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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845
OREGON LIQUOR AND CANNABIS COMMISSION

FILED
06/30/2022 1:34 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: This rule sets requirements for wine labels including the name of Nested American Viticultural Areas.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/05/2022 5:00 PM

The Agency 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.

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Portland,OR 97222

Filed By:
Nicole Blosse
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/26/2022
TIME: 2:00 PM - 3:00 PM
OFFICER: Nicole Blosse
ADDRESS: Oregon Liquor & Cannabis Commission
9079 SE McLoughlin Blvd
Portland, OR 97222
SPECIAL INSTRUCTIONS:
To listen to, or participate in this Public Hearing, please call: 1 323-553-3576, Phone Conference ID: 637988536# , or select the l

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NEED FOR THE RULE(S)

Senate Bill 829 passed in the 2019 legislative session. This bill was codified as ORS 471.802 and imposed certain wine labeling requirements related to Nested American Viticultural Areas within the Willamette Valley American Viticultural Area. In response to this legislation, the OLCC adopted OAR 845-010-0923 in December 2020; however, the wine labeling requirements are not operative until January 1, 2023. Since the rule was adopted, the OLCC and wine industry members have identified rule clarifications; specifically, changing references of “brand label” to “wine label” and making clear that the rule applies to wine that is labeled on or after January 1, 2023. Commission staff propose to initiate rulemaking to clarify the rule language before the labeling requirements become operative.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 829 (available from Legislative Counsel)
OLCC rulemaking files (available upon request from the OLCC.)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

At this time, the Commission has no data to suggest that this rule will impact racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

This statement takes into account the fiscal impact on: (a) Winery Licensees; (b) Local Government; (c) State Agencies; and (d) the Public.

(a) Winery Licensees:
Licensees may be impacted by these changes depending upon their position and actions within the market in the following ways:
The Commission forecasts that the impact on winery licensees in the Willamette Valley will be minimal. The proposed amendment provides flexibility in placement of the name of the nested viticultural area. The existing rule provides for the use of non-conforming labels with OLCC permission, minimizing the fiscal impact.

(b) Local Government:
The Commission expects the proposed amendments to have no impact upon local governments, as the rules do not apply to them.

(c) State Agencies:
The Commission expects the proposed amendments to have no impact upon other state agencies, as the rules do not apply to them. The Oregon Liquor & Cannabis Commission forecasts a minimal impact because the proposed amendments allow more flexibility with placement of the nested AVA name, thus reducing the amount of non-conforming label approval requests that the Commission might receive. Also, the proposed amendment only impacts wine labeled on or after January 1, 2023, thus requiring no changes to wine labels already in the market.

(d) The Public:
The Commission does not anticipate the proposed rule amendments will have an impact on the public.

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 anticipates no new costs to comply with the proposed amendments for state agencies and local government.

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:
This rule impacts wineries located in the Willamette Valley American Viticultural Area, which includes approximately 700 wineries.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:
The Commission forecasts that the impact on winery licensees in the Willamette Valley will be minimal. The proposed

amendment provides flexibility in placement of the name of the nested viticultural area. The existing rule provides for the use of non-conforming labels with OLCC permission, minimizing the fiscal impact.

c. Equipment, supplies, labor and increased administration required for compliance:
The Commission forecasts that the impact on winery licensees in the Willamette Valley will be minimal. The proposed amendment provides flexibility in placement of the name of the nested viticultural area. The existing rule provides for the use of non-conforming labels with OLCC permission, minimizing the fiscal impact.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Commission has collaborated with industry members about these changes. The Commission looks forward to receiving feedback during the comment period about this rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

These changes are housekeeping in nature to provide clarification before the operative date of the rule, and the Commission anticipates a minimal fiscal impact to the industry. Industry has requested these amendments and the Commission looks forward to receiving comments at the public hearing or in the subsequent comment period.

AMEND: 845-010-0923

RULE SUMMARY: Senate Bill 829 passed in the 2019 legislative session. This bill was codified as ORS 471.802 and imposed certain wine labeling requirements related to Nested American Viticultural Areas within the Willamette Valley AVA. In response to this legislation, the OLCC adopted OAR 845-010-0923 in December 2020; however, the wine labeling requirements are not operative until January 1, 2023. Since the rule was adopted, the OLCC and wine industry members have identified rule clarifications; specifically, changing references of “brand label” to “wine label” and making clear that the rule applies to wine that is labeled on or after January 1, 2023. Commission staff propose to initiate rulemaking to clarify the rule language before the labeling requirements become operative.

CHANGES TO RULE:

845-010-0923
Wine Label Designation of Nested American Viticultural Areas
(1) For the purposes of this rule, "Nested American Viticultural Area" or "Nested AVA" means an American Viticultural Area or "AVA" that is partially or wholly contained within a larger American Viticultural Area.¶
(2) ~~O~~Any wine labeled on or after January 1, 2023~~, any wine label that includes~~ that includes on the wine label the name of a Nested AVA that is wholly or partially contained within an AVA listed in section (6) of this rule must include the name of the larger AVA on the ~~brand~~wine label.¶
(3) The letter size of the larger AVA name must be at least:¶
(a) Two millimeters high if the wine container is more than 187 milliliters in volume; or¶
(b) One millimeter high if the wine container is 187 milliliters or less in volume.¶
(4) The name of the larger American Viticultural Area may:¶
(a) Be included in or near the name of the Nested AVA; or¶
(b) Be in the same size or font as the Nested AVA.¶
(5) The appearance of an AVA on the label may not resemble a brand name or appear in lettering that is larger or more prominent than the brand name for the product, unless the brand name stating or implying an AVA has been in continuous use as a brand name since December 31, 2017, and prior to December 31, 2017, was:¶
(a) Used in conformance with Commission standards;¶
(b) Subject to a federal trademark registration for wine under United States Patent and Trademark Office Class 33; and¶
(c) Sold in interstate commerce.¶
(6) When the appellation of origin used on a wine label is a nested AVA wholly or partially within the Willamette Valley AVA, then the separate phrase "Willamette Valley" must appear on the ~~brand~~wine label ~~of the wine~~.¶
(7) Notwithstanding Section (2) of this rule, a manufacturer may submit a written request to the Commission as described in this section to affix non-conforming labels to containers of wine on or after January 1, 2023. The

Commission will evaluate and provide approval of these requests on a case-by-case basis. Requests to use up the remaining stock of labels on or after January 1, 2023 must include:¶
(a) Information identifying the affected label(s) including:¶
(A) A copy of the TTB-approved certificate of label approval (COLA); or¶
(B) Other copy of the label intended for use and a TTB certificate of exemption from label approval.¶
(b) The reason for the non-conforming label (i.e. how did this happen);¶
(c) The steps the licensee will take to ensure that all future labels to be printed comply with this rule;¶
(d) The quantity of non-conforming labels the licensee needs to use up; and¶
(e) The length of time the licensee anticipates it will need to use up the nonconforming labels.
Statutory/Other Authority: ORS 471.030, 471.730
Statutes/Other Implemented: ORS 471.442, 471.445, 471.446, 471.802