



Oregon

Kate Brown, Governor

Liquor Control Commission

9079 SE McLoughlin Blvd

Portland, OR 97222-7355

503-872-5136

FOR YOUR INFORMATION **NO ACTION NEEDED**

To: Rulemaking List
Date: December 22, 2015
Re: Notice of an Advisory Committee Meeting: Promotional Events Package

On January 30th 2015, the Oregon Liquor Control Commission voted to initiate action to amend OAR 845-005-0428, 845-006-0450, 845-013-0040 and adopt 845-006-0446. Subsequently, staff has worked with various industry interests to adjust the language in order to address concerns heard during the public comment period.

The Oregon Legislature encourages agencies to seek public input to the maximum extent possible before giving notice of intent to amend, adopt or repeal an administrative rule. Agencies may involve the public in many different ways. To assist with the drafting and development of the proposed amendments, the Commission has appointed an advisory committee. Members of this committee represent the interests of persons most likely to be impacted by the proposed rule amendments.

Advisory committee meetings are open to the public. If you would like to observe the committee's discussion, you are welcome to attend. The committee will meet at 1:30 p.m. on Wednesday, January 27th, 2016 at our Portland office (9079 SE McLoughlin Blvd., Portland, OR 97222). For your convenience, copies of the invite list, proposed rule amendments and supporting documents are attached.

Please note, this notice is purely informational. Advisory committees are typically used during the initial stages of the rulemaking process. You will receive a notice of public hearing three to four weeks after the advisory committee meets that includes the time and date of the public hearing and the period for public comments.

If you have questions about this or any other rulemaking matter, please contact me directly, at (503) 872-5136, or by e-mail, at bryant.haley@oregon.gov. Thank you for your interest.

Sincerely,

Bryant Haley

Rules Coordinator

Administrative Policy and Process Division

Oregon Liquor Control Commission

att. AC Invite List; At-A-Glance Initial Action; Proposed Rule Language



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Per ORS 183.333(3):

“If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee’s recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committee’s recommendations on compliance with ORS 183.540.”

Per ORS 183.540:

“If the statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) shows that a rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

- (1) Establishing differing compliance or reporting requirements or time tables for small business;
- (2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- (3) Utilizing objective criteria for standards;
- (4) Exempting small businesses from any or all requirements of the rule; or
- (5) Otherwise establishing less intrusive or less costly alternatives applicable to small business.”

Per OAR 137-001-0007(2):

“If the agency appoints an advisory committee, the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule. The meetings of the advisory committee shall be open to the public.”



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OLCC Advisory Committee Invitation List

Promotional Events Package

Amend OAR 845-005-0428, 845-006-0450, 845-013-0040 and Adopt OAR 845-006-0446

Wednesday, January 27, 2016 @ 1:30 pm – 4:00 pm

Invitations have been sent to the following individuals:

Community and Public Safety Representatives

Mitchell Orellana (Portland Police Bureau)

Doug Ehrich, Commander (Hillsboro Police Department)

Kathy Stromvig / Anne Pratt (Mothers Against Drunk Driving)

Daniel Estes (Oregon Department of Transportation)

Lisa Frisch / Bill Sinnott (Portland Downtown Retail & Clean & Safe Programs)

Lise Gervais (Public Action Management)

Daniel Ward (Oregon Alcohol & Drug Policy Commission)

Scott Winkels (League of Oregon Cities)

Veronica Rinard (Travel Portland)

Patty McMillan (Safe Communities Program Coordinator - Clackamas County)

Mike Boyer - (ONI Liquor Licensing Coordinator)

Licensees and Industry Representatives

Bill Perry (Balance point strategies)

Brian Butenschoen (Oregon Brewers Guild)

Brian McMenemy (McMenamin's)

Duke Tufty (Wyse Kadish)

Elaine Albrich (Stoel Rives)

Judy Craine (Holman Bar & Grill)

Paul Romain (Romain Group)

Danelle Romain (Romain Group)

Mike O'Gorman (Craft brew.com)

Pete Mulligan (NW Cider Association)

Dan Jarman (Oregon Wine Board)

Jim Bernau (Willamette Valley Vineyards)

Bill Cross (Willamette Valley Vineyards)

Jana McKamey (Oregon Winegrowers Association)

Glenda Hamstreet (Oregon Restaurant & Lodging Association)

Jason Brandt (Oregon Restaurant and Lodging Association)

Jeff Giametta (Davis Wright Tremaine)



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Shawn Miller (Lobbyist Grocery - Miller Public Affairs)

Art Larrance (Licensee)

Phil Donovan (NW Public Affairs)

Micheal Mills (ORLA)

Marcus Reed (Craft Brew Alliance)

Brainard Braurer (Licensee)

Ted Pappas (Oregon Distillers Guild)

Ryan Shortt (Hood River Distillers)



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OREGON LIQUOR CONTROL COMMISSION

At-A-Glance Initial Action

(To amend 3 existing rules and adopt 1 rule)

Promotional Events Package

OAR 845-005-0428

OAR 845-006-0450

OAR 845-006-0446

OAR 845-013-0040

JANUARY 2015

This rules package would allow suppliers (wholesale/manufactures) to advertise Promotional Events for all types of alcohol and centralize this concept into a new rule OAR 845-006-0446. These amendments allow suppliers to pay for advertising (provided the payment is not to the retailer but directly to the provider of the advertising) for these events and for tasting events allowed under 845-006-0450. Further, the package removes the tasting prohibition in stores that are under 20,000 sq. ft. and that sell petroleum products.

SUGGESTED MOTION:

I move to initiate rulemaking to amend OAR 845-005-0428, 845-006-0450, 845-013-0040 and adopt OAR 845-006-0446 and to hold a rulemaking hearing at staff's discretion.

ALTERNATIVE MOTIONS:

I move to defer this rulemaking action until our next meeting.

I move to decline this rulemaking action.



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OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845
PROPOSED AMENDMENTS

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

845-005-0428

Retail On-Premises Distilled Spirits Sampling Involving Distillery Representative

(1) Full On-Premises Sales licensees may allow a distillery with products approved for sale in Oregon (distillery) and its representatives, employees, contractors, and agents to participate in distilled spirits *educational seminars and* sample tasting events. These events must be sponsored by the Full On-Premises Sales licensee and be held on the Full On-Premises Sales licensee's *permanently* **annually** (not temporarily) licensed premises.

(2) Sample Tasting Events. These are events sponsored by the Full On-Premises Sales licensee where a distillery and its representatives, employees, contractors, and agents visit the Full On-Premises Sales licensee's *permanently* **annually** licensed premises for the purpose of offering free sample tastings of the distillery's product to customers of the Full On-Premises Sales licensee. At any event allowed by *sections (2) through (7) of* this rule, the Full On-Premises Sales licensee is responsible for ensuring that the distillery and its representatives, employees, contractors, and agents:

(a) Provide or pay for the person to serve the distilled spirit tasting. The server must be the distillery's representative, employee, contractor, or agent. The server may not be an employee or agent of the Full On-Premises licensee *where the tastings occur*. **The server may provide education to patrons and staff.** All servers must have valid Oregon Service Permits;

(b) Do not compensate the Full On-Premises Sales licensee or its employees or agents in order to conduct the tasting event;

(c) Do not sell, serve, or coordinate the sale or service of alcohol for the Full On-Premises Sales licensee or its employees or agents;

(d) Do not advertise the tasting. The Full On-Premises Sales licensee may advertise the tasting event only inside its retail business;

(e) **(c)** Do not provide any other service normally provided by the Full On-Premises Sales licensee (for example: taking orders for alcohol or food, serving **anything** *drinks*



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other than sample tastings to customers, promoting alcohol beyond service of the sample tasting);

- (f) **(d)** Provide the distilled spirits product to be sampled, and remove any remaining product at the end of the tasting;
- (g) **(e)** Provide only distilled spirits product approved for sale in Oregon;
- (h) **(f)** Do not give anything prohibited by division 13 of chapter 845 of the Commission's administrative rules to a retailer or its customers;
- (i) **(g)** Comply with ORS 471.398, and division 13 of chapter 845 of the Commission's administrative rules.

~~(3) Tastings allowed under sections (2) through (7) of this rule are permitted only in premises or portions of premises where minors are not allowed, either due to an existing OLCC minor posting sign which prohibits minors, or because the event is not open to minor patronage.~~

(4) **(3)** Sample tasting sizes, number of samples per customer. At sample tasting events allowed under ~~sections (2) through (7) of~~ this rule, a tasting shall be no more than one-quarter **half** fluid ounce of distilled spirits in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A distillery and its representatives, employees, contractors, and agents may not provide more than ~~one-half ounce~~ **two and one-half fluid ounces** total of distilled spirits per customer per day. For purposes of this rule, a day is from 7:00 a.m. until 2:30 a.m. on the succeeding calendar day.

(5) **(4)** Number of sample tasting events allowed. Each Full On-Premises Sales licensee shall sponsor no more than eight sample tasting events ~~(as described in sections (2) through (7) of this rule)~~ per calendar year on its premises.

(6) **(5)** Violations associated with sample tastings. In the case of a liquor law violation associated with a sample tasting allowed under ~~sections (2) through (7) of~~ this rule, the Full On-Premises Sales licensee will be held responsible. When the violation also involves a server (for example, service of a sample to a minor or a visibly intoxicated person), both the server and the Full On-Premises Sales licensee will be held responsible.

(7) **(6)** Record keeping. The Full On-Premises Sales licensee must keep a record of each tasting event it sponsors, including the date and location of each event, the products served, and the names of the servers. Records of tasting events must be retained for one year from the date of the tasting.

~~(8) Promotional Dinner Events. These are events sponsored by a Full On-Premises Sales licensee on its permanently licensed premises where it accepts assistance from~~



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~~the distillery and its representatives, employees, contractors, and agents, where meals are served, and multiple servings/samples ("flights") of distilled spirits accompany the meals. These are not considered sample tasting events as described in sections (2) through (7) of this rule. At all promotional dinner events the Full On-Premises Sales licensee must meet the Commission's food service standards as described in OAR 845-006-0459 through 845-006-0469. All distilled spirits consumed at promotional dinner events as described in this section must be purchased by the Full On-Premises Sales licensee from a retail sales agent of the Commission or from another Full On-Premises Sales licensee who has purchased the distilled spirits from a retail sales agent of the Commission. All advertising of the promotional dinner event must be purchased by the Full On-Premises Sales licensee.~~

~~(a) Each Full On-Premises Sales licensee may sponsor no more than eight promotional dinner events per calendar year on its premises.~~

~~(b) At events allowed under this section, the Full On-Premises Sales licensee is responsible for ensuring that the distillery and its representatives, employees, contractors, and agents:~~

~~(A) Provide only education to patrons and staff (the distillery and its representatives, employees, contractors, and agents may not pour, serve or sell alcoholic beverages);~~

~~(B) Participate in these promotional events only for the products they represent;~~

~~(C) Do not compensate any employee or agent of the retail licensee to participate in any promotional event as described in this section;~~

~~(D) Do not pay for advertising the event;~~

~~(E) Do not donate, give, pay for, underwrite, or otherwise compensate the Full On-Premises Sales licensee for the distilled spirits consumed at the promotional dinner event.~~

~~(c) The Full On-Premises Sales licensee must keep a record of each promotional dinner event it holds, including the date and location of each event, the proof of purchase of each product(s) served, the distillery or distilleries represented, and the name of each distillery representative, employee, contractor, or agent who participated in an educational capacity at the event. These records must be retained by the Full On-Premises Sales licensee for one year from the date of the promotional dinner event.~~

(7) Advertising. The retailer may advertise these events. The distillery may advertise these events as allowed in OAR 845-013-0040.

(9) **(8)** Violation of ~~sections (2) through (8)~~ of this rule are Category III violations.

(10) A distillery and its representatives, employees, contractors, and agents may offer samples not exceeding one-quarter ounce of alcohol per sample by measured pour to those attending an industry trade show.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.398



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Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 3-2001(Temp), f. & cert. ef. 8-10-01 thru 2-6-02; OLCC 3-2002, f. & cert. ef. 2-15-02; OLCC 7-2005, f. 10-19-05, cert. ef. 11-1-05; OLCC 5-2011, f. 8-15-11, cert. ef. 9-1-11

845-006-0446

Promotional Events at a Retailer Licensed Premises Involving Suppliers

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

- (a) "Retailer Licensed Premises" means a premises licensed with a full on-premises sales issued under ORS 471.175, limited on-premises sales issued under ORS 471.178, or brewery-public house licensed issued under ORS 471.200.**
- (b) "Supplier" means a Winery, Grower Sales Privilege, Brewery, Brewery-Public House, Warehouse, and Distillery licensee. It also means an Oregon Certificate of Approval (CERA) holder and an Oregon Certificate of Approval Distillery (CERD) but only for the product for which it holds the certificate. Further, a supplier does not mean an Oregon Wholesale Malt Beverage and Wine licensee; however, a Wholesale Malt Beverage and Wine licensee may represent a CERA holder.**
- (c) "Promotional Event" means an event sponsored by a retailer at a retailer licensed premises where the retailer accepts assistance as per section (3) of this rule from one or more suppliers. Examples include winemaker dinners, food and alcohol pairings, and product releases.**

(2) Retail Licensee Responsibilities. The retail licensee is responsible for:

- (a) All sale and service of alcohol at the event.**
- (b) Ensuring that a supplier who serves alcoholic beverages at the event has a valid Oregon service permit.**
- (c) Ensuring that the supplier does not compensate the retailer or any employee or agent of the retailer to participate in any event as described in this section.**
- (d) Ensuring that the supplier does not donate alcohol or sell alcohol at a discount to the retail licensee and the retail licensee does not accept donated alcohol or discounted alcohol from a supplier (the retail licensee must obtain the alcohol from a retail sales agent of the Commission or a supplier authorized to sell alcohol directly to retail licensees of the Commission).**



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- (e) **Meeting all applicable food service requirements.**
- (3) **Supplier Assistance. OAR 845-013-0001 to 845-013-0110 apply to these events; however, at these events a supplier may provide to a retailer and a retailer may accept from a supplier:**
 - (a) **Education to patrons and staff.**
 - (b) **Staff or agents of the supplier to serve alcoholic beverages for the products it represents provided the server has a valid Oregon service permit.**
 - (4) **Record Keeping. The retail licensee must keep a record of each event it sponsors, including the date and location of each event, the products served, and the names of suppliers. Records of events must be retained for at least one year from the date of the event.**
 - (5) **Advertising. The retailer may advertise these events. The supplier may advertise these events as allowed in OAR 845-013-0040.**
 - (6) **Number of Promotional Events. A supplier may be in each retail premises no more than 12 days per calendar year for the purpose of a promotional event.**
 - (7) **This rule does not apply to items or services a supplier provides under OAR 845-013-0090 to a nonprofit or governmental temporary sales licensee as described in OAR 845-013-0090(4)(a).**
 - (8) **Violation of sections (2) through (4) of this rule are Category III violations.**

Stat. Auth.: ORS 471, including 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.398 & ORS 471.400

845-006-0450

Retail On-Premises ~~Malt Beverage or Wine Sampling: Operating Requirements and Limits~~ Malt Beverage, Wine, or Cider Tastings Involving Suppliers

The Commission allows certain other Oregon licensees to conduct or participate in malt beverage, cider, or wine sample tasting on Full On-Premises Sales, Limited On-Premises Sales, and Off-Premises Sales licensed premises as specified in OAR 845-005-0427, subject to the requirements and limits identified in this rule.

- (1) **Sample Sizes.** The size of each sample must not exceed one and a half ounces for wine or cider and three ounces for malt beverages.



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(2) Identified Tasting Area.

(a) Any Off-Premises Sales retailer who conducts tastings or who allows manufacturers to conduct tastings on the retail premises must identify a specific tasting area or areas.

(b) The area/s must be of a size and design such that the person/s conducting the tasting can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol.

(c) Customers must remain in the tasting area or areas until they have finished consuming the sample.

(d) The retailer must keep on file at the premises a floor plan identifying the tasting area(s).

(e) If a retailer does not have an identified tasting area or areas, the Commission may require prior approval of an area or areas before the retailer conducts any more tastings or allows any more manufacturer-conducted tastings on the premises.

(3) Number of In-Store Tastings.

(a) A manufacturer may be in each retail premises no more than ~~eight times~~ **12 days** per calendar year for the purpose of tastings, ~~including both manufacturer-conducted tastings and retail-conducted tastings where the manufacturer assists.~~

(b) There is no limit on the number of tastings a retailer may conduct, but the retailer must not allow a manufacturer on the retailer's premises more than ~~eight times~~ **12 days** per calendar year for the purpose of tastings.

~~(4) Manufacturer Conducted Tastings. A manufacturer may hold tastings on consecutive days in one premises, but the tastings must not exceed two consecutive days. Tastings must be conducted at least four weeks apart. If a manufacturer holds tastings on two consecutive days, they must not hold another tasting on that retail premises for at least four weeks.~~

~~(5)~~ **(4)** Server Requirements. Alcohol servers must have **a valid Oregon** service permits.

~~(6)~~ **(5)** Record Keeping. The manufacturer or wholesaler must keep a record of each tasting they conduct, including the date and location of each event, the products served and the names of the servers.

~~(7)~~ **(6)** Manufacturer-Conducted Sample Tastings: Oregon law allows Oregon Winery, Grower Sales Privilege, Brewery, Brewery-Public House and Warehouse licensees and



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Oregon Certificate of Approval holders, for the product for which they hold the certificate, to conduct tastings if they:

- (a) **These license holders must** provide the product to be tasted, and remove any remaining product at the end of the tasting;
- (b) **These license holders must** provide or pay for a person to serve the wine, cider, or malt beverages. The server must be the manufacturer's employee or agent. The manufacturer may not compensate any employee or agent of the retail licensee to participate in the tasting; and
- (c) **The retailer may advertise these events. These license holders may advertise these events as allowed in OAR 845-013-0040;**
- (d) ~~Do not advertise the tasting. The retailer may advertise the tasting only inside the licensed premises.~~ **An Oregon Wholesale Malt Beverage and Wine licensee may conduct tastings under this section only if representing a Certificate of Approval holder.**

~~(8)~~ **(7)** Retailer-Conducted Tastings. Retailers with Full On-Premises Sales, Limited On-Premises Sales and Off-Premises Sales licenses may conduct tastings on their licensed premises ~~and may~~ **only as follows:**

(a) ~~Accept assistance from manufacturers, wholesalers and warehouse licensees, and from certificate of approval holders if:~~ **The retail licensee must provide the product to be tasted.**

(b) The retail licensee must provide the person to serve the wine, cider, or malt beverage. The server must be the retail licensee's employee or agent and may not be an employee or agent of an Oregon Winery, Grower Sales Privilege, Brewery, Brewery-Public House, Warehouse, Wholesale Malt Beverage and Wine licensee or an Oregon Certificate of Approval holder.

(c) The retail licensee may not accept any financial assistance from an Oregon Winery, Grower Sales Privilege, Brewery, Brewery-Public House, Warehouse, Wholesale Malt Beverage and Wine licensee or an Oregon Certificate of Approval holder.

(d) The retailer may advertise the tasting.

(e) The retailer may hold an unlimited number of retailer-conducted tastings.



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~~(A) The only assistance provided is an employee to assist. Assist includes pouring if the person meets the requirements in subsection (5);~~

~~(B) The retailer pays for the wine, cider, or malt beverages; and~~

~~(C) The retailer is responsible for any advertising~~

~~(b) Sponsor an unlimited number of tastings if there is no manufacturer, wholesaler, warehouse or certificate holder involved. The retailer may advertise these events.~~

~~(9) Prohibitions. Off-Premises Sales licensees at locations where petroleum products are sold shall not conduct or allow sample tasting on the licensed premises or otherwise at the licensed location, unless the licensee operates a fully enclosed retail area encompassing at least 20,000 square feet and tastings take place within that retail area.~~

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.398 & 471.402

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 15-2002, f. 12-19-02, cert. ef. 1-1-03; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thur 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-013-0040

Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer.

(1) Except as authorized **in this rule** ~~under section (2) of this rule~~, the only advertising a supplier ~~(manufacturer or wholesaler), or its agents~~, may provide under **ORS 471.398(4)** ~~this statute~~ is generic, off-premises references to the **supplier's** ~~manufacturer or wholesaler's~~ alcoholic beverage products that mention no specific retailer. Some examples include radio and television commercials and billboards.

(2) A supplier, ~~or its agents~~, may make available to its customers, either on the supplier's website or on lists available at the supplier's premises, the names and addresses of the retail licensees that sell products made or distributed by the supplier. Any such list must include all retailers who carry the products without discrimination, for example, an alphabetical or geographical list. The lists may not include prices or any other information that would appear to promote any particular retailer over other retailers.

(3) A supplier may provide or pay for advertising pursuant to OAR 845-013-0080.



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(4) A supplier may provide or pay for advertising pursuant to OAR 845-005-0428, 845-006-0446, and 845-006-0450. Some examples include radio, television, billboards, and its own website. Only the following advertising is allowed:

(a) The advertising may list no more than the retailer's name and address, the date of the event, and the name of the supplier's product.

(b) No monetary payments may be made by a supplier to a retail licensee except for payments to purchase advertising allowed under ORS 471.401(1)(d).

~~(3)~~ **(5)** A violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.398(4) & 471.730(7)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92;

Renumbered from 845-010-0124; OLCC 8-2010, f. 6-22-10, cert. ef. 7-1-10