NOTICE OF PROPOSED RULEMAKING

CHAPTER 845
OREGON LIQUOR CONTROL COMMISSION

FILING CAPTION: Requirements to sell and deliver mixed drinks and single servings of wine in sealed containers.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/24/2021 5:00 PM

HEARING(S):

DATE: 05/18/2021
TIME: 2:00 PM - 3:00 PM
OFFICER: Madeline Kane
ADDRESS: Oregon Liquor Control Commission (Virtual)
9079 SE McLoughlin Ave.
Milwaukie, OR 97222
SPECIAL INSTRUCTIONS:
To listen to, or participate in, this Public Hearing please call: +1(571) 317-3122 and enter access code: 715-107-709#

In order to offer oral comment, please email: OLCC.rulemaking@oregon.gov, no later than 1:30 pm on Tuesday May 18, 2021. The hearing will end at 2:15 pm, if no interested parties have emailed to offer comment by 1:30 pm that day; or 5 minutes after the last oral comment has been recorded into the record.

NEED FOR THE RULE(S):
During a special session held on December 21, 2020, the Oregon legislature passed Senate Bill 1801 allowing full on-premises sales licensees to sell and deliver mixed drinks and single servings of wine for consumption off the premises. The bill required the Oregon Liquor Control Commission to adopt rules to implement this legislation within 30 days. This rule describes the requirements for a full on-premises licensee to sell and deliver mixed drinks and single servings of wine for consumption off the premises.

The State of Emergency has been extended, and the temporary rule is set to expire on June 21, 2021. To ensure that licensees can utilize this privilege until the end of the State of Emergency, this rule is being made permanent, and will be repealed upon the State of Emergency's expiration.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
2020 Senate Bill 1801 (available from the Oregon State Legislature)
Executive Orders 21-05 (available from the Governor's Office.)
OLCC rulemaking files (available upon request from the OLCC.)

FISCAL AND ECONOMIC IMPACT:
This statement takes into account the fiscal impact on: (a)Alcohol Licensees; (b) Local Government; (c) State Agencies; and (d) the Public:

(a) Alcohol Licensees:
The OLCC expects a positive financial impact for Full On-Premises Sales licensees who choose to exercise this privilege. Licensees now have the ability to sell more of their products for off-premises consumption, as well as to maintain social distancing and limit in-person contact.

(b) Local Government:
The Commission forecasts both positive and possible negative impacts due to the proposed permanent rule. With this rule, Licensees may be able to provide more social distancing options and remain viable. Conversely, the Commission is aware that public health and safety agencies have voiced concern about expanded alcohol access, which may potentially impact cities, counties and public health departments. However, pending possible future legislation, this rule will be repealed at the end of the pandemic, and was written with strict parameters to limit abuse. With that said, the Commission will continue to monitor these changes and their impacts. This includes working with and listening to local government bodies' experiences.

(c) State Agencies:
The Oregon Liquor Control Commission forecasts a positive impact, as the agency will be able to provide licensees with delivery options that may help them stay viable during the COVID outbreak. The Commission is aware that public health and safety agencies (OHA & OSP) have voiced concern about any expanded alcohol access. However, pending possible future legislation, this rule will be repealed at the end of the pandemic, and was written with strict parameters to limit abuse. With that said, the Commission will continue to monitor these changes and their impacts. This includes working with and listening to other state agencies' experiences.

(d) The Public:
The Commission forecasts a positive impact to public health and safety by providing more options for social distancing. Conversely, the Commission is aware that some parties have voiced concern about any expanded alcohol access. The Commission will continue to monitor these changes and their impacts. This includes working with and listening to interested parties.

COST OF COMPLIANCE:
(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and

administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
The Commission is aware that public health and safety agencies (OHA & OSP) have voiced concern about any expanded alcohol access and the impacts of addiction. However, at this time, the Commission does not have any evidence to show if more or less consumption is occurring within the State as a result of deliveries and sales of mixed drinks and single servings of wine to Oregon consumers. The Commission will continue to monitor these changes and their impacts. This includes working with and listening to local government bodies experiences.

2. Cost of compliance effect on small business (ORS 183.336):
a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

As of April 26, 2021, the Commission has approximately 4,736 Full On-Premises alcohol licensees that may be impacted by this permanent rule depending upon their business practices.

b. Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s):
In regards to administrative activities, record keeping, and compliance costs for State Agencies and units of local government, the Commission anticipates no significant increase, as this privilege does not require approval or registration.

Licensees are required by this rule to maintain delivery records for a minimum of 120 days from the date of the delivery. This will result in an increase in recordkeeping. This rule also requires that licensees post specific notices and labels. This may result in additional costs for compliance, for licensees who elect to exercise this privilege.

c. Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).
The Commission expects no significant cost related to professional services, equipment supplies, labor and increased administration required to comply with the rule. This rule requires licensees to utilize compliant containers, which may require licensees to purchase new containers to meet the requirements of the rule. The increased business may require licensees to increase labor, however, licensees are not required to exercise this privilege and the Commission forecasts an ultimate positive impact to licensees, and third-party carriers.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):
The Commission has worked with small businesses since the outbreak of the COVID pandemic to provide some options in order to keep these businesses viable and provide for social distancing options. This rule change was made in response to legislative requirements made during a special

session aimed to help Oregon's struggling hospitality industry.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?This rule was made in response to legislative requirements. The legislation is contingent upon the Governor's Executive Order and State of Emergency, and will sunset when the Executive Order expires. There are additional bills in consideration during this current legislative session regarding drinks to go, but given the legislation is not yet finalized, and the current legislation is set to expire, the agency did not consult a RAC for feedback on a rule with an unknown future. ?
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Additionally, this rule is an additional elective privilege designed to provide licensees with opportunities to sell more product. As the financial impact on small businesses is expected to be positive the rulemaking did not necessitate a RAC.

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ADOPT: 845-006-0399
RULE TITLE: Sale of Mixed Drinks and Single Servings of Wine by Full On-Premises Sales Licensees for Off-Premises Consumption and Delivery
RULE SUMMARY: This rule describes the requirements for full on-premises sales license to sell mixed drinks and single servings of wine in sealed containers for off-premises consumption.
RULE TEXT:

(1) Definitions. For the purposes of this rule:

(a) “Manufacturer-sealed container” means a container holding an alcoholic beverage that was sealed upon removal from federal bond.

(b) “Mixed drink” means a beverage that is combined on a licensed premises and sold in a sealed container for consumption off of the licensed premises and is:

(A) A drink where the principal alcoholic liquor is distilled liquor and one or more mixers, and contains no more than three ounces of distilled liquor; or

(B) A drink where the principal alcoholic liquor is wine combined with one or more mixers or distilled liquor that contains no more than six ounces of liquid.

(c) “Mixer” means malt beverages, wine, cider, or nonalcoholic ingredients.

(d) “Resident of Oregon” means a person who is in Oregon, even if temporarily.

(e) “Sealed container” means a container with a secure cap or lid that completely covers the opening

for the container and a seal designed to make it evident when the seal has been removed or broken. The seal is affixed to the container by the licensee after the container is filled pursuant to a consumer order for the mixed drink.

(f) “Serving of wine” means a container holding six ounces or less of wine with no mixer and no distilled liquor.

(g) “Third-party platform” means a website, mobile application or other electronic service that facilitates the order of food and beverages for sale to a consumer by a licensee and that provides one or more the following services:

(A) Delivering, or arranging for the delivery of, the order to the consumer; or

(B) Arranging for the pickup of the order by the consumer from the licensee.

(2) A Full On-Premises Sales licensee may sell or provide no more than a total of either two containers of a mixed drink, two servings of wine, or one mixed drink and one serving of wine per substantial food item as defined in OAR 845-006-0459.

(3) A Full On-Premises Sales licensee that sells mixed drinks or servings of wine to consumers must prominently post a notice provided by the Commission relating to Oregon’s open container laws. The notice must be prominently displayed on the premises and present in whatever manner is necessary to ensure that the consumer purchasing, or a delivery person transporting, such beverages is given notice of this warning. Violation of this section is a Category IV violation.

(4) Mixed drinks and servings of wine may be delivered to a resident of Oregon by a Full On-Premises Sales licensee only as follows:

(a) To a resident of Oregon who is at least 21 years of age and only if the mixed drink or serving of wine is for personal use and not for the purpose of resale;

(b) To a resident of Oregon who is not visibly intoxicated at the time of receiving the mixed drink or serving of wine;

(c) The mixed drink or serving of wine is in a container or packaging that is conspicuously labeled with the words “Contains alcohol: deliver only to a person age 21 years or older.” This message may be directly on the container, on the packaging, or accompanying the container. Examples that meet this labeling requirement include but are not limited to a card, adhesive label or notice, or other medium approved by the Commission;

(d) Pursuant to an order for a mixed drink or serving of wine that is received by the licensee and paid for by the resident prior to removal from the licensed premises for delivery to the resident;

(e) The mixed drink or serving of wine is delivered between the hours of 7:00 am and 10:00 pm;

(f) To a home or business where the home or business has a permanent street address; or to a location

that is within 100 feet of the boundary of the licensed premises.

(5) Licensees may use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 to deliver mixed drinks and servings of wine to residents of Oregon. When a licensee uses a for-hire carrier to deliver a mixed drink or serving of wine to a resident of Oregon, the licensee may be held responsible for the for-hire carrier's failure to follow the requirements of OAR 845-005-0424. If the licensee does not use a for-hire carrier, in addition to complying with all other requirements of this rule applicable to the licensee, the person making the delivery of the mixed drink or serving of wine must:

(a) Be age 18 or over;

(b) Verify that the person receiving the mixed drink or serving of wine is at least 21 years of age;

(c) Determine that the person receiving the mixed drink or serving of wine is not visibly intoxicated; and

(d) Collect information that must be retained by the licensee for a minimum of 120 days from the date of delivery of the mixed drink or serving of wine to the resident. The information retained must include:

(A) The date and time the mixed drink or serving of wine was delivered to the resident;

(B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name and delivery address of the person receiving the alcohol.

(6) A Full On-Premises Sales licensee may receive orders and payment for mixed drinks and servings of wine through a third-party platform. The licensee may use a third-party platform to deliver mixed drinks or servings of wine sold to a resident of Oregon only if the third-party platform is approved as a for-hire carrier as defined in OAR 845-005-0424.

(7) A Full On-Premises Sales licensee may not sell manufacturer-sealed containers of distilled liquor of any size. Violation of this subsection is a Category I violation.

(8) This rule does not apply to sales of manufacturer-sealed containers or securely covered containers of malt beverages, wine, or cider for off-premises consumption.

(9) Unless otherwise specified, violation of this rule is a Category III violation.

(10) This rule shall be repealed 60 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

STATUTORY/OTHER AUTHORITY: ORS 471, 471.030, 471.040, 471.730(1), 471.730(5)
STATUTES/OTHER IMPLEMENTED: 2020 S.B. 1801