

OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845, DIVISION 13
POINT OF SALE & ITEMS OF NOMINAL VALUE
PROPOSED AMENDMENT – FINAL STAFF DRAFT

Note: **Bold and underlined** = new text; *italics and strikethrough* = deleted text

845-013-0050

Point of Sale Advertising Materials and Consumer Take-Aways, ORS 471.398(4)

1) Wine Manufacturers and Wholesalers.

NOTE: Bureau of Alcohol, Tobacco and Firearms (BATF) rules differ from Commission rules, particularly with regard to subsection (2)(b) of this rule. Be sure to check with BATF before applying this rule.

*(2) (1) ORS 471.398(4) allows a **A supplier (manufacturer or wholesaler), or its agents, to may** provide point of sale materials **and consumer take-aways** to a retailer **provided that the conditions prescribed in section (3) of this rule are met.***

*Manufacturers and wholesalers **Suppliers, or their agents,** may provide point of sale material only for display at the retailer's premises. **No minimum purchase may be required of a retailer in order to have an item at their premises.** *The only point of sale material a manufacturer or wholesaler may provide is:**

(a) Material that functions only to advertise the manufacturer or wholesaler's alcoholic beverage products. Some examples of this material include table tents, case cards, danglers, static cling stickers, display mirrors, inflated plastic beer or wine bottles and neon beer or wine signs;

(b) Material that has another function in addition to advertising the manufacturer or wholesaler's alcoholic beverage products that meets the following conditions:

(A) The cost of the material in any one display does not exceed \$30 (cost is the cost to the manufacturer or wholesaler who initially purchased or produced the item);

(B) The manufacturer or wholesaler loans but does not give the material to the retailer for a period not to exceed 45 days;

(C) The manufacturer loans this type of material for no more than four displays per year per retail premises;

(D) The manufacturer or wholesaler invoices the material upon delivery, describes on the invoice how the retailer will use the material and issues the retailer a credit upon manufacturer or wholesaler removal;

(E) The retailer uses the material only as a part of a promotional display for the manufacturer or wholesaler's products on the retailer's licensed premises; and

(F) The retailer makes no minimum purchase in order to have the material at his/her premises.

(2) Definitions. For this rule:

(a) Point of sale advertising materials are items designed to be used at a retail establishment to attract consumer attention to a supplier's products. Such materials include window decorations, posters, placards, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, calendars, alcohol beverage lists or menus, display mirrors, table tents, chalk boards, thermometers, and similar items of like value. Also allowed are signs (neon, electrical, mechanical, inflatable or otherwise). Point of sale items do not include fixtures, furniture or furnishings as prohibited by ORS 471.398(3) and OAR 845-013-0030.

(b) Consumer take-aways are items intended for use by the retailer's customers off the premises that provide information to the retailer's customers but do not promote the retailer's business. Only items made of paper or other similar inexpensive material are allowed to be given to the retailer and such informational items include recipes, sports and entertainment event schedules, and informational pamphlets.

(3) Conditions and limitations.

(a) All point of sale advertising materials and consumer take-aways must bear conspicuous and substantial advertising matter about the product or the supplier that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials only.

(b) The supplier, or its agents, may not directly or indirectly pay or credit the retailer for using or distributing these items or for any expense incidental to their use.

(c) The Commission prohibits any advertising that contains material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages (OAR 845-007-0020(1)(e)).

*(e) **(d) Material Items** that predominantly advertises the *manufacturer or wholesaler's* **supplier's** alcoholic beverage products but also advertises a generic food product **are allowed**. This **sub**section does not prohibit cross-promotions of the *manufacturer or wholesaler's* **supplier's** alcoholic beverage product with a specific food product or brand when **the** food product producer is not a retail licensee; the food product producer pays at least half the cost of the cross-promotion; and any retailer who receives the *material item* pays none of the costs. For example, a cheese manufacturer and a wine manufacturer jointly produce a poster to promote their products. As long as the cheese manufacturer is not a retail licensee, the cheese manufacturer pays at least half the costs and the retail licensee pays none of the costs, the Commission treats the poster as **an** alcoholic beverage/generic food product *material item*;*

~~(d)~~ **(e) Material Items** that predominantly advertises the *manufacturer or wholesaler's* **supplier's** alcoholic beverage products but also ~~has~~ **have** generic words or symbols for activities the *manufacturer or wholesaler* **supplier** wants to associate with his/her alcoholic beverage products **are allowed**. Exterior material may, however, have only generic symbols relating to activities, not words.

(f) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limits items of nominal value to the supplier's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite OAR 845-013-0001(3)(d) that prohibits customization, the supplier may add generic food references to the list. For example, the list may indicate that a particular alcoholic beverage goes well with chicken but may not refer to a chicken dish on the retailer's menu.

~~(3)~~ **(g)** Exterior point of sale material given or loaned under this rule must not exceed 630 square inches. This means that inflatables or any point of sale material cannot be displayed in a retailer's parking lots or other outside areas if the material exceeds 630 square inches.

(4) A violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471 & ~~ORS 472~~, including ORS 471.030, ~~ORS 471.730(1), ORS 471.730 & (5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)~~
Stats. Implemented: ORS 471.398(4)

845-013-0060

Items of Nominal Value, ORS 471.398(4)

(1) In addition to advertising and point of sale material, ORS 471.398(4)) allows a **supplier (manufacturer or wholesaler), or its agents**, to provide items of nominal value to a retailer. This rule describes the ~~two categories of~~ items of nominal value a *manufacturer or wholesaler* **supplier, or its agents**, may give to a retailer.

(2) A *manufacturer or wholesaler* **supplier, or its agents**, may give basic items that support the *manufacturer or wholesaler's* **supplier's** products at the retailer's premises such as:

(a) Tavern Heads:

(A) One tavern head per calendar year per retail licensee;

(B) A trade-in of a tavern head at the fair market value as partial payment for a new one when the retailer replaces an existing draft system.

(b) Washers or Thomas valves necessary for proper operation of draft equipment;

(c) New and used empty shells or bags in sufficient quantity for returning the ~~manufacturer or wholesaler's~~ **supplier's** empty containers;

(d) Samples and Tastings:

(A) Tastings or samples of distilled spirits that the retailer does not carry but only in an amount not to exceed 50 ml.;

(B) Tastings or samples of wine and malt beverages that the retailer does not carry. ~~¶~~The sample must not exceed a one gallon container of malt beverage or a five liter container of wine. It must be clearly and permanently marked "sample – not for resale";

(C) Distilled spirits, wine and malt beverage tastings for retailer educational seminars that are not open to the public.

~~(3) A manufacturer or wholesaler may give items that are made of paper or other similar inexpensive material that provide information to a retailer's customers but do not promote the retailer's business. The following are some examples of these items:~~

~~(a) Items that have the manufacturer or wholesaler's alcoholic beverage brand name prominently displayed, are intended for use by the retailer's customer off the premises and are made available to the retailer's customers. Some examples include sports schedules, schedules for concerts, theatre, operas and other entertainment series, calendars, recipes and informational pamphlets. Examples do not include napkins, coasters and other paper products a licensee uses in the normal course of business;~~

~~(b) Schedules of entertainment events (sports, music, theatre, etc.) for the retailer to display at the licensed premises;~~

~~(c) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limit items of nominal value to the manufacturer or wholesaler's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite OAR 845-013-0001(3)(d) that prohibits customization, the manufacturer or wholesaler may add generic food references to the list. For example, the list may indicate that a particular alcoholic beverage goes well with chicken but may not refer to a chicken dish on the retailer's menu.~~

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Stats. Implemented: ORS 471.398(4)