



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

OAR 845-006-0345 Prohibited Conduct

PUBLIC HEARING:

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

Date: February 3, 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: Amendments to clarify and strengthen prohibitions against certain drink promotions such as drinking contests

Due to recent case history, staff is recommending the amendment of section (11) covering promotions, to specifically tighten the rule language prohibiting drinking contests (a)(E) and free-pouring alcohol (a)(F). Also, staff is recommending additional rule language in section (11) Promotions which would prevent the current practice of a cover charge and then penny drinks (a)(D) and clarify that no drink discounts are allowed after midnight (a)(C), as well as prohibiting on-premises sales of distilled spirits by the bottle (a)(B) and alcohol vaporization devices (a)(G). Staff also recommends making further clarifying amendments. These additional amendments include: an introductory paragraph clarifying that licensees are held accountable for the acts of their agents and employees; the addition to each section of the sanction level for violation of that section; and clarifying amendments to section (6) Liquor on Premises, section (7) Drive-up window, and section (10) related to kegs and minor patronage.

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 "Prohibited Conduct Rulemaking", 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 17, 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 February 17, 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 February 17, 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 471.030, 471.040, 471.730(1) & (5)

Other Authority: None

Statutes Implemented: ORS 471.030, 471.040, 471.175, 471.178, 471.200, 471.315(1)(a)(G), 471.405(1), 471.408, 471.412, 471.675 & 471.730

Need for the Rule(s): This rule describes a variety of acts which both licensees (including their employees or agents) and service permittees are prohibited from engaging in. Due to recent case history, staff is recommending the amendment of section (11) covering promotions, to specifically tighten the rule language prohibiting drinking contests (a)(E) and free-pouring alcohol (a)(F). Also, staff is recommending additional rule language in section (11) Promotions which would prevent the current practice of a cover charge and then penny drinks (a)(D) and clarify that no drink discounts are allowed after midnight (a)(C), as well as prohibiting on-premises sales of distilled spirits by the bottle (a)(B) and alcohol vaporization devices (a)(G). Staff also recommends making further clarifying amendments. These additional amendments include: an introductory paragraph clarifying that licensees are held accountable for the acts of their agents and employees; the addition to each section of the sanction level for violation of that section; and clarifying amendments to section (6) Liquor on Premises, section (7) Drive-up window, and section (10) related to kegs and minor patronage.

Documents Relied Upon, and where they are available: Minutes of Advisory Committee meeting of November 18, 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) Liquor licensees; (b) local government; (c) state agencies; and (d) the public.

(a) Liquor licensees. The Commission anticipates the potential for some negative fiscal impact to on-premises licensees if pricing is overly restricted. However, the proposed amendments are meant to address the public safety concerns of over-consumption while limiting the impact on business operations. It is estimated that only a small percentage of on-premises liquor licensees currently rely on the promotional practices this rule amendment would prohibit, so any negative fiscal impact should be minimal.

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

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

(d) The public. Advisory Committee members foresaw the potential for some negative fiscal impact on consumers if the price of the alcoholic beverages they purchase is higher than the licensee would have charged but for the Commission's regulation. However, the Commission anticipates the potential for positive impact on public safety by tightening the restrictions on drink promotions. Because these practices can lead to over-consumption, prohibiting them should lead to decreased costs to society, including costs to families, and a decreased 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 18, 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 December 31, 2008)