were reminded to record their name and email address on the sign-in sheet.

Ms. Huntsman noted that members of this advisory committee would discuss the possible amendments of OAR 845-013-0050 and OAR 845-013-0060. These two rules describe the point of sale materials and items of nominal value that suppliers are allowed to provide to a retailer under our "tied-house" prohibitions. Based on industry advertising concerns and subsequent Business Partner work group discussions, staff proposes amendment of these two rules to reflect more closely the Federal standards for point of sale advertising materials and consumer advertising specialties.

Ms. Huntsman explained that we would be discussing the rule language in detail and that this discussion and suggestions will be used in the permanent rulemaking process.

There will be a formal rulemaking hearing on this matter on Tuesday, February 24, 2009 at 10:00 am in Room 103A. Ms. Huntsman advised that she will repeat that information at the end of the meeting, but asked everyone to please note the dates on their agendas for the hearing and public comment period.

Ms. Huntsman asked members to introduce themselves before proceeding to discuss the proposed amendments.

Ms. Huntsman led off the discussion of the proposed amendments with an overview and the strategy behind the initial version of the amendments. No major concept changes are included in the proposed amendments to OAR 845-013-0060 Items of Nominal Value. Most of its rule language (regarding consumer advertising specialties) would be moved to OAR 845-013-0050 and combined with point of sale (POS) items. This would leave only a few non-advertising items of nominal value such as washers and Thomas valves covered by the language in OAR 845-013-0060.

In both OAR 845-013-0050 & -0060, the new term "supplier" is proposed to be used throughout the rules and is defined to include both manufacturers and wholesalers. The advisory committee members agreed that it would be a good idea to add "or their agents" where applicable after the term "supplier".

The primary change proposed is in OAR 845-013-0050. The proposed amendments

would eliminate the concept of differentiating between items whose sole purpose is advertising and those that also have another function with a \$30 cost cap. Instead, all advertising items would be handled the same, with the creation of a new section (2) & (3) which would mirror the Federal regulations by creating lists of representative nominal value items, for both POS and consumer take-aways, which are okay for suppliers to give to retailers as long as they are branded. The rest of the existing rule language would remain the same.

OAR 845-013-0050 Point of Sale Advertising Materials and Consumer Advertising Specialties

As to the overall concepts, some members of the committee felt that no changes to these rules should be made. Some industry members were concerned about the increased expense of having to compete with larger national suppliers on an expanded list of items.

Of those preferring no amendments be made, a number of members' primary concern was the impact on underage drinking. They looked at the proposed expansion of the items allowed in the rules as a problematic expansion in advertising. They believe it is likely to encourage increased underage drinking as well as increased drinking among the high drinking older youth population. This would be due in part to the rule not distinguishing between licensed establishments where only patrons over 21 are allowed and those frequented by children and families. In addition, there is no age restriction for supplying free t-shirts, hats, posters, etc. One member of the committee shared some data from alcohol advertising research, including a Rand Corporation study of over 1,700 six-graders in South Dakota which found that 19% actually owned alcohol promotional t-shirts, hats or posters, and that those 19% were twice as likely to drink or to intend to drink as compared with those who did not own these items. The researchers were surprised with the finding and noted that "it probably is a subtle communication to kids that beer drinking is cool".

Other members of the committee felt that advertising, both inside and outside a retail establishment, is a different issue than what is covered in these financial assistance rules. They expressed that these rules are about who pays for the items – providing exceptions as to what a supplier can give a retailer versus what the retailer must purchase. The items being discussed are allowed now if purchased by the retailer and would continue to be allowed even if the list of free items is not expanded. Some members did feel that these items would be less prevalent if retailers have to pay for them versus getting them free from suppliers.

Some committee members reiterated that advertising works, a young person's environment influences their behavior, and that of paramount importance is limiting their exposure to advertising that makes drinking seem "cool" to those under 21. Some of these same committee members felt that allowing just the POS items which remain inside the premises and limiting this practice to "over 21 only" establishments would probably be okay.

Several members expressed concerns with items such as alcohol promotional t-shirts falling into the hands of 4-year olds, whether given to them directly or via their parents. Other members felt that this type of advertising concern would be better addressed in a rule establishing restrictions on retailers, rather than in rules governing what suppliers can give retailers. Whether directly applicable to this financial assistance rule matter or not, all committee members expressed a desire to see alcohol advertising and its impact on underage drinking comprehensively addressed. In addition, committee members suggested incorporating a reference to the Division 7 rule which prohibits using advertising as an inducement for minors to buy alcohol.

Several committee members explained the main drivers for the proposed changes. Some industry members expressed difficulty with the subtle distinctions from state to state in these types of regulations and hoped for greater ease in compliance. They also felt that all types of alcohol should be treated the same, (i.e. allowing neon signs to be given to retailers). Some industry members and staff also pointed out that it is currently illegal for paper napkins and coasters to be given to retailers. They felt that it would be a better use of very limited Commission resources to focus on minors in possession and visibly intoxicated persons instead of who paid for such advertising items.

Several members did not believe this rule should be expanded simply because of limited enforcement resources, and that we need to be lobbying for more resources. Staff believes that the proposed amendments would be easier to enforce and that regulatory staff will then be able to focus on the bigger ticket items such as pool tables. All committee members expressed a desire to have the penalty level raised, and staff shared that this is being looked at under a separate rulemaking for the Penalty rule.

Subsection (2)(a) regarding point of sale (POS) items was discussed at length. Industry members are much more unified on the proposed list of items in this section than in (2)(b) regarding consumer take-aways. Again, several members prefer no changes be made to the rule due to public safety concerns, however they also stated that if anything is changed, (2)(a) is less problematic than (2)(b). So far there are no specific suggestions to modify any of the items in the proposed POS

list.

Subsection (2)(b) was also discussed at length. Industry members are not in consensus on the proposed list of consumer take-aways; contributing to the lack of agreement are the differences in how beer/wine versus distilled spirits are advertised and marketed. Again, those members expressing public safety concerns find this subsection more problematic than the POS items in (2)(a). At a minimum, they would like to see “pencils, t-shirts, caps” and “visors” deleted from the proposed rule language. Two other items that the committee didn’t find practical/applicable and thus recommends deleting are “non-alcoholic mixers” and “shopping bags”.

As to the new section (3), all committee members were okay with the language in subsection (3)(a); all items having to be branded with the alcohol product or supplier is the current practice. In subsection (3)(b) members suggested, as mentioned earlier, to add “or their agents” after the term “supplier”.

Fiscal Impact Statement

Ms. Huntsman led the committee through a discussion of the Fiscal Impact Statement and the need to quantify (if possible) fiscal impacts this rulemaking will have in general, as well as any adverse impact on small businesses. During the discussion on the Fiscal Impact Statement, the following points were made:

There could be a positive impact on small retailers by giving them more equal access to advertising. (The nature of marketing any product is to focus on larger accounts.) A potential positive impact for the Oregon micro-distillery business for example could be more affordable marketing avenues than paying for radio, television, or print advertising.

There could also be a negative impact on small retailers because they could be forced to do new things in the marketing arena in order to compete with larger businesses. Small Oregon brewers feel that it could potentially cost them six to seven figures more a year if these new items are allowed.

Some members also saw the potential for lower compliance costs overall for the distilled spirits business.

As to on-premises retail licensees as a whole, while there may be some differences in impact from one retailer to the next, the overall fiscal impact should be neutral.

As written currently, the proposed rule amendments have the potential to affect

underage drinking. Forward-looking businesses try to capture the hearts of young people as future customers. However, with alcohol that would mean marketing to an underage audience where alcohol is already a major problem.

Also, the 3-tier system of alcohol distribution is seen as being key to public safety and specifically important to underage drinking prevention. Marketplace domination would likely result in lower prices, heavy promotion and efforts to push others out of business. Those who are being pushed out may be tempted to violate rules in order to survive.

Ms. Huntsman stated that a new draft of the proposed rule amendment will go out with the Advisory Committee minutes within the next few weeks. This will be the version of the proposed rule amendments that folks will be asked to comment on at the hearing and in this next written comment period.

Ms. Huntsman reminded members of the rest of the process: the rulemaking hearing is currently scheduled for Tuesday, February 24, 2009 at 10:00 am in Room 103A. Written comment would then be received into the rulemaking record until 5:00 pm on Tuesday, March 10, 2009. The tentative plan is to present a report to the Commissioners at their April 2009 meeting for possible final action on this matter.

Ms. Huntsman closed the meeting by thanking members for their attendance and participation. The meeting ended at 11:20 am.