OREGON LIQUOR CONTROL COMMISSION

The Commission proposes to:


NOTICE OF PUBLIC HEARING

Date and Time: September 20, 2017 at 10:00 am.
Location: Oregon Liquor Control Commission
9079 SE McLoughlin Blvd.
Portland, OR 97222
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Auxiliary aids for persons with disabilities are available upon advance request.

CAPTION:

The amendments and adoptions clarify beverage redemptions, exemptions and sanctions for violations of ORS 459A.

RULE SUMMARY:

ORS 459A.705 states that “Every beverage container sold or offered for sale in this state shall have a refund value of not less than 10 cents… Eight months after the Oregon Liquor Control Commission determines that, in each of the two previous calendar years, the number of beverage containers returned for the refund value specified in this section was less than 80 percent of the total number of beverage containers that were sold in this state.”

In July of 2016, the Commission determined the return rate has been less than 80% in each of the two previous years. This has led the Commission to determine that, effective August 1, 2016, by statute the refund value had to change from five cents to ten cents on refundable beverage containers per statute. In response, staff initiated the rulemaking process to work with industry and the public on how best to respond to the changes made by this determination before the April 1, 2017 implementation of the
change. This included informally meeting with industry and monitoring legislative proposals.

Further, with the completion of the 2017 legislative session, and no relevant legislation passed, staff held an advisory committee on August 3rd to review staff’s redrafting of Division 20 of Chapter. Staff was specifically interested in listening to industry partners concerning the expansion of the types of beverages that may have a refund value.

Specifically, ORS 459A.702 requires:

“….On January 1, 2018, … ORS 459A.700 to 459A.740 apply to any individual, separate, sealed glass, metal or plastic bottle or can, except for cartons, foil pouches, drink boxes and metal containers that require a tool to be opened, that contains:
(a) The following beverages, intended for human consumption and in a quantity less than or equal to three fluid liters:
   (A) Water and flavored water;
   (B) Beer or other malt beverages; and
   (C) Mineral waters, soda water and similar carbonated soft drinks.
(b) Any beverage other than those specified in paragraph (a) of this subsection that is intended for human consumption and is in a quantity more than or equal to four fluid ounces and less than or equal to one and one-half fluid liters, except distilled liquor, wine, dairy or plant-based milks, infant formula and any other exemptions set forth in rule of the Oregon Liquor Control Commission.”

Finally, the proposed rules clarify the independent audit process and sanctions the Commission may enforce per violations of 459A and Division 20. The Commission walked through these proposed rules with industry.

**HOW TO OBTAIN THE PROPOSED RULE LANGUAGE:**

A copy of the proposed rule language is attached to this Notice. Alternatively, you may obtain a copy of the proposed rule language by calling the Oregon Liquor Control Commission at the phone number listed above. For your convenience, the proposed rule language is also available on our website at: http://www.oregon.gov/OLCC/pages/index.aspx.

Go to the “Laws and Rules” tab on the left side of the screen, and then follow the link to the “Proposed Rulemaking” section of our website. You will find all of the relevant rulemaking documents, including the proposed rule language, under the “Division 20 – Beverage Containers and Redemption Centers ” section of this webpage.

**HOW TO SUBMIT COMMENTS:**

During the hearing, you may present oral or written testimony that includes opinions, information, concerns or proposals related to this rulemaking matter. The Commission also requests comments on whether other options exist and/or should be considered for
achieving the substantive goals while reducing the negative economic impact of the proposed rule on business.

After the hearing, you may submit written comments in person, by mail, by fax or by e-mail (see above for relevant contact information). **However, all written comments must be received by 5:00 p.m. on October 4, 2017.**

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 this rulemaking matter.

**STATEMENT OF NEED AND FISCAL IMPACT:**


Statutory Authority: ORS 459A

Other Authority:

Statutes Implemented: ORS 459A

Need for the Rule:

The rule package updates Division 20 of Chapter 845 – Beverage Containers and Redemption Centers. The Commission is amending and adopting rules within this package to provide technical corrections, clarifications and to update the language in anticipation of the expansion of containers which have a redeemable value. The expansion of containers covered under the Bottle Bill is statutorily set for January 1, 2018. The Commission is asking for public comment prior to the effective date so that the rules reflect the needs of the industry.

Documents Relied Upon and Where They Are Available:

ORS 459A available from Legislative Counsel.


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

(a) OLCC Licensees
- Licensees that sell beverage containers that have a refundable value will be required to accept returns or, if able to, contract with Oregon Beverage Recycling
Cooperatives (OBRC). This impact is being cited to reflect the discussion of the Fiscal Impact Committee; however, the Committee found that the impact was due to statutory changes and the Commission was merely clarifying those issues, as permitted and required by statute. The committee did not have substantive issues with the Commission’s draft rules.

(b) Local Government.
- These rules do not effect local government bodies.

(c) State Agencies.
- Both the Department of Environmental Quality and the Oregon Liquor Control Commission are assigned responsibilities around the Bottle Bill. The Commission spoke with DEQ staff about the proposed changes. DEQ said it could not foresee a fiscal impact from the proposed rules. OLCC staff will continue to ensure that licensees of the Commission, dealers that sell beverages that have a redemption value and redemption centers are following the rules laid out within this package. The Commission will be required to respond to consumer complaints and investigate any infractions.

(d) The Public.
- Consumers will be affected by the expansion of the types of containers that are required to have a refund value. This is a statutory issue, as the expansion is required by 459A.702 (2). The Commission met with industry to talk about this expansion and the types of bottles that the industry thought would be appropriate to exclude from redemption.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
   - State agencies
     - Both the Oregon Liquor Control Commission and the Oregon Department of Environmental Quality are charged with managing aspects of the Bottle Bill. The Department of Environmental Quality reviewed the proposed rules and informed the Commission that it did not foresee an impact upon its operations.
     - The Commission foresees an impact upon both its administrative and enforcement duties. Specifically, administrative staff and enforcement staff will have to respond to complaints from the general public and work with dealers, licensees and redemption centers to ensure they are complying with the both the rules and statutory requirements.
   - Local Government
     - These rules do not affect local governments.
• Public
  o These rules will have an effect upon consumers that purchase any beverage that has a refund value. In the past year, the refund value has gone from five to ten cents. This has increased the return rate. Commission staff worked with industry representatives to discuss which containers to exempt. This included a discussion around nutritional supplements and how both seniors and infants depend on such commodities.

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:

   The Commission is charged with enforcing the requirements of the Bottle Bill statewide. This covers licensees of the Commission, dealers (non-Commission licensees) and redemption centers. The Commission cannot estimate an exact number on the total number of businesses affected by the rules, but can state that all business entities selling or receiving redeemable beverage containers will be affected by these rules.

   That said, the Commission is statutorily required to implement these rules as very specific timelines and redemption rates have triggered these changes to both the refund value changing from 5 to 10 cents and the expansion of containers required to have a refund value.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

   The Commission is proposing to add a rule (845-020-0060) to Division of 20 of Chapter 845. This proposed rule clarifies standards for an Independent audit for a distributor cooperative, a distributor or an importer. ORS 459A.718 requires the Commission to develop standards for such an audit via rulemaking.

c. Equipment, supplies, labor and increased administration required for compliance:

   Dealer, licensees and redemption centers will see more returns, as more containers will be required to have a refund value as of January 1, 2018. During the advisory committee, one licensee pointed out the problem of lacking logistical space to store returned containers within their stores. This issue relates back to the statutory requirement to accept containers. During the advisory committee, several members discussed going to the legislature next session to remove the 5,000 square foot limit that prevents smaller stores from participating in redemption centers.

How were small businesses involved in the development of this rule?
The Commission held a meeting with industry on August 3, 2016 to explain the Commissions’ responsibilities and listen to industry concerns.

Small businesses as well as interested licensees and industry representatives were invited to attend the advisory committee meeting that was held on August 3, 2017.

**Was an administrative rule advisory committee consulted?**
Yes.

*(This notice was sent on August 16, 2017)*