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DIVISION 1

PROCEDURAL RULES

845-001-0005

Notice of Rulemaking

Prior to adoption, amendment or repeal of any rule, the Commission shall give notice of the intended action:

(1) In the Secretary of State’s bulletin referred to in ORS 183.360 at least 21 days prior to the effective date. If a hearing is scheduled after the original notice, the subsequent notice must appear in the bulletin at least 14 days before the date of the hearing.

(2) By mailing a copy of the notice to persons on the mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date. If a hearing is scheduled after the original notice, the subsequent notice must be mailed at least 21 days before the date of the hearing.

(3) By mailing or furnishing a copy of the notice to the Associated Press and all daily newspapers of general circulation published in the state.

(4) By mailing or furnishing a copy of the notice to associations or organizations having an interest in the subject matter.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.335

Hist.: LCC 19-1980, f. 6-4-80, ef. 6-5-80; OLCC 6-1994, f. & cert. ef. 11-22-94

845-001-0007

Attorney General’s Model Rules of Procedure

The Commission adopts, by reference, the Attorney General’s Model Rules of Procedure, effective September 9, 1995 and January 1, 1996, except Division 003, the rules pertaining to contested cases. The Commission’s rules for contested cases are in Division 3 of this Chapter.

[ED. NOTE: The full text of the Attorney General’s Model Rules of Procedure is available from the office of the Attorney General or Liquor Control Commission.]

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 183.341(1)
 Hist.: LCC 10-1986, f. 6-4-86, ef. 7-1-86; OLCC 4-1989, f. 4-28-89, cert. ef. 7-1-89; OLCC 9-1992, f. 10-7-92, cert. ef. 12-1-92; OLCC 1-1994, f. & cert. ef. 5-2-94; OLCC 9-1995, f. 12-4-95, cert. ef. 1-1-96

DIVISION 3

CONTESTED CASE PROCEDURES

845-003-0200

Statement of Purpose

(1) The purpose of these rules is to carry out the statutory policies contained in ORS 183.413 to 183.470, to give all persons involved in a contested case clear guidelines to follow and an understanding of what is expected of participants, and to provide for thorough and timely hearings.

(2) In an effort to provide timely hearings, these rules establish time limits which will be strictly followed if good cause is not shown.

(3) These rules apply to all contested case proceedings pending with or received by the Hearings Division on or after the effective date of OAR 845-003-0200 to 845-003-0670. The presiding officer may adjust any conflicts or uncertainties in the time requirements resulting from such application.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 183.413 – ORS 183.470
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0210

Model Rules of Procedure

The Attorney General's Model Rules of Procedure, effective September 9, 1995, and subsequent amendments, are hereby adopted by reference as permanent rules for the Hearings Division of the Liquor Control Commission except to the extent modified in this division or any other division of chapter 845 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR chapter 137, division 3.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 183.341(1)
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0220

Definitions

The following definitions apply to these rules, unless the context requires otherwise:

(1) "Administrative Law Judge" means an individual designated by the Commissioners to preside over aspects of a contested case hearing including motions, oral or written hearings, preparation of the proposed order and assistance in preparation of the final order. The administrative law judge may or may not be an employee of the agency.

(2) "Charging Document" means any document issued by the Commission stating that any person or entity has violated the laws over which the Commission has jurisdiction; any document proposing to act upon an application for a permit, license, or certification, or upon an existing permit, license, or certification; or any document alleging a violation of a term or condition of a retail sales agent agreement.

(3) "Commission" means the Oregon Liquor Control Commission and any employee thereof, but for purposes of these rules does not refer to the presiding officer or the Commissioners.

(4) "Commissioners" means a quorum of duly appointed Commissioners at a meeting called for the transaction of any business, the performance of any duty, or the exercise of any power of the Oregon Liquor Control Commission.

(5) "Counsel" means an attorney who is a member in good

standing of the Oregon State Bar.

(6) "Counsel for the Commission" means the Attorney General or his or her designee.

(7) "Discovery" means the prehearing process that allows a participant to gain access to relevant information and evidence in the possession, knowledge, or control of another participant or the Commission.

(8) "Employee Representative" means the Commission employee assigned to present the case for the Commission at the contested case hearing and to handle all related matters, but does not include counsel for the Commission.

(9) "Filed" or "filing" with the Hearings Division means the date received by the Hearings Division, or the date postmarked on the correctly addressed document, whichever is earlier.

(10) "Good cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or circumstance over which the participant had no control. The failure to perform a required act due to the press of business does not constitute good cause. Good cause does not include a lack of knowledge of the law, including these rules.

(11) "Hearings Division" means the section of the Liquor Control Commission that handles all aspects of administrative hearings. The street address for the Hearings Division is: Oregon Liquor Control Commission, Hearings Division, 9079 SE McLoughlin Blvd., Portland, Oregon 97222. The mailing address is: PO Box 22297, Milwaukie, Oregon 97206.

(12) "Issuance" means the date of sending out a document from the Hearings Division. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the Hearings Division.

(13) "Mail" or "mailing" means placing in a receptacle of the United States Postal Service.

(14) "Participant" means any party involved in a particular contested case proceeding or the Commission.

(15) "Party" means:

(a) Any person, entity, government agency or body upon whom a charging document has been served;

(b) Any person, entity, government agency or body that has been granted party or limited party status.

(16) "Presiding officer" is the Director of Hearings until a hearing or prehearing conference is convened; otherwise, the presiding officer is the administrative law judge who conducts the hearing or conference.

(17) "Prima facie case" is a case which consists of sufficient evidence on each legal element to support the order until contradicted and overcome by other evidence.

(18) "Service" means, for purposes of these rules, the method of forwarding documents and includes personal service, registered or certified mail, hand delivery, fax, or regular U.S. Mail.

(19) "Showing of necessity" means:

(a) A conflict with the hearing date due to a previously scheduled professional commitment, medical procedure, or pre-paid vacation; or

(b) A circumstance beyond the control of the participant which, in the discretion of the presiding officer, constitutes a compelling justification for postponement.

(20) "Stay request" means a request by a party to the Administrator of the Commission to delay enforcement of an adverse final order pending reconsideration, rehearing or judicial review of that order.

(21) "Substantial prejudice" means harm to a participant's rights which would affect the outcome of a case.

(22) "Summary of the Case" means a prehearing discovery document ordered by the presiding officer pursuant to OAR 845-003-0460.

(23) "Summary judgment" means an accelerated decision on the merits of a case based exclusively on the law as applied to undisputed facts or upon the existence of an earlier adjudication.

(24) "Telephone" means any two-way electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) &

ORS 472.060(2)(d)
 Stats. Implemented: ORS 183.310(6) & ORS 183.341(2)
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0230

Service of Documents

(1) The charging document shall be served on the party or the party's representative by personal service or by registered or certified mail. Service of a charging document is effective upon receipt by the party, when personally served, and upon mailing when correctly addressed and registered or certified by the postal service.

(2) All other documents may be served on the party or the party's representative at the last known address in the Hearings Division file. Service of a document other than the charging document is complete upon issuance by the Hearings Division, upon personal service, or upon mailing.

(3) Any participant to a contested case proceeding filing a document with the Hearings Division shall provide a copy of such document to all other participants or their representative.

(4) Each party shall notify the Hearings Division of the party's change of address. Unless the Hearings Division has been so notified, they shall presume that the party's address on file with the Hearings Division is correct.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(1), ORS 183.415(2) & ORS 183.415(6)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0240

Calculation of Time and Filing Dates

(1) In computing a period of time required by these rules, the Commission will not include the day from which the designated period begins to run. If, for example, the charging document is served on Monday, the time period to file an answer and request a hearing will not start to run until Tuesday. The Commission includes the last day of the period, unless it is a Saturday, Sunday, or a legal holiday. If that is the case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(2) A document is considered filed on the date received by the Hearings Division, or on the date postmarked on the correctly addressed document, whichever is earlier.

(3) All time periods described in these rules are measured in calendar days.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2), ORS 187.010 & ORS 187.020

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0250

Timeliness

(1) Any document that is filed with the Hearings Division beyond the date due may be disregarded by the presiding officer.

(2) Where a participant requires additional time to submit any document, a request for an extension must be made to the presiding officer prior to the date due. The presiding officer may grant an extension of time in situations where the need for more time is due to circumstances beyond the control of the participant making the request or where refusal to extend the time would create an undue hardship. The presiding officer shall notify the participant that requested the extension whether it will be allowed.

(3) Where an extension of time is allowed, the presiding officer shall advise the other participants of the extension.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0260

Charging Document/Notice of Opportunity for Hearing

(1) A charging document shall contain:

(a) A short and concise statement of the matters asserted or charged;

(b) A reference to the particular sections of the statutes or administrative rules involved;

(c) A statement of the action, remedies or penalties sought;

(d) A statement of the party's right to a hearing;

(e) The time limitation for filing a request for hearing and response to the charging document;

(f) A statement that a party may be represented by an attorney at the hearing.

(2) A charging document may contain:

(a) A statement that when a party fails to request a hearing within the established time limitation, or having made a timely request, subsequently withdraws it, the Commission's investigatory file shall constitute the evidentiary record of the proceeding;

(b) A statement that when, following an answer and a request for hearing, the party notifies the Commission or Hearings Division that it will not appear at the hearing, or, without such notification, the party fails to appear at the hearing, the Commission's Summary of the Case shall automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(2), ORS 183.415(3) & ORS 183.415(6)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0270

Request for a Contested Case Hearing and Response to Charging Document

(1) Any party who wants to contest a charging document shall file a response ("answer") to the charging document and request a contested case hearing. The answer and request for hearing must be in writing and filed with the Hearings Division within the time limit established in the charging document. Unless the intended action of the Commission is a suspension or nonrenewal of a license on an emergency basis under ORS 183.430(2), the time limit for response to violation matters is 30 days after receipt of the charging document, for licensing or certification application denials, 60 days, and for service permit refusals, 15 days. In agency cases, if the retail sales agent agreement between the Commission and the agent provides for a hearing, the agent must file the request within the time period provided in the agreement.

(2) Failure to respond to the charging document and to request a hearing within the time allowed shall constitute a default. If relief from default is not granted pursuant to OAR 845-003-0560, and the Commission's investigatory file provides a prima facie case supporting the charges, a final order of default may be entered.

(3) The answer must specify what statements in the charging document the party denies and what defense or defenses the party will rely upon. The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations. A general denial is not sufficient to constitute an answer. Where the answer does not include the information required by this rule, the presiding officer may convene a prehearing conference to obtain the required information.

(4) Evidence shall not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or answer (or in a prehearing conference convened to supplement the answer), except for good cause shown to the presiding officer, or pursuant to amendment under OAR 845-003-0400.

(5) Any party intending to be represented by counsel at the contested case hearing must so notify the Hearings Division in the answer and request for hearing, or as soon thereafter as possible.

(6) When a petition for status of a party or limited party is granted, the presiding officer shall set a time limit for the party or limited party to respond to the charging document or answer, whichever is appropriate to the interest of that party or limited

party.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.090(3), ORS 183.415(2), ORS 183.415(4), ORS 183.415(6), ORS 183.435, ORS 183.450(3) & ORS 471.380(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0280

Notice of Hearing

(1) When a party makes a timely written request for a contested case hearing, that hearing shall be scheduled within 60 days and the party shall receive a notice of hearing. The Hearings Division shall issue a notice of hearing to the participants.

(2) The notice of hearing shall contain:

(a) A statement of the time and place of the hearing, including the statement that the hearing will reconvene on successive business days thereafter until concluded;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters alleged;

(e) A statement that a party may be represented at hearing by an attorney;

(f) The name of the administrative law judge designated to preside at the hearing, and a statement indicating whether the administrative law judge is an employee of the Commission;

(g) A statement indicating whether the Commission will be represented at hearing by counsel for the Commission or by an employee representative;

(h) A statement that a party may have subpoenas issued by the Hearings Division for the appearance of witnesses;

(i) A statement that if a non-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate whether the party needs an interpreter and to identify the primary language or hearing impaired status of the party.

(3) The notice of hearing may contain:

(a) A statement that when a party fails to request a hearing within the time limit allowed, or having made a timely request, subsequently withdraws it, the Commission's investigatory file shall constitute the evidentiary record of the proceeding;

(b) A statement that when, following an answer and request for hearing, the party notifies the Commission that the party will not appear at the hearing, or, without such notification, the party fails to appear at the hearing, the Commission's Summary of the Case shall become part of the contested case record upon default, for the purpose of proving a prima facie case.

Stat. Auth.: ORS 183, including 183.341(2), 183.415(4), 183.450(3), 471 & 472, including 471.030, 471.730(5) & (6), 472.030 & 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.413(2), ORS 183.415(2), ORS 183.415(3), ORS 183.415(6), ORS 183.418, ORS 183.421 & ORS 183.440(1)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0290

Information for Contested Case Hearings

The Hearings Division shall provide a statement of information for all parties involved in a contested case hearing that contains:

(1) Instructions that all filings, correspondence and documents shall be provided to the presiding officer, through the Hearings Division at this address: Oregon Liquor Control Commission, Hearings Division, 9079 SE McLoughlin Blvd., Portland, Oregon 97222. The mailing address is: PO Box 22297, Milwaukie, Oregon 97206.

(2) The information required under ORS 183.413(2) concerning the rights of the parties to the hearing.

(3) A statement that an order may be issued upon default if a party who has requested a hearing fails to appear at the hearing and if the Commission has presented a prima facie case on the

record.

(4) A statement that the party's address as it appears in the Hearing Division's file, and to which the notice has been sent, will be the address used throughout the proceeding. A party whose address changes must notify the Hearings Division; otherwise, the Hearings Division shall presume the address on file is correct.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.413(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0300

Immediate Suspension or Refusal to Renew a License

(1) When the Commission suspends or refuses to renew a license on an emergency basis under ORS 183.430(2), the Commission must immediately give notice to the party. The Commission must serve the notice personally or by certified mail.

(2) The notice must include:

(a) A statement of the party's right to hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) A statement that an attorney may represent the party at the hearing;

(f) A statement that the party must file a written request for hearing within 90 days of the date of the notice; and

(g) A statement giving the reason or reasons for the immediate action as required in ORS 183.430(2).

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.430(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0310

Request to Participate as a Party or Limited Party

(1) When the Commission gives notice that it intends to hold a contested case hearing, persons or entities having an interest in the outcome of the Commission's proceeding or who represent a public interest in the outcome may request to participate as parties or limited parties.

(2) A person or entity requesting to participate as a party or limited party shall file a petition with the Hearings Division at least 21 days before the date set for the hearing and shall include a sufficient number of copies of the petition for service on all parties. Petitions untimely filed shall not be considered unless the Hearings Division determines that good cause has been shown for failure to file timely.

(3) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the Commission's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest; and

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interests identified in subsections (3)(d) or (e) of this rule.

(4) The Hearings Division shall serve a copy of the petition

on each participant personally or by mail. Each participant shall have ten days from the date of personal service or mailing to file a response to the petition.

(5) If the presiding officer determines that good cause has been shown for failure to file a timely petition, the presiding officer may:

(a) Shorten the time within which answers to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(6) If a person is granted participation as a party or a limited party, the presiding officer may postpone or continue the hearing to a later date if necessary to avoid an undue burden to one or more of the participants in the case.

(7) In ruling on petitions to participate as a party or a limited party, the presiding officer shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the Commission's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest; and

(d) The extent to which the petitioner's interest will be represented by existing parties.

(8) A petition to participate as a party may be treated as a petition to participate as a limited party.

(9) If the presiding officer grants a petition, the presiding officer shall specify areas of participation and procedural limitations, as it deems appropriate.

(10) The presiding officer's ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all participants. If the petition is allowed, the Hearings Division shall also serve petitioner with the notice of rights required by ORS 183.413(2).

(11) When a petition to participate as a party or limited party is granted, the presiding officer shall set a time limit for the party or limited party to respond to the charging document or answer, whichever is appropriate to the interest of that party or limited party.

(12) Where a corporate licensee is a party and is not represented by an attorney at the hearing, any person who owns or controls a substantial percentage of stock of the corporation may be made a party without filing a petition.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(4) & ORS 183.450(3)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0320

Representation of a Party in a Contested Case Proceeding

(1) Any party may be represented by counsel. All parties which are government agencies, corporations and unincorporated associations must be represented by counsel in accordance with ORS 9.320 and either 9.160 or 9.241. Counsel may perform all functions consistent with representation of a client.

(2) If a party is represented, counsel shall provide the Hearings Division and other participant(s) with counsel's name, address, telephone number and fax number.

(3) Absent a showing of substantial prejudice, once the contested case hearing has begun, no party will be allowed a recess to obtain the services of counsel.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730 (6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.413(2), ORS 183.415(3), ORS 9.160, ORS 9.241 & ORS 9.320

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0330

Employee Representation at Contested Case Hearings

(1) The Commission's goal in contested case hearings is to have a full and accurate record upon which the Commissioners can make the best decision. To help ensure a full record, the Commission allows employees to represent the Commission in certain contested case hearings. The employee representative's role is to represent the Commission in a way that supports objective fact finding and encourages an open, fair, and efficient process.

(2) A Commission employee may represent the Commission in contested case hearings involving violations, license or service permit applications, alcohol server education provider and instructor certification applications, and liquor store agent contract violations or disputes.

(3) The representative's responsibilities include, but are not limited to:

(a) Presenting evidence;

(b) Asking questions of all witnesses;

(c) Presenting information about the facts, and advocating for staff's position surrounding the facts;

(d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;

(e) Presenting information comparing Commission actions in similar situations;

(f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and

(g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.

(4) The employee representative may not make legal arguments. "Legal arguments" include arguments on:

(a) The jurisdiction of the Liquor Control Commission to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Liquor Control Commission; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(5) When an employee represents the Commission in a contested case hearing, the presiding officer will advise the employee representative of the way in which objections may be made. This advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objections. If the objections involve legal argument, the presiding officer will provide reasonable opportunity for the employee representative to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.450(7) & ORS 183.450(8)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0340

Interpreters and Assistive Communication Devices

(1) When a person who cannot speak or understand the English language, or who has a physical hearing impairment or physical speaking impairment, is a participant or witness in a contested case hearing, such person is entitled to a qualified interpreter or appropriate assistive communication device. All interpreters shall be appointed by the Hearings Division. In order to obtain the services of an interpreter or to obtain an assistive communication device, a participant must notify the Hearings Division of the need at least two weeks prior to the hearing.

(2) Upon receipt of such a request, the Hearings Division will arrange for the services of an interpreter or for the use of an assistive communication device. The Commission shall compensate the interpreter and provide for the use of an assistive communication device at its own expense.

(3) When a physically impaired or non-English speaking person is a party to a proceeding, the interpreter shall translate all statements made by other participants, and all statements made by the non-English speaking party. The presiding officer shall ensure

that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party.

(4) The presiding officer shall explain to the non-English speaking party that a written decision or order will be issued in English, and that the party may contact the interpreter for an oral translation of the decision and that the translation itself is at no cost to the party. The interpreter shall provide to the presiding officer and the party the interpreter's business telephone number and address. The telephone number and address shall be attached to the order mailed to the party. A copy of the order shall also be mailed to the interpreter for use in translation.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.418 & ORS 183.421

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0350

Mode of Hearing

(1) The Hearings Division may conduct hearings in person or by telephone.

(2) In determining whether a hearing will be conducted in person or by telephone, the presiding officer may consider any special circumstances which would make the conduct of a hearing by telephone, or in person, impractical.

(3) Any participant may make a request to the presiding officer that a hearing set to be held in person be changed to a telephone hearing, or that a hearing set to be held by telephone be changed to a hearing in person. The other participants shall be given a reasonable opportunity to respond to the request. The presiding officer shall issue a written ruling granting or denying the request and shall set forth the reasons for the decision.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0360

Location of Contested Case Hearings

(1) When a hearing is conducted in person, it may be held in the Commission's main office, regional office, or other public building nearest the location where the party or parties, or licensed premises, are located.

(2) In determining the location of an in-person hearing, the presiding officer may consider:

(a) The number and location of participants and their counsel or employee representative;

(b) The number and location of witnesses;

(c) Whether the services of an interpreter or the use of an assistive communication device will be utilized;

(d) Whether a participant, counsel, or essential witness is unable to travel due to disability or ill health, and participation by telephone is impractical or is unsatisfactory, given the issues in the case;

(e) Whether a view of the licensed premises or the location of the licensed premises would assist the fact finder, given the issues in the case;

(f) Whether there is high public interest in the case in the community where the parties or licensed premises is located;

(g) An agreement among the participants to hold a hearing at a particular location; or

(h) Whether special circumstances exist which would make the conduct of a hearing at a particular location impractical.

(3) Any participant may make a request to the presiding officer that a hearing set to be held in one location be held in a different location. The other participants shall be given a reasonable opportunity to respond to the request. The presiding officer shall issue a written ruling granting or denying the request and shall set forth the reasons therefore.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS

471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0370

Teleconference Hearings

(1) The presiding officer may, at his or her discretion, hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes the presiding officer from allowing some parties or witnesses to attend by telephone while others attend in person.

(2) The presiding officer may direct that a hearing be held by telephone upon request or on the presiding officer's own motion.

(3) Unless otherwise ordered by the presiding officer, ten days before the teleconference hearing each participant shall deliver to the Hearings Division and each other participant copies of documentary evidence that it will seek to introduce into the record and a list of all persons to be called as witnesses. Impeachment or rebuttal documents need not be provided.

(4) The presiding officer may refuse to admit evidence which has not been disclosed as required by section (3) of this rule, unless the participant that failed to provide the documentary evidence and the list of witnesses offers a satisfactory reason for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry. If the presiding officer admits evidence which was not disclosed as required, the presiding officer may grant a continuance to allow an opportunity for the other participant(s) to respond.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0380

Consolidation of Hearings

The presiding officer may consolidate two or more cases for one contested case hearing where the presiding officer determines that the cases involve common questions of law or fact. The presiding officer, in conducting the hearing, may establish such procedures as necessary to avoid additional costs or delay.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0390

Withdrawal of Charging Document

A request to withdraw the charging document may be made by the Commission at any time after service of the charging document and before the beginning of the hearing, and may be based upon insufficiency of evidence to proceed or other equitable basis.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0400

Amendments to Charging Document or Answer (Pleadings)

(1) The participants may amend their respective pleadings at any time 30 days or more prior to the date set for hearing; thereafter, the pleadings may be amended only with the permission of the presiding officer.

(2) Permission to amend a pleading may be granted up until the start of the testimony at the hearing, provided the other participants are afforded an opportunity to be heard on the subject of the amendment.

(3) Permission to amend a pleading shall not be granted after the hearing has been convened and testimony has begun, unless such amendment is to correct a technical or typographical error, or

is otherwise not prejudicial to the other participants.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0410

Motions

Unless otherwise indicated, all motions must be submitted in writing to the presiding officer through the Hearings Division. The participant receiving a motion shall respond to a written motion within seven days after service of the motion, unless the presiding officer orders otherwise. Motions include but are not limited to the following:

(1) Motion to Dismiss Allegations or Charging Document:

(a) A party may make a request for dismissal of all or part of the allegations contained in the charging document based upon:

- (A) Lack of jurisdiction over the subject matter;
- (B) Insufficiency of process or service of process; or
- (C) Failure to state a claim upon which relief can be granted.

(b) Where a request to dismiss is filed at hearing or within one week prior to hearing, the presiding officer may take the request under advisement and rule upon the request in the proposed order. A filing of a request for dismissal within a week of hearing shall not constitute a basis for postponement of the hearing.

(2) Motion To Change the Mode of Hearing.

(3) Motion To Change the Place of Hearing.

(4) Motion to Exclude Witnesses: A motion to exclude witnesses may be made orally by any participant at any time prior to or during the hearing. The presiding officer may, without a motion being made by a participant, exclude witnesses until the time of closing argument.

(5) Motion for Postponement or Continuance of Hearing:

(a) Any participant may request that the Hearings Division postpone a contested case hearing. The request must be made promptly after receipt of the notice of hearing or after knowledge of the circumstances causing the request for postponement;

(b) A request for postponement prior to hearing must be made in writing, unless an emergency exists. The participant seeking the postponement shall notify all other participants of the request, and shall include in the request for postponement a statement that all participants agree to the postponement or that all participants do not agree to the postponement;

(c) Any participant making a request for a postponement of the contested case hearing must state in detail the reason for the request. The presiding officer may grant the request upon a showing of necessity, as defined in OAR 845-003-0220(19). In making this determination, the presiding officer shall also consider:

- (A) Whether previous postponements have been granted;
- (B) The timeliness of the request;
- (C) Whether there is a reasonable alternative to postpone; for example, submitting a sworn statement of a witness;
- (D) The date the hearing was originally scheduled to begin;

and

(E) Whether all participants agree to the postponement.

(d) If all participants agree to a postponement, in order for the postponement to be effective, the presiding officer must approve of the agreement;

(e) The presiding officer shall issue a written ruling either granting or denying the request and shall set forth the reasons for the decision;

(f) Once a hearing has started, the presiding officer may continue the hearing to another time or place only when necessary to avoid substantial prejudice to a participant's ability to present it's case or when necessary to ensure a full and fair record.

(6) Motion for Summary Judgment:

(a) A request for summary judgment may be made by a participant, or by decision of the presiding officer, for an accelerated decision in favor of any participant as to all or part of the issues raised in the charging document and answer. Summary judgment may be based on the following conditions:

(A) Issue or claim preclusion due to prior adjudication; or
(B) No genuine issue as to any material fact exists, and the issue(s) in the proceeding may be resolved as a matter of law.

(b) A participant requesting summary judgment shall provide a copy of the request to all other participants. The other participants shall be granted a reasonable time within which to respond to the request;

(c) In instances where the presiding officer denies summary judgment, the participants shall be notified in writing;

(d) In instances where the presiding officer grants summary judgment, the participants shall be notified in writing, and the decision shall be set forth in a proposed order.

(7) Motion for Consolidation of Hearings: This motion must allege facts sufficient to show that two or more cases for hearing involve common questions of law or fact.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0420

Prehearing Conferences

(1) Prior to hearing, the presiding officer may conduct a prehearing conference to determine any matters that would facilitate the conduct and resolution of the case. The presiding officer may convene the conference on his or her own initiative or at the request of a participant.

(2) The purposes of a prehearing conference may include, but are not limited to, the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify, and clarify issues;

(c) To eliminate irrelevant issues;

(d) To obtain stipulations of fact;

(e) To provide to the presiding officer and other participants, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To consider limitation on the number of witnesses and consolidation of the examination of witnesses;

(h) To decide the order of proof and other procedural matters pertaining to conduct of the hearing;

(i) To encourage the participants to explore settlement or other resolution or partial resolution of the case.

(3) The prehearing conference may be conducted in person or by telephone.

(4) The presiding officer must make a record of any stipulations, rulings or agreements. The presiding officer may make an audio record of the conference, or may place the substance of stipulations, rulings or agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the participants unless good cause is shown for rescinding a stipulation or agreement.

(5) At the time set for hearing, the presiding officer may conduct a conference prior to the taking of testimony, or may recess the hearing for such conference, for the purpose of carrying out the purpose of this rule. The presiding officer shall state on the record the results of such conference.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0430

Informal Disposition of Contested Cases

(1) Informal Disposition by Settlement:

(a) Where a party is interested in reaching a settlement of the case prior to the contested case hearing, the party should contact

the individual listed in the notice of hearing who is scheduled to present the case for the agency. Settlement negotiations do not serve as a basis for a postponement and participants should continue to prepare for the hearing until a settlement is reached and the Hearings Division is so notified;

(b) Where a settlement is reached before the date of hearing, the Commission shall immediately notify the Hearings Division. The Commission shall submit settlement documents signed by the participants for ratification at the next regularly scheduled monthly meeting of Commissioners;

(c) If the participants have not signed settlement documents for presentation to the Commissioners at the next regularly scheduled monthly meeting of Commissioners, or if the Commissioners decline to ratify the agreement, the matter shall be returned to the Hearings Division docket and rescheduled for hearing;

(d) If the settlement agreement is ratified by the Commissioners, upon receipt of the fully signed settlement agreement, the presiding officer shall issue a final order incorporating the settlement agreement as set forth in section (2).

(2) Requirement for Final Order:

(a) Any informal disposition of a contested case by settlement agreement must be in writing and signed by the participants to the contested case, and incorporated by the presiding officer into a final order;

(b) Such final order is not subject to the form and content requirements of ORS 183.470;

(c) The Commission shall deliver or mail a copy of such final order to each participant or, if applicable, to the participant's attorney of record;

(d) Such final order is not subject to judicial review;

(e) A participant may petition the Commission to set aside such final order on the ground that the informal disposition was obtained by fraud or duress.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0440

Discovery

(1) In order to avoid unnecessary costs and delays, the Commissioners encourage informal exchanges of information between the participants. Any participant may request a discovery order pursuant to the requirements in this rule. Before requesting a discovery order, a participant must seek the discovery through an informal exchange of information.

(2) In his or her discretion, the presiding officer may order discovery by the participants. This rule does not require the presiding officer to authorize any discovery. If the presiding officer does authorize discovery, the presiding officer shall control the methods, timing and extent of discovery. When the presiding officer orders discovery, the presiding officer shall notify the participants of the possible sanction, pursuant to section (8) of this rule, for failure to provide the discovery ordered.

(3) Discovery may include but is not limited to one or more of the following:

(a) Depositions;

(b) Disclosure of names and addresses of witnesses expected to testify at the hearing;

(c) Production of documents;

(d) Requests for admissions.

(4)(a) A participant who seeks to take the testimony of a material witness by deposition shall file a written request with the presiding officer. The request shall set forth the name of the witness, a showing of relevance of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request that the witness's testimony be taken before a person authorized by law to administer oaths;

(b) Except as provided for subpoenas in section (7) of this rule, for all other forms of discovery, a request for a discovery order must be filed with the Hearings Division, be in writing, and

must include a description of the attempts to obtain the requested discovery informally. The presiding officer shall consider any objections by the participant from whom discovery is sought.

(5) Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the presiding officer may require the participant requesting discovery to explain how the request is likely to produce relevant information. If the request appears unduly burdensome, the presiding officer may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

(6) The presiding officer shall issue an order granting or denying a discovery request in whole or in part.

(7) Unless limited by the presiding officer, the participants may issue subpoenas in support of discovery. The presiding officer may issue subpoenas in support of discovery for any party not represented by counsel. The Commission may apply to the circuit court to compel obedience to a subpoena. Where a participant issues a subpoena in support of discovery, the participant shall notify the other participants of the possible sanction, pursuant to section (8) of this rule, for failure to provide the discovery subpoenaed.

(8) The presiding officer may refuse to admit evidence which has not been disclosed in response to a discovery order or subpoena, unless the participant that failed to provide discovery offers a satisfactory reason for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the presiding officer admits evidence which was not disclosed as ordered or subpoenaed, the presiding officer may grant a continuance to allow an opportunity for the other participant(s) to respond.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.425 & ORS 183.440

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0450

In Camera Reviews

(1) A party or the Commission may request that the presiding officer make a ruling on the disclosure of information believed to be privileged after the presiding officer has had an opportunity to inspect documents or take testimony in private.

(2) Unless there is a court order to the contrary, copies of the documents requested shall be provided to the presiding officer who will retain the information ruled not subject to disclosure in a secure, confidential fashion. The presiding officer shall issue an appropriate protective order in conjunction with such a ruling.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0460

Summary of the Case

(1) Prior to any contested case hearing, the presiding officer may issue a discovery order directing the participants to prepare a summary of the case containing any or all of the following:

(a) A list of all persons to be called as witnesses, including expert witnesses, at the hearing, except that impeachment or rebuttal witnesses need not be included on the witness list; in the case of an expert witness, the qualifications of the expert and the substance of the facts and opinions to which the expert is expected to testify;

(b) Identification and description of any document or other physical evidence to be offered into evidence at the hearing, together with a copy of any such document, except that evidence offered solely for impeachment or rebuttal need not be identified or furnished;

(c) Statement of the defense(s) to the matters charged;

(d) Statement of any agreed or stipulated facts;

(e) Statement of actions or penalties proposed by the Commission and the reasons for the proposal(s);

(f) Statement, where appropriate, of any applicable agency policies together with, in the discretion of the Commission, any supporting documents or information upon which the policies are based.

(2) Each participant shall file a summary of the case with the Hearings Division and provide a copy to the other participant(s) by the date established by the presiding officer.

(3) Following the filing and exchange of the summary of the case and before the start of the hearing, participants shall immediately provide to the other participants and the Hearings Division any newly discovered matter, such as a document, that is within the scope of the discovery order.

(4) Where the presiding officer orders a summary of the case, the presiding officer shall notify the participants of the possible sanction, pursuant to OAR 845-003-0440(8), for failure to comply.

(5) If a participant fails to comply with the presiding officer's discovery order issued pursuant to this rule, the presiding officer shall apply the provisions of OAR 845-003-0440(8).

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.425

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0470

Responsibilities of the Presiding Officer

The Commissioners designate as presiding officers the Director of Hearings, those employees who are employed as administrative law judges, and those persons who are appointed to preside at particular hearings. The Commissioners delegate to presiding officers the authority to:

(1) Rule on motions and requests filed prior to hearing.

(2) Issue subpoenas and order the taking of depositions in a manner consistent with rules relating to these powers.

(3) Hold appropriate conferences, if necessary, before or during the course of the hearing to discuss the conduct of the proceedings or the issues to be presented.

(4) Regulate the course of the hearing including scheduling, reconvening and adjourning.

(5) Maintain order during the course of the hearing, including the authority to eject persons whose conduct is disruptive.

(6) Make rulings on motions or evidence, with or without objection, during the hearing.

(7) Question witnesses at the hearing.

(8) Set reasonable time limitations for case presentation or argument.

(9) Limit or extend filing periods and time limits.

(10) Decide procedural matters.

(11) Allow discovery to the extent necessary and limit, supervise, and control discovery.

(12) Prepare a proposed order at the conclusion of the contested case hearing and send it to all participants; and at the request of the Commissioners, assist in responding to any exceptions and the preparation of the final order.

(13) Take any other action consistent with the duties of an administrative law judge.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.413, ORS 183.415, ORS 183.418, ORS 183.421, ORS 183.425, ORS 183.440, ORS 183.450, ORS 183.462, ORS 183.464 & ORS 183.470

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0480

Conduct of Hearing

The hearing shall be conducted by and under the control of the presiding officer. At the discretion of the presiding officer, the hearing, including a teleconference hearing, may be conducted in

the following manner:

(1) The presiding officer shall open the hearing with a brief introduction of the participants and issues, including all information required by ORS 183.413(2) and 183.415(7) if that information was not provided in writing prior to the hearing.

(2) Each participant shall be given an opportunity to present a summary of the evidence and issues to be presented at the hearing.

(3) The Commission shall present evidence in support of the charging document.

(4) Each party opposing the charging document shall present evidence in support of the party's respective position.

(5) The participants shall have the right to conduct cross-examination of adverse witnesses.

(6) The participants may present rebuttal evidence.

(7) The participants shall be given the opportunity to make a closing statement at the conclusion of the testimony.

(8) The presiding officer shall have the right to question any witness. The presiding officer may request any participant to provide additional evidence, and may recess the hearing where necessary to allow the participant(s) the opportunity to gather and present the requested evidence.

(9) Where the testimony of a witness who cannot be present at the hearing is necessary to the complete and fair adjudication of the case, the presiding officer may admit testimony of the witness by telephone.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.413(2), ORS 183.415(4), ORS 183.415(7), ORS 183.415 (8), ORS 183.415(10) & ORS 183.450

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0490

Evidence

(1) The presiding officer:

(a) Will admit evidence of a type that reasonably prudent persons commonly rely upon in the conduct of their serious affairs;

(b) Will exclude unreliable, irrelevant, immaterial or unduly repetitious evidence;

(c) Will give effect to the rules of privilege recognized by law; and

(d) May require the production of evidence.

(2) The presiding officer may rule on the admissibility of evidence at the hearing or may reserve ruling until the proposed order in the case is issued.

(3) The presiding officer must find facts based on the preponderance of the evidence in the record, unless a higher standard is required.

(4) The presiding officer shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing court to determine whether the evidence was properly excluded. The presiding officer shall have the discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The presiding officer may place reasonable limits on the offer of proof.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.450

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0500

Exhibits

(1) Exhibits shall be premarked by the participants. Commission exhibits shall be marked with "C" (for example, C-1, C-2, etc.), and the exhibits of the parties shall be marked with "P" (for example P-1, P-2, etc.). Each participant shall make copies of each exhibit sufficient for distribution to each participant at hearing. The exhibits received shall be preserved by the presiding officer as part of the record of the proceedings.

(2) All paper exhibits should be no larger than 8-1/2 by 11 inches in size. Larger exhibits are allowed; however, in order to be included in the record, the information contained in the exhibit shall be reduced to paper 8-1/2 by 11 inches in size.

(3) The presiding officer may allow variation from these requirements in cases where there is no reasonable alternative.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0510

Stipulation

(1) Participants in a contested case may agree, by stipulation, upon all or some of the facts involved in the case, subject to the approval of the presiding officer. A stipulation shall be binding upon those who agree to it and be regarded and used as evidence at the hearing. The presiding officer will be bound by the facts set forth in the stipulation, but not by any conclusion drawn from those facts.

(2) Any party interested in stipulating to all or any part of the facts involved in the case should contact the individual listed in the notice of hearing who will present the case for the Commission at the contested case hearing. The Commission may also contact any unrepresented party, or counsel for a represented party, requesting that a stipulation be entered on all or any part of the facts at issue.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0520

Witnesses

All testimony to be taken at the hearing, except matters officially noticed or entered by stipulation, shall be sworn or affirmed.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(8)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0530

Official Notice

(1) The presiding officer may find as fact any facts that may be judicially noticed and may take official notice of facts within the Commission's specialized knowledge.

(2) Participants shall be notified of facts officially noticed, and they will be afforded the opportunity to contest the fact so noticed. The notification may be given during the hearing, prior to the issuance of the proposed order, or in the proposed order in the matter.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(4)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0540

Ex Parte Communications

(1) An ex parte communication is an oral or written communication to the presiding officer or Commissioner(s) not made in the presence of all parties to the hearing concerning a fact in issue in the proceeding, but does not include communication from Commission staff or counsel about facts in the record. An ex parte communication includes the communication of any new facts from Commission staff.

(2) The presiding officer or the Commissioner(s) shall place on the record a statement of the substance of any written or oral ex

parte communication they received during the pendency of the proceeding.

(3) The Commissioner(s) or the presiding officer shall give notice to all parties of any ex parte communications. The notice shall include:

(a) A statement of the substance of any oral communication or a copy of any written communication; and

(b) A statement of whether the presiding officer or the Commissioner(s) will consider the ex parte communication in making a recommendation or in deciding the case.

(4) If the Commissioners or presiding officer give notice that they will consider the ex parte communication in making a recommendation or in deciding the case, the Hearings Division will:

(a) Set a date by which the other parties may rebut the substance of the ex parte communication in writing; or

(b) Schedule a hearing for the limited purposes of receiving arguments and evidence rebutting the ex parte communication.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(9) & ORS 183.462

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0550

Default

(1) Default can occur in four ways:

(a) Where a party fails to file a request for hearing and answer within the time specified in the charging document;

(b) Where a party withdraws a request for hearing;

(c) Where the Hearings Division has scheduled a hearing and the party notifies the Commission or the presiding officer that the party will not appear at the hearing; or

(d) Where a party fails to appear at the scheduled hearing.

(2) When a party notifies the Hearings Division or Commission that it will not appear at the hearing or, without such notification, fails to appear at the hearing, the presiding officer shall take evidence in addition to the Commission's Summary of the Case, if necessary to establish a prima facie case in support of the charging document, and shall then issue a proposed order. Unless notified by the party, the presiding officer shall wait for 30 minutes from the time set in the notice of hearing to commence the hearing.

(3) When a party is in default and relief from default has not been granted, the party will not be allowed to participate in any manner in any subsequent proceeding involving the same case. A defaulting party may not file exceptions to the proposed order.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(6)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0560

Relief from Default

(1) Relief from default may be granted where good cause is established within ten days of any of the following:

(a) A final order by default has been issued; or

(b) A party has failed to appear at hearing.

(2) The request for relief from default shall be in writing and shall be accompanied by a written statement, together with appropriate documentation, outlining the facts supporting the claim of good cause.

(3) A request for relief from default made after a final order by default has been issued shall be addressed to the Administrator of the Commission.

(4) A request for relief from default made after a party has failed to appear at a hearing shall be addressed to and ruled upon by the presiding officer.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0570

Record of Proceeding

(1) A verbatim, written and/or mechanical record shall be made which shall include:

(a) All pleadings, motions, correspondence, and rulings made by the presiding officer;

(b) The summary of the case submitted by any participant;

(c) Evidence received or considered;

(d) Stipulations of the participants;

(e) A statement of matters officially noticed;

(f) Questions asked, offers of proof, objections and rulings made during the hearing;

(g) A statement of any ex parte communications on a fact at issue made to the presiding officer;

(h) The proposed order by the presiding officer;

(i) Exceptions;

(j) Policy statements submitted by the agency; and

(k) The final order by the Commissioners.

(2) The record in the case does not close until the Hearings Division has received all documents, statements, and arguments requested. The presiding officer shall determine the date upon which the record closed.

(3) Generally, the written or mechanical record will not be transcribed unless requested for purposes of court review.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(11) & ORS 183.415(12)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0580

Proposed Orders

(1) The presiding officer shall prepare a proposed order which shall include the following:

(a) Rulings on motions or objections, including those rulings previously reserved;

(b) Findings of fact, including those matters which are either agreed to as fact at the hearing or by stipulation, or which, when disputed, are determined by the presiding officer to be a fact over contentions to the contrary, and must include:

(A) A concise statement of facts supporting the findings as to each contested issue of fact;

(B) Ultimate facts required to support the agency's order; and

(C) Credibility findings where credibility is of importance in the decision of the case, including the evidence relied upon to reach this finding and the relevance of that evidence.

(c) Conclusions of law;

(d) An opinion explaining the rationale for the findings of fact and conclusions of law; and

(e) An order setting forth the presiding officer's suggested determination, and where the proposed decision is adverse to the party, of the recommended action or penalty to be imposed.

(2) The Hearings Division shall serve the proposed order upon the participants.

(3) When the Hearings Division serves the proposed order upon the participants, the Hearings Division shall notify the participants that written exceptions must be filed within 15 days of the mailing date of the proposed order.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.464

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0590

Exceptions

(1) Only parties, limited parties, and the Commission staff may file exceptions to a proposed order.

(2) Exceptions may only contain arguments about policy or allegations of error that are a basis for reversal or remand under ORS 183.482. Exceptions may not contain information outside the record, or raise issues that were not presented during the hearing

unless the presiding officer raises new issues in the proposed order or unless a request to reopen the record accompanies the exceptions.

(3) Exceptions must be in writing and filed with the Hearings Division within 15 days of the mailing date of the proposed order to be considered by the Commission.

(4) The Director of Hearings may grant a participant's written request to extend the period to file exceptions for good cause shown. The participant must file the request within 15 days of the mailing date of the proposed order. Good cause includes circumstances reasonably beyond a participant's control that would make it unfair to deny the extension.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.460

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0600

Reopening the Record

(1) Before a proposed order is issued, a participant may file a written request with the Hearings Division to present information not already in the record if:

(a) The relevant information was not available at the time of the hearing; or

(b) Failure to consider this information and related argument would result in substantial prejudice to the development of a participant's case.

(2) Before the Commissioners review the case or a final order is issued pursuant to OAR 845-003-0620(3), the Hearings Division may reopen the record, on its own motion, to provide a full and fair record.

(3) Upon review of a case pursuant to OAR 845-003-620(1), the Commissioners, on their own motion, may direct that the record be reopened to provide a full and fair record. A participant may request that the record be reopened by the Commissioners only when the participant simultaneously files timely exceptions and the basis for the request meets the criteria identified in section (1) of this rule. The Commissioners may limit the reopening of the record to specific matters.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.030(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0610

Rehearing or Reconsideration by Commissioners

(1) A participant may request rehearing or reconsideration before the Commissioners by filing a petition with the Hearings Division within 30 days after the date the final order was served.

(2) The petition will set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(3) A petition for reconsideration shall be denied if exceptions to the proposed order were filed by the same participant and considered by the Commissioners in the same case.

(4) A petition for rehearing shall be denied if a request to reopen the record was filed by the same participant and considered by the Commissioners in the same case.

(5) The Commissioners may limit a rehearing to specific matters.

(6) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 845-003-0640. Unless the Administrator or designee grants a stay, a final order remains in effect until the Commissioners issue an amended final order.

(7) The Commissioners may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(8) Within 60 days after the final order is served, the Com-

missioners may, on their own motion, reconsider or rehear the case. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a participant's petition for reconsideration or rehearing.

(9) If the Commissioners grant a petition for rehearing or reconsideration, they must issue an amended final order. The order may affirm or amend the existing order.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.482(1) & ORS 183.482(5)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0620

Final Order

(1) The Commissioners will review cases in which exceptions have been filed and all cases involving:

(a) Proposed terminations of agency agreements;

(b) New applications for or relocation of dispenser licenses; and

(c) Applications that have received an unfavorable recommendation from the appropriate city or county under ORS 471.210(3) or 472.120.

(2) Before issuing the final order, the Commissioners will consider the proposed order, any exceptions and responses filed, and oral argument based on the exceptions when reviewing cases under section (1) of this rule.

(3) In cases not subject to review under section (1) of this rule, the Administrator will issue a final order based on the proposed order.

(4) Except as provided in OAR 845-003-0430 or OAR 845-003-0630, on the basis of the record considered as a whole, the Commissioners shall issue a final order in writing which includes findings of fact, conclusions of law, opinion and order. The final order shall also contain a notice that the final order may be appealed to the Oregon Court of Appeals.

(5) The final order may contain findings, conclusions or interpretations of law, which are different from the proposed order.

(6) The final order may provide for a different determination concerning any or all allegations or sanctions, than did the proposed order.

(7) Participants to a contested case shall be served a copy of the final order.

(8) Unless otherwise specified, a final order becomes effective 10 days after service on the parties.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.470

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0630

Final Order by Default

(1) A final order by default may be issued when:

(a) A party is given an opportunity to request a hearing and file an answer within the time specified in the charging document and fails to do so; or

(b) A party withdraws the party's request for hearing.

(2) A final order by default may be issued only after a prima facie case in support of the charging document is made on the record. A prima facie case may be made from the Commission's investigative file, if designated as the record in the charging document, provided that the charging document contained a statement advising the party that a failure to request a hearing would result in a final order.

(3) The participants will be served with a copy of the final order by default by regular U.S. mail.

(4) Where a party has requested a hearing but either fails to attend the hearing or notifies the Hearings Division or Commission that it will not attend, the presiding officer will issue a proposed order and the Commissioners will issue a final order

pursuant to OAR 845-003-0620.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.415(6) & ORS 183.470

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0640

Request for Stay

(1) Any person entitled to judicial review of a Commission order who files a petition for judicial review may request the Administrator to stay the enforcement of the Commissioners' final order.

(2) The written request must include:

(a) A statement of facts and reasons sufficient to show that the Administrator should grant the stay request because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(b) A statement of whether a bond or other undertaking is appropriate and if so, the amount;

(c) A statement of any conditions that the petitioner believes would be reasonable to impose if the Administrator grants the stay request; and

(d) Affidavits containing all evidence outside the record upon which the petitioner relies that are admissible under ORS 183.450. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(3) The petitioner must serve the request on the Commission and on all parties.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.482(3)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0650

Request for Stay – Response

(1) Any participant may file a response to a petition for stay.

(2) The response must contain:

(a) A statement accepting or denying each of the statements of facts and reasons provided in the petitioner's request for stay;

(b) A statement accepting, rejecting or proposing alternatives to:

(A) The petitioner's statement on the bond or undertaking; and

(B) The petitioner's statement concerning the conditions the Administrator should impose if the Administrator grants the stay.

(c) Affidavits containing all evidence, other than evidence contained in the record, upon which the party relies.

(3) The participant must serve the response on the Administrator and all other parties within 10 days of the date of the delivery or mailing of the stay request.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.482(3)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0660

Determination on Request for Stay or Temporary Stay

(1) After a petition has been filed, the Administrator may conduct such further proceedings pertaining to the stay request as he or she deems desirable. The Administrator shall commence such proceedings promptly after receiving the stay request.

(2) The Administrator must issue a written order within 30 days after receiving the stay request. The order shall:

(a) Grant the request and impose reasonable conditions;

(b) Deny the request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error; or

(c) Deny the request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error.

(3) The Administrator may receive evidence from the Commission's staff concerning the stay request.

(4) The Administrator may issue a temporary stay before making a final determination under section (2) of this rule.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.482(3)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

845-003-0670

Retained Authority of Commissioners

(1) The Commissioners retain all authority not specifically delegated to the Administrator of the Commission, the Director of Hearings, or an administrative law judge as presiding officer.

(2) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to request a hearing and file an answer or when a party, after requesting a hearing, withdraws the request.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by settlement, pursuant to OAR 845-003-0430.

(4) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners pursuant to OAR 845-003-0620(1).

(5) The Commissioners delegate to the Administrator the authority to summarily deny requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.

Stat. Auth.: ORS 183.341(2), ORS 183.415(4), ORS 183.450(3), ORS 471.030, ORS 471.730(5), ORS 471.730(6), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99

DIVISION 4

GENERAL

845-004-0001

Prohibited Interests in the Alcoholic Beverage Industry

(1) Definitions: As used in ORS 471.710 and this rule:

(a) "Employed by the Commission" means any permanent, temporary or limited duration Commission employee;

(b) "Financial Interest" means knowingly having an ownership interest, as a sole proprietor, partner, limited partner or stockholder in a business licensed by the Commission or any manufacturer of alcoholic beverages sold in Oregon;

(c) "Business Licensed by the Commission" means a business or that part of a business which requires an alcoholic beverage license to operate. A person is "employed by a business licensed by the Commission" if:

(A) That person's job duties include involvement with that portion of the business that requires an alcoholic beverage license to operate; or

(B) That person exercises management control over that portion of the business that requires an alcoholic beverage license to operate.

(d) "Business Connections" include, but are not limited to, the following:

(A) Knowingly providing anything of value to a manufacturer or a business licensed by the Commission in return for something of value. This rule does not, however, prohibit persons and licensees from providing commodities and services to each other

that they routinely provide to the general public under the same terms;

(B) Partnerships with a manufacturer or licensee and similar ventures formed for the purpose of making a profit.

(e) "Knowingly" means a person actually knew or reasonably should have known;

(f) "Household" means all persons living as a family unit in the same dwelling;

(g) "Immediate Family" means spouse and juvenile dependent children;

(h) "Position to Take Action or Make Decisions Which Could Affect the Licensed Business" means that the employee's job duties include the discretion to take actions or make decisions that are reasonably likely to create more than a trivial cost or benefit for a licensed business in money, time or anything else of value. An employee is not in a position to "take action or make decisions which could affect the licensed business" under ORS 471.710(2)(c) and (d) if the Commission removes the employee from actions and decisions affecting the licensed business. The Commission will do so where the removal would not unreasonably affect the employee's ability to perform his/her job duties.

(2) Additional Prohibitions:

(a) Employment: No commissioner or employee may be employed by a business licensed by the Commission, unless the commissioner or employee is not in a position to take action or make decisions which would affect the licensed business;

(b) Close Association: As used in this section, "close association" means a relationship that would or would reasonably be perceived to influence commissioner or employee decisions. A commissioner or employee who has a close association with an alcoholic beverage licensee:

(A) Will inform the Commission of the association as soon as the commissioner or employee knows about the association; and

(B) Will not participate in a decision that directly affects this licensee.

(3) Reporting Requirements:

(a) All applicants for Commission jobs must complete and sign a form describing any financial interest or business connection the applicant or any person in the applicant's household or immediate family has with the alcoholic beverage industry that the applicant would reasonably know of. The Commission will determine whether any prohibited interest or connection exists. An applicant or person in the applicant's household or immediate family who has a prohibited interest or connection must divest the interest or connection before the Commission hires the applicant;

(b) An employee must report any prohibited interest or connection with the alcoholic beverage industry to the employee's supervisor as soon as the employee would reasonably know of the interest or connection. If ORS 471.710 or this rule prohibits the interest or connection, the Commission will set a reasonable time period for divestiture. If the employee, household member or immediate family member fails to divest, the Commission will terminate the employee's employment with the Commission. An employee who has a prohibited interest in or connection with an alcoholic beverage retailer, wholesaler or manufacturer will not participate in any licensing or compliance decisions involving the retailer, wholesaler or manufacturer.

(4) Disciplinary actions: The Commission will appropriately discipline an employee who:

(a) Fails to report a prohibited interest or connection as section (2) of this rule requires;

(b) Knowingly acquires an interest or establishes a connection that ORS 471.710 or this rule prohibits.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.710

Hist.: OLCC 4-1988, f. & cert. ef. 7-1-88; OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89

845-004-0005

Gifts, Gratuities

(1) Purpose: The Commission expects employees and retail sales agents to do their jobs fairly and impartially and to avoid conduct that compromises or appears to compromise that fairness and impartiality.

(2) No commissioner, employee or retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee.

(3) No alcoholic beverage licensee will offer or give any gift, gratuity or thing of value to a Commissioner, employee or retail sales agent.

(4) Despite sections (2) and (3) of this rule a Commissioner, employee or retail sales agent may accept:

(a) Items totalling \$25 or less per year per alcoholic beverage licensee offered to Commissioners, employees or retail sales agents as customers of the licensee as long as the items are offered on an equal basis to all customers irrespective of any connection to the Commission;

(b) Food and beverages provided for immediate consumption at a convention or a business conference or meeting that are offered to all participants irrespective of any connection to the Commission;

(c) A non-alcoholic beverage for immediate consumption that a licensee offers at a business meeting;

(d) Items offered to all participants at a convention irrespective of any connection to the Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.710(5)

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 34, f. 1-23-70, ef. 2-26-70; LCC 17-1979, f. 9-24-79, ef. 10-1-79; LCC 13-1980(Temp), f. & ef. 4-25-80; LCC 24-1980, f. 9-30-80, ef. 10-1-80; Renumbered from 845-010-0155(9); LCC 3-1981, f. & ef. 9-18-81; LCC 6-1982, f. 7-30-82, ef. 8-1-82; OLCC 7-1989, f. 7-28-89, cert. ef. 8-1-89

845-004-0010

Delegation of Authority to Staff

(1) In order to expedite service to applicants, licensees and the public, the Commissioners delegate to the Administrator the authority described in this rule. The Administrator will designate which staff members may exercise this authority and determine the method for exercising the authority.

(2) Licensing Delegation:

(a) The Administrator makes recommendations to the Commissioners on:

(A) New outlet and greater privilege Class A (including Tour Boat) and Class B dispenser license applications;

(B) License actions involving an unfavorable local governing body recommendation;

(C) License actions involving significant public opposition;

(D) License actions involving an applicant's significant record or habit of alcohol or drug misuse; and

(E) License actions that the Administrator determines pose a potential for poor compliance with alcoholic beverage laws.

(b) Only the Commissioners deny licenses. The Administrator may, however, recommend denial of a license. If the applicant requests a contested case hearing, the Commissioners will not consider the Administrator's denial recommendation until the Hearings Division issues a proposed order in the contested case;

(c) The Administrator may, upon finding that an applicant has met the applicable criteria, make all licensing decisions, subject to payment of the appropriate fee, except those described in subsections (2)(a) and (b) of this rule.

(3) Cancellation, Suspension Delegation:

(a) Only the Commissioners cancel or suspend licenses. The Administrator may, however, recommend license cancellation or suspension. If the applicant requests a contested case hearing, the Commissioners will not consider the Administrator's recommendation until the Hearings Division issues a proposed order in the contested case;

(b) Despite subsection (3)(a) of this rule, the Administrator may suspend or refuse to renew a license as described in ORS 183.430(2) when the Administrator finds a serious danger to pub-

lic health or safety.

(4) Service Permit Delegation:

(a) The Administrator may, upon finding that the applicant has met the applicable criteria, issue service permits and may approve changes of legal name subject to payment of the appropriate fee;

(b) Only the Commissioners deny service permits. The Administrator may, however, recommend denial of a service permit. If the applicant requests a contested case hearing, the Commissioners will not consider the Administrator's denial recommendation until the Hearings Division issues a proposed order in the contested case;

(c) Despite subsection (4)(b) of this rule, the Administrator may deny a service permit when the applicant fails to take and pass an approved alcohol server education course as ORS 471.542 requires and the applicant has not requested a contested case hearing.

(5) Merchandising Delegation: the Administrator may:

(a) Add additional sizes of a listed brand to the product line, based on sales volume, sales trend and type of liquor;

(b) Approve requests for changes in proof;

(c) Add or remove from the product line trophy or collector items, or special one-time purchase items.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.720

Hist.: LCC 7-1978, f. 6-23-78, ef. 7-1-78; Renumbered from 845-010-0360; LCC 4-1981, f. 9-25-81, ef. 1-1-82; OLCC 19-1990, f. 9-28-90, cert. ef. 10-1-90; OLCC 15-1997, f. 7-24-97, cert. ef. 9-1-97

845-004-0015

Signing of Orders

Unless the Commissioners specifically give other directions, the Administrator may sign, on the Commissioners' behalf, the written expression of any official action the Commissioners take at any public meeting. The Administrator's signature has the same force and effect as the signature of all the Commissioners.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.720

Hist.: LCC 12-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 845-010-0375; OLCC 14-1991, f. 9-30-91, cert. ef. 1-1-92

845-004-0020

Fees for Certain Services

(1) Purpose. In order to recover some of the costs involved, the Commission charges fees for certain services furnished to the public, license applicants and the industry.

(2) The Commission charges the following fees for these lists of licensees. The Commission may, in its discretion, waive a fee in special instances:

(a) Complete list of all licensees — \$60;

(b) On-premises licensees (retail malt beverage, restaurant, dispenser) — \$30;

(c) Dispenser and restaurant licensees — \$20;

(d) Wholesale licensees — \$10;

(e) Package store licensees — \$30;

(f) Salesperson, winery-salesperson and agent licensees — \$20;

(g) Multnomah County licensees — \$25;

(h) Clackamas, Lane, Marion or Washington County licensees, each — \$20;

(i) All other counties, each — \$15;

(j) Licensees by renewal district — \$20;

(k) Monthly supplements of license actions per calendar year — \$15; Individual month, each — \$1.25;

(l) License nonrenewals by renewal district — \$10.

(3) The Commission furnishes the monthly supplements described in subsection (2)(k) of this rule to purchasers of the \$60 complete list of all licensees at no additional charge.

(4) The Commission charges the following per record fees for individualized lists of licensed premises by type and location:

- (a) 0 - 999 Records — \$10;
- (b) 1,000 - 2,999 — \$20;
- (c) 3,000 - 4,999 — \$30;
- (d) 5,000 - 6,999 — \$40;
- (e) 7,000 - 8,999 — \$50;
- (f) 9,000 and up Records — \$60.

(5) The Commission charges the following fees for copies of computer printouts of annual gross sales by Dispenser Class “A” and “C” licensees:

- (a) All Dispenser Class “A” and “C” licensees — \$60;
- (b) Multnomah County licensees only — \$25;
- (c) Clackamas, Lane, Marion or Washington county licenses, each — \$20;
- (d) All other counties, each — \$15;
- (e) Dispenser licensees by renewal district, each — \$20.
- (6) The Commission may provide electronic copies of its records. The fee is the cost of the time and material needed to produce the copy.

(7) The fee for finding and producing for inspection and providing a microfiche copy, if available, of the Commissioner’s official files is \$5. The Commission will furnish copies of documents that are public records and not exempt from disclosure for a fee of 5 cents per page and will furnish paper copies of microfiche documents for 25 cents per page.

(8) The Commission will provide copies of tapes of its hearings, monthly Commission meetings and other taped proceedings for a \$5 per tape fee. The Commission does not provide transcription service.

(9) Representatives of distilled spirits’ suppliers may purchase monthly reports of sales and inventory by code number (brand) by retail outlet. The fee is \$4 for preparation of the report, plus \$1 for each code included in the report. The Commission will bill representatives monthly, with payment due within 30 days.

(10) The Commission will charge the supplier or carrier, according to the responsibility for damage, a fee for recouping merchandise. The Commission sets this fee based on an annual review of the Commission’s labor and materials cost.

(11) The Commission charges a handling charge of \$1.25 per full case or 25 cents per bottle in split cases on special accounts that do not pay normal markup on liquor purchases.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 192.440(3)
 Hist.: LCC 11-1980, f. 3-3-80, ef. 4-1-80; Renumbered from 845-0010-355; LCC 30-1980, f. 12-22-80, ef. 1-1-81; LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 3-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 16-1991, f. 10-31-91, cert. ef. 1-1-91

845-004-0022

Annual License Fee Definition and Refund

(1) “Annual license fee” is the amount ORS 471.290(5) requires for the use of an annual license.

(2) The Commission considers an annual license “used” when:

(a) A licensee allows any sale, service, or consumption of alcoholic beverages on the premises after the effective date of the license; or

(b) The Commission holds a dispenser license for a licensee for future use.

(3) The Commission refunds the annual license fee, less any processing fee required by ORS 471.290(2) and (3), when the licensee verifies that he/she has not used the license as described in subsection (2)(a) or (b) of this rule.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.290
 Hist.: LCC 6-1986, f. & ef. 4-1-86

845-004-0025

Special Licenses; Qualifications; Frequency; Responsibility; Service Permits

(1) A person must obtain a special license to serve alcoholic

beverages for a financial consideration on premises that are not licensed by the Commission. ORS 471.475 defines financial consideration. The kinds of special licenses and what they allow are:

(a) A Special Retail Beer License allows sale of malt beverages up to 14 percent alcohol by volume for on-premises and off-premises consumption;

(b) A Special Retail Wine License allows sale of wine up to 14 percent alcohol by volume for on-premises and off-premises consumption;

(c) A Special Retail Wine-Special Auction License allows a wine collector, non-profit group, or charitable organization to auction wines up to 21 percent alcohol by volume for off-premises consumption only. The wines auctioned must conform to the commercial grade standards described in OAR 845-010-0280;

(d) A Special Retail Wine-Special Wine Raffle License allows a nonprofit, charitable corporation to raffle wines up to 21 percent alcohol by volume for off-premises consumption only. The wines raffled must conform to the commercial grade standards described in OAR 845-010-0280. The licensee may arrange for delivery of the wine to the residence of the person winning a raffle;

(e) A Special Dispenser License allows a dispenser licensee to serve beer, wine, and distilled spirits for on-premises consumption at a location other than the dispenser licensed premises for no more than five days;

(f) A Special Events Winery License allows a winery licensee to sell wine for on-or off-premises consumption at a location other than the Winery licensed premises for no more than five days;

(g) A Special Events Grower’s Sales Privilege License allows a grower sales privilege licensee to sell wine for on or off-premises consumption at another location for no more than five days.

(2) The Commission issues Special Retail Beer and Special Retail Wine Licenses only for picnics, convention, fairs, community enterprises, business promotions on licensed premises, special auctions, and other special events like concerts, festivals, and spectator sports events.

(3) Application Requirements:

(a) The applicant must submit a completed application on the form the Commission provides;

(b) The applicant must have permission to use the premises from the person responsible for the property;

(c) The applicant must pay the Commission the license fee listed in ORS 471.290;

(d) When the applicant is a firm or organization, the applicant must designate a person who is responsible for ensuring compliance with liquor laws at the event;

(e) The Commission may require the applicant to obtain a recommendation from the local governing body and the local governing body sign-off that the applicant has all permits required by the event.

(4) Denial, Cancellation and Suspension Criteria: The Commission uses the same criteria to deny, cancel or suspend a special license that it uses for other licenses except for OAR 845-005-0011, True Name on Application; Interest in the Business.

(5) Special License Limitations:

(a) The Commission requires ongoing operations to meet regular licensing standards, which are different from special license requirements;

(b) The Commission may refuse to issue more than five Special Dispenser Licenses in any 12 month period at a location licensed with a Restaurant, Retail Malt Beverage, or Package Store License. These limitations do not apply to Special Dispenser Licenses issued to Dispenser Class B licensees;

(c) Dispenser licensees may not include Special Dispenser License sales in figuring food percentages that OAR 845-005-0060 requires;

(d) The Commission may restrict or prohibit off-premises sales at an event held with a Special Retail Beer or Special Retail Wine license if the Commission determines that a restriction is in the public interest or is necessary to protect public safety. In mak-

ing its determination, the Commission considers factors that include but are not limited to:

(A) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor law violations;

(B) The need to limit the availability of alcohol to minors or visibly intoxicated persons;

(C) The need to limit noise, public disturbances, litter, disorderly or unlawful activities and other liquor related impacts on the surrounding neighborhood or community.

(6) Repeat User Special License:

(a) "Repeat User" means a special license applicant who has been licensed for 14 or more special events in the 12 months prior to the date the Commission receives the current application. An applicant is a repeat user, regardless of the name on the application, if the proceeds are going to essentially the same individuals or entity as 14 previous special licenses;

(b) Additional Special License Requirements:

(A) For the 15th application forward, the Commission may require the repeat user applicant to provide the same forms, documents and information that an annual license applicant provides;

(B) A Special Retail Beer or Special Retail Wine applicant or designee for an organization must complete an approved alcohol server education course and pass the exam before the Commission grants the 15th special license.

(c) Application Receipt: The Commission must receive the 15th application at least 30 days prior to the requested day(s) of operation. The Commission may waive the 30-day requirement if the applicant has a current Individual History Questionnaire on file with the Commission and the Commission has completed its background investigation of the applicant;

(d) Annual License: Instead of applying for a special license, the repeat user applicant may apply for any annual license for which the applicant is qualified.

(7) Sellers and Servers at Special License Events: Any person who sells or serves alcoholic beverages for on-premises consumption under a special license must have a valid service permit unless:

(a) The person is named as the licensee on the special license;

(b) The person has a Winery-Salesperson license (Special Events Winery License only); or

(c) The person is an uncompensated volunteer for a special licensee who is not an annual licensee or a repeat user special licensee. Although the Commission does not require these servers to have service permits, the licensee must make sure that each volunteer has read the Commission-provided pamphlet (**What Every Volunteer Alcohol Server Needs to Know**) that explains the laws regarding alcoholic beverage sale and service.

(8) The Commission may refund the special license fee if:

(a) The Commission denies the application;

(b) The event does not occur because of circumstances beyond the applicant's control, such as rain or fire; or

(c) The applicant does not need a special license to hold the event described in the application.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.290

Hist.: LCC 29-1979, f. 11-23-79, ef. 11-26-79; Renumbered from 845-010-0760; LCC 7-1986, f. 4-3-86, ef. 7-1-86; OLCC 4-1992, f. 4-30-92, cert. ef. 7-1-92; OLCC 10-1996, f. 6-27-96, cert. ef. 8-1-96

845-004-0030

Priority List for Dispenser Applications

To provide fair treatment to applicants, the Commission will use the following priority system whenever the Commission has insufficient dispenser licenses:

(1) When no license is available and the Commission finds that it would grant a license if one were available, the Commission will place that application on the priority list.

(2) The Commission will rank applicants on the priority list by filing date of the license application. If applicants have equal priority, the Commission will list them as equal and determine priority between them by a coin flip conducted by the Administrator in the presence of all parties or after waiver of the right to be present.

(3) As dispenser licenses become available, the Commission will grant them to applicants on the priority list in the order of their ranking. If an applicant on the priority list is not actually in operation when the Commission offers a license, the Commission will grant the license to the applicant next highest in priority who is in operation.

(4) If the Commission grants a change of ownership for a license application on the priority list, the filing date of the change of ownership will determine the priority of that application.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.100, ORS 472.105 & ORS 472.111

Hist.: LCC 13-1978(Temp), f. 10-2-78, ef. 10-24-78; LCC 16-1978, f. 12-26-78, ef. 1-1-79; Renumbered from 845-010-0765; LCC 10-1985, f. 11-6-85, ef. 1-1-86; OLCC 2-1994(Temp), f. 5-24-94, cert. ef. 5-25-94

845-004-0060

Sales by U.S. Customs, County Sheriffs, Other Agencies

(1) The purpose of this rule is to provide for the sale of alcoholic liquors which have been confiscated or received by U.S. Customs, county sheriffs, courts, Internal Revenue Service or other governmental agencies.

(2) A letter requesting permission to sell alcoholic liquors shall be submitted to the Commission, setting forth the following information:

(a) Reason for the sale;

(b) List of merchandise to be sold and approximate quantities;

(c) Date(s), time(s) and place of sale;

(d) Person(s) who will actually conduct the sale;

(e) If the sale is by a U.S. Customs agent, agreement that no merchandise will be delivered to the purchaser until the purchaser presents a letter of release from the Commission.

(3) On approval, the Commission will appoint the person designated to conduct the sale as a retail sales agent of the Commission for the limited purpose of selling the listed merchandise at a specified time and place. All merchandise sold must have seals intact and must be fit for human consumption, unless the purchaser has a federal permit to produce alcohol for fuel and indicates in writing that the merchandise purchased will not be used for human consumption.

(4) If distilled spirits are purchased through a U.S. Customs sale, the purchaser must obtain from the U.S. Customs agent a statement in writing of the quantity of distilled spirits purchased and the purchase price. The purchaser must remit to the Commission a markup of 25 percent of the purchase price of the distilled spirits and obtain a letter of release from the Commission before the U.S. Customs agent may release the distilled spirits to the purchaser.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.610, ORS 471.657, ORS 471.665 & ORS 472.060(2)(e)

Hist.: LCC 21-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0380

845-004-0065

Communications Between the Commission and Applicants, Licensees, Service Permittees or Alcohol Server Education Program Providers

(1) The Commission sends all correspondence to the mailing address that the applicant, permittee, provider or licensee gave on the original application form. An applicant, permittee, provider or licensee, including officers, directors, shareholders and partners, who wants to receive suspension, cancellation, nonrenewal and contested case hearing notices at a different address, must notify the Commission in writing of this. The Commission will include

this information about notice and the notice option as a written part of the application packet.

(2) Each applicant, permittee, provider or licensee is responsible for notifying the Commission in writing of any change in an address specified in section (1) of this rule.

(3) When the Commission gives notice by mail, according to ORS Chapter 183 and as specified in section (1) of this rule, the applicant, permittee, provider or licensee has received proper notice even when the applicant, permittee, provider or licensee fails to claim this mail.

Stat. Auth.: ORS 183, including ORS 183.341(2), ORS 183.415(4) & ORS 183.450(3); & ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183, including ORS 183.341(2)

Hist.: LCC 2-1981, f. 7-1-81, ef. 1-1-82; OLCC 14-1991, f. 9-30-91, cert. ef. 1-1-92

845-004-0070

Screening and Selection Procedures for Personal Service Contracts

(1) Purpose: Department of Administrative Services Administrative Rules OAR 122-020-0005 through 122-041-0005 govern personal service contracts. Within these rules, the Commission is required to develop its own rule for screening and selecting procedures. This rule describes the Commission's procedures.

(2) The Department of General Services in OAR 125-310-0092 defines personal service contracts as:

(a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant or broadcaster;

(b) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, filmmaker, weaver, or sculptor;

(c) Contracts for services of a specialized, creative and research-oriented, non-commercial nature;

(d) Contracts for services as a consultant;

(e) Contracts for educational and human custodial care services.

(3) The Commission's Administrative Services Division contracts for the Commission. Before any personal service contract work is done, the Commission must have a written contract that complies with this rule and any applicable Department of Administrative Services rule.

(4) Contracting procedures: When the Commission proposes to contract, the Commission:

(a) Develops written justification for the contract based on OAR 122-020-0015(3) which says:

"An agency may contract for consultant services when the specialized skills, knowledge and resources to be provided by consultant are not available within the agency; when the work cannot be done in a reasonable time with the agency's own work force; when an independent and impartial evaluation of a situation is required by a consultant with recognized professional expertise and stature in a field; or when it will be less expensive to contract for the work";

(b) Develops the criteria the Commission will use to award the contract. These criteria may include:

(A) Contractors specialized experience and technical competence in relation to the service required;

(B) Contractors capability to perform the work, including any specialized services, within the time limitations;

(C) Contractors past record of performance on other contracts including quality of work and ability to meet schedules;

(D) Overall cost of the service, as well as hourly rates.

(c) Selects appropriate contractor response format such as request for proposal, written bid, telephone bid. The Commission requires a minimum of three bids for contracts in amounts of

\$1,000 or more;

(d) Notifies prospective contractors and documents the notification method. The Commission will make special efforts to ensure that it notifies minority/female contractors;

(e) Reviews proposals and selects the best qualified contractor based on the award criteria.

(5) Contract Approval: Before the Commission awards the contract to the selected contractor:

(a) The Commissioners must first approve all personal service contracts of \$5,000 or more at their monthly meeting. The Commissioners must approve amendments or extensions of personal service contracts that exceed the authorized dollar amount at their monthly meeting. At their monthly meeting, the Commissioners will review a list of any personal service contracts that exceed \$1,000 but are less than \$5,000 that staff has entered into during the previous month;

(b) The Department of Administrative Services must approve contracts exceeding \$1,000. The Department of Administrative Services has delegated to the Commission the authority to enter into contracts in the amounts up to \$1,000 with an annual (fiscal year) limit for each contractor of \$2,000;

(c) The Attorney General must review and approve contracts in excess of \$25,000;

(d) The Department of Administrative Services must approve amendments or extensions of personal service contracts that exceed the authorized dollar amount;

(e) The Department of General Services must approve architectural or engineering service contracts;

(f) The Information Systems Division of the Department of Administrative Services must approve data processing contracts.

(6) Despite section (4) of this rule the Commission may contract with other government agencies for personal services without Department of Administrative Services approval. The Commission must, however, follow the other requirements of this rule and any applicable Department of Administrative Services rules.

(7) In an emergency the Commission may bypass the requirements of section (4) of this rule. The Commission must justify this action in writing. The Commission will keep the explanation in the personal service contracts file and will provide a copy to the Department of Administrative Services.

(8) Despite subsection (5)(a) of this rule, the Administrator, in consultation with the Commission chairperson, may approve personal service contracts between \$5,000 and \$25,000 in an emergency. The Administrator will bring the contract with an explanation of the emergency to the next Commission meeting for ratification.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 291.021

Hist.: LCC 15-1983, f. 12-27-83, ef. 1-1-84; LCC 6-1985, f. 5-3-85, ef. 7-1-85; OLCC 3-1989, f. 3-31-89, cert. ef. 4-1-89; OLCC 11-1990, f. 6-4-90, cert. ef. 7-1-90; OLCC 1-1991, f. 3-1-91, cert. ef. 4-1-91

845-004-0075

Public Contracting

The Commission adopts the Attorney General's Model Rules for Public Contracting effective August, 1990, by reference as a permanent rule of the Oregon Liquor Control Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 279.049

Hist.: LCC 3-1986, f. 2-6-86, ef. 4-1-86

845-004-0100

Production of Alcohol for Fuel

ORS 471.205 prohibits the distilling of alcoholic liquor without a license. Producers of alcohol for fuel will not violate ORS 471.205 if they comply with the following requirements:

(1) Any person who produces motor fuels containing distilled spirits must possess a Federal Alcohol Fuel Producer's Permit, pursuant to **Title 27, CFR, Section 19.935**, and must comply with all pertinent federal regulations in effect as of January 1, 1984.

(2) Prior to beginning operation, the person must furnish the Commission with a copy of the Alcohol Fuel Producer's Permit and a copy of the application for the permit.

(3) Alcohol produced or held under the permit may not be used, sold or made available for human consumption.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.205 & ORS 471.730(8)

Hist.: LCC 14-1979, f. 8-27-79, ef. 8-29-79; Renumbered from 845-010-0785; LCC 1-1984, f. & ef. 4-3-84

845-004-0101

Purchase of Grain and Ethyl Alcohol for Scientific, Pharmaceutical, Manufacturing, Mechanical and Industrial Purposes

(1) ORS 471.730(8) allows the Commission to license, regulate and control the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

(2) ORS 471.335 allows the Commission to:

(a) Issue permits for alcohol importation by a person who is not a brewery, winery, distillery, or wholesaler licensee; and

(b) Charge a reasonable fee, based on quantity and type, for each importation. Because these permit users do not use the Commission's regular retailing system for distilled spirits, the Commission interprets a reasonable fee as less than the usual distilled spirits mark-up.

(3) To meet the needs of those who use grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes, the Commission provides to ways for these users to purchase 190 or 200 proof alcohol: importation permit (see section (4) of this rule) or purchase by the Commission (see section (5) of this rule).

(4) Importation Permit:

(a) The Commission may issue a permit that allows a person to import 190 or 200 proof alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes to a person who:

(A) Is at least 21 years old;

(B) Completes the Importer Permit application; and

(C) Sends the application to the Commission along with the permit fee which is 25 percent of the purchase price of the alcohol, excluding the federal excise tax. For purposes of calculating the 25 percent permit fee, the purchase price is the alcohol vendor's price on file with the Commission.

(b) If the person is eligible for a permit, the Commission will send the person the permit. The person may then order the alcohol from an alcohol vendor and must include a copy of the permit with the order;

(c) The Commission may deny the permit if the person does not complete the application, does not include the appropriate fee, proposes an unacceptable use for the alcohol or makes a false statement on the application. If the person makes a false statement on the application or uses the alcohol other than described in the application, the Commission may refuse to issue another permit; and

(d) Any alcohol vendor who provides alcohol under an importation permit must complete a Monthly Vendor Report showing these alcohol shipments. The Commission must receive these reports by the 15th of the month following the month being reported.

(5) Purchase by the Commission:

(a) Instead of the importation permit described in section (4) of this rule, a person who uses 190 or 200 proof alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes may send the Commission:

(A) A purchase order indicating the type and amount of alcohol needed; and

(B) A check or money order for the cost of the alcohol as indicated on the Commission-provided price list. The Commission price for the alcohol is the cost of the alcohol, the 25 percent mark-up and the federal excise tax, if applicable.

(b) The Commission will purchase the alcohol and have the vendor deliver the alcohol directly to the purchaser.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.335 & ORS 471.730(8)

Hist.: OLCC 25-1990, f. 12-19-90, cert. ef. 2-1-91

845-004-0120

Investigative Subpoenas and Oaths

NOTE: ORS 471.760 allows the Commissioners and any of their authorized agents to issue subpoenas and administer oaths. The Commissioners delegate authority to the Administrator and Deputy Administrator to issue investigative subpoenas, and authorize the Administrator to delegate that authority to selected staff. The rule defines the circumstances under which the Commission issues investigative subpoenas and administers oaths. This rule does not concern subpoenas issued and oaths administered by Administrative Law Judges in the contested case process.

(1) At any time during a license application, Service Permit application, or alleged liquor law violation investigation, the Administrator or Deputy Administrator may issue:

(a) An investigative subpoena for documents under the following circumstances:

(A) It appears to the Administrator or Deputy Administrator the information may be helpful to make a decision about a liquor license application, Service Permit application, or alleged liquor law violation; and

(B) The applicant, licensee or service permittee cannot or will not provide the document; the investigation might be compromised by asking the licensee or applicant for the document; or the person in possession of the document requires a subpoena for its release.

(b) An investigative subpoena to any person requiring the person to give a sworn statement. The Administrator or Deputy Administrator may issue a subpoena whenever compelling a sworn statement may be helpful in making a decision about a liquor license application, Service Permit application, or alleged liquor law violation. Investigators, Inspectors, Regional Coordinators and Regional Managers may conduct interviews of subpoenaed witnesses under oath.

(2) During a liquor license application, Service Permit application, or alleged liquor law violation investigation, an Investigator, Inspector, Regional Coordinator or Regional Manager may administer an oath to a person making a voluntary statement.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.760

Hist.: OLCC 16-1997, f. 7-24-97, cert. ef. 9-1-97

DIVISION 5

CRITERIA FOR ISSUANCE AND MAINTENANCE OF LICENSES

845-005-0005

Purpose and Interpretation

(1) ORS 471.295 is the primary statute that gives the reasons for which the Commission may deny an alcoholic beverage license application. The rules in this Division describe how the Commission applies these and other licensing-related statutes in granting, denying, modifying or renewing alcoholic beverage licenses and related privileges.

(2) The Commission liberally applies these rules to:

(a) Minimize health or safety problems caused by the use and abuse of alcoholic beverages;

(b) Encourage moderation in the use of alcoholic beverages;

(c) Ensure that qualified persons obtain available licenses and operate in compliance with alcoholic beverage laws;

(d) Prevent access to alcoholic beverages by minors;

(e) Provide the opportunity for public participation in license decisions;

(f) Provide guidelines for local governments in making recommendations to the Commission;

(g) Ensure availability of alcoholic beverages to the public.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295

Hist.: LCC 46(Temp), f. & ef. 1-21-74; LCC 47, f. 3-28-74, ef. 5-1-74; LCC 16-1979, f. 8-28-79, ef. 8-29-79; Renumbered from 845-010-0700; LCC 27-1979(Temp), f. & ef. 11-23-79; LCC 4-1980, f. 1-28-80, ef. 2-1-80; Renumbered from 845-010-0705; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92; Renumbered from 845-005-0010

845-005-0006

Procedures for Public Notice of License Applications

(1) The Commission will provide written notice to the public at least 14 calendar days before the Commission grants or denies:

(a) An initial annual license;

(b) A change of license privileges;

(c) The addition of alcohol beverage sales or service to an outdoor area;

(d) A change of licensee where the Commission determines that the potential exists for problems with unlawful activities, noise or disturbances in or around the premises that are related to the sale or service of alcoholic beverages;

(e) Any change for which OAR 845-006-0100 requires Commission approval where the Commission determines that the potential exists for problems with unlawful activities, noise or disturbances in or around the premises that are related to the sale or service of alcoholic beverages.

(2) The Commission will provide the written notice as follows:

(a) Conspicuous notice posted on the premises proposed to be licensed;

(b) Notice to licensed child care facilities, elementary or secondary schools, churches, hospitals, nursing facilities, convalescent homes, parks, children-oriented recreational facilities and alcohol and other drug rehabilitation facilities within 500 feet of the premises in urban or suburban areas and 1,500 feet in rural areas; and

(c) Notice to the neighborhood organization(s) for the area in which the proposed premises are located if the organization is recognized by the appropriate city or county and registered with the Commission. If there is no recognized organization, the Commission will notify any organization registered with the Commission that represents at least 25 households in the area.

(3) The written notice will include:

(a) Name of applicant. If applicant is not an individual, the name(s) of the person(s) who will have primary responsibility for operating the business;

(b) Address of premises proposed to be licensed;

(c) Type of license;

(d) Legal hours of operation; and

(e) How to contact the Commission within 14 days for further information about:

(A) The application;

(B) Providing information to the Commission to help determine the applicant's eligibility for a license; and

(C) Participating in the Commission's licensing process.

(4) The applicant will, by providing a copy of the Commission's license application form, give notice to the incorporated city in which the premises are located, or if the premises are not located in an incorporated city, the county in which the premises are located.

Stat. Auth.: ORS 471.730(5) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295 & ORS 472.160

Hist.: OLCC 4-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92; OLCC 9-1997, f. 5-12-97, cert. ef. 6-1-97

845-005-0007

Information from the Public about Licensing Criteria

(1) Local governments, other government agencies, organizations, facilities or individuals may give the Commission reliable

factual information concerning whether there is a basis to grant or deny a license or to impose license restrictions under ORS Chapters 471 or 472 or OAR Chapter 845. As an example, "reliable factual information" includes personal observations of activities in or around the proposed outlet, as opposed to opinion, feelings, beliefs or speculation.

(2) Some of the bases to deny or restrict licenses include the following issues relating to probable conflicts between the community and the exercise of the license privileges:

(a) Disturbances, lewd or unlawful activities or noise in or in the immediate vicinity of the premises that are related to the sale or service of alcoholic beverages. See ORS 471.295(5); OAR 845-005-0027;

(b) Applicant has a history or record of using alcohol or other drugs to excess. See ORS 471.295(4)(a); OAR 845-005-0025(4);

(c) Applicant proposes to locate near a licensed child care facility or elementary or secondary school; a church; a hospital, nursing care facility or convalescent care facility; a park or children-oriented recreational facility; an alcohol and other drug treatment or rehabilitation facility. See ORS 471.295(1) and OAR 845-005-0026(2);

(d) Applicant proposes to locate in an area that has a history of serious or persistent problems with unlawful activities, noise or disturbances related to alcoholic beverage sale or service. See ORS 471.295(1).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295

Hist.: OLCC 4-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92

845-005-0011

True Name on Application; Interest in Business

(1) True name on application: Applications for licenses must specify the real and true names of all persons who own or have an interest in the business proposed to be licensed by the Commission, and these persons or in the case of corporations, a duly authorized officer, must sign the application.

(2) License privileges: The License privileges are available only to the persons specified in the application and only for the premises designated on the license.

(3) Interest in the business: For purposes of section (1) of this rule, the following persons have an "interest in the business":

(a) Any person who receives or is entitled to receive, directly or indirectly, any of the profits of a licensed business except persons who receive any of the profits as:

(A) A bonus paid to an employee, if the employee is on a fixed wage or salary and the bonus is not more than 25 percent of the employee's pre-bonus annual compensation, or the bonus is based on a written incentive/bonus program and is not unreasonable or out of the ordinary for the services rendered;

(B) Repayment of a loan or payment on a contract to purchase property unless the loan or contract holder exercises control over or participates in the management of the business;

(C) Reasonable payment for rent under a bona fide lease or rental obligation unless the lessor or property manager exercises control over or participates in the management of the business;

(D) Reasonable payment for a franchise under a bona fide franchise agreement;

(E) Payment of dividends to corporate stockholders.

(b) A person who does not receive any of the profits but receives compensation that is out of the ordinary for the services rendered. "Out of the ordinary" includes both over and under compensation;

(c) Any person or firm who contracts to provide food service or to manage or operate any part the licensed premises, other than as an employee;

(d) Any person who invests money or other property in the licensed business, other than a stockholder. Any stockholder who owns ten percent or more stock must receive Commission approval (OAR 845-006-0020). For purposes of this subsection, a bona fide loan that entitles the lender to a return of only the princi-

pal and interest on the principal is not an investment;

(e) A contract purchaser of a licensed business. A contract purchaser may not operate or invest prior to Commission approval. A contract purchaser may make contract payments into an escrow account prior to Commission approval of the change of ownership, but may not operate the business other than as an employee.

(4) ORS 471.757 allows the Commission to deny, cancel or suspend a license if an unlicensable person has any financial interest in the licensed business or place of business. For purposes of ORS 471.757, the following persons have a financial interest in the business:

(a) Any person who rents or leases property for the licensed business;

(b) Any person who invests or loans money or other property for the licensed business; or

(c) Any person who gives money or property for the licensed business and who exercises control over or participates in the management of the licensed business or is employed by the licensed business.

(5) For good cause shown, the Commission may waive the requirements in this rule to take into account unusual or extraordinary circumstances.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 471.757

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 11-1979, f. & ef. 6-22-79; LCC 9-1980, f. 3-3-80, ef. 3-5-80; Renumbered from 845-010-0050; LCC 10-1983, f. 7-28-83, ef. 10-1-83; OLCC 6-1990, f. 3-16-90, cert. ef. 4-1-90; Renumbered from 845-006-0010

845-005-0012

Financial Statements; Statements of Financing; Tied-House Disclosures; Individual Histories; Corporate Questionnaires

(1) As a part of the application:

(a) All individual applicants, all general partners, limited partners whose investment commitment is ten percent or more of the total investment commitment, all directors who own or control three percent or more of the voting stock, principal officers, (as defined in OAR 845-006-0020) of corporate applicants, and all natural person stockholders owning or controlling ten percent or more of the voting stock of corporate applicants will submit:

(A) Tied-house disclosure (applies only to applications for a manufacturer's, wholesaler's or retailer's license); and

(B) Individual history.

(b) All individual applicants, a general partner on behalf of all partnership applicants and a duly authorized officer on behalf of all corporate applicants will submit a statement of financing, verification of the financing source and a financial statement;

(c) All corporate applicants must complete a corporate questionnaire which lists, among other things, all directors, all officers and stockholders, including amounts of stock held by each. If there are more than twenty stockholders, only those owning or controlling ten percent or more of the voting stock need to be listed;

(d) Each principal manager will submit an individual history.

(2) In addition to the requirements in section (1) of this rule, if another corporation owns ten percent or more of the voting stock of a corporate applicant, the applicant will furnish:

(a) A list of all directors, principal officers, and stockholders owning more than ten percent of the outstanding voting stock of the stockholding corporation;

(b) A current annual report as filed with the Securities and Exchange Commission (Form 10-K) for the stockholding corporation or, in the alternative, a corporate financial statement.

(3) If a corporate applicant is a subsidiary of a parent corporation established in whole or in part to qualify for an alcoholic beverage license, the Commission may treat the parent corporation as the applicant for purposes of section (1) of this rule.

(4) The Commission's License Process Manager or the Administrator may waive the requirements of this rule to take account of unusual or extraordinary circumstances. These cir-

cumstances may include the following:

(a) Previous licensing by the Commission of the applicant;

(b) General reputation of the applicant;

(c) Information from other state or federal regulatory agencies that the Commission could use in lieu of the information this rule requires.

(5) ORS 471.757 allows the Commission to deny, cancel or suspend a license if an unlicensable person has any financial interest in the business or place of business. The Commission may require a personal history or fingerprints from any person who has a financial interest in the licensed business to help determine if this person is licensable.

(6) Nothing in this rule prevents the Commission from requiring additional information or information from other persons where there is reason to believe that this information may help the Commission determine the merits of a license application or to otherwise perform its statutory duties.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.757

Hist.: OLCC 6-1990, f. 3-16-90, cert. ef. 4-1-90; Renumbered from 845-006-0015

845-005-0015

License Applications: Refusal to Process

(1) ORS 471.290(1) requires an applicant to provide pertinent information. ORS 471.290(1) requires all license applicants to pay a processing fee. ORS 471.210(3) allows the Commission to require a license applicant to obtain a recommendation from the local governing body. ORS 471.295(4)(i) requires applicants for a liquor license to demonstrate financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed; ORS 471.218 and OAR 845-005-0100 require certain licensees to maintain liquor liability insurance or bond.

(2) The Commission may refuse to process an application if:

(a) The application is incomplete. A complete application is a Commission supplied form that is completely filled out, is signed by the applicant and includes the appropriate fee(s), the local governing body recommendation and the bond or equivalent that ORS 471.210 requires. For those applicants that ORS 471.542 requires to take alcohol server education, a complete application also includes the successful completion of an approved alcohol server education program. For those applicants that ORS 471.218 and OAR 845-005-0100 require to have liquor liability insurance or bond, a complete application also includes proof of such liquor liability insurance or bond;

(b) The applicant neglects or refuses to provide in a timely manner any document or other information the Commission reasonably requests.

Stat. Auth.: ORS 471, ORS 472, including ORS 471.030, ORS 471.730(1) & (5), ORS 472.030 & ORS 472.060(1) & (2)(d).

Stats. Implemented: ORS 471.290(1), ORS 471.210(3), ORS 471.295 & ORS 471.218.

Hist.: LCC 46(Temp), f. & ef. 1-21-74; LCC 47, f. 3-28-74, ef. 5-1-74; LCC 16-1979, f. 8-28-79, ef. 8-29-79; Renumbered from 845-010-0710; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 6-1989, f. 6-23-89, cert. ef. 7-1-89; OLCC 7-1994, f. 12-23-94, cert. ef. 1-1-95; OLCC 2-1998, f. 3-5-98, cert. ef. 3-15-98

845-005-0016

Temporary Authority

ORS 471.262 and 471.297 allow the Commission to give certain applicants the authority to sell and serve alcoholic beverages while the Commission determines the applicant's eligibility. The Commission may refuse to grant this temporary authority to operate when the Commission has reasonable basis to believe that the applicant may not be eligible for a license under ORS Chapters 471 and 472 and the Commission Administrative Rules, OAR Chapter 845.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.262 & ORS 471.297

Hist.: OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92

845-005-0020**Criteria Precluding Issuing License**

The following criteria will preclude issuing a license:

(1) The applicant has or would have an interest in another liquor business that ORS 471.295(3), 471.394, or 471.396 prohibits.

(2) The applicant has or will have no facilities or space to cook or serve food as ORS 472.100, 472.205 and Commission rules require.

(3) The applicant seeks a Dispenser Class "A" or "C" or Seasonal Dispenser license and will not be open to the general public as ORS 472.001(2) requires or to the extent Commission rules require.

(4) The applicant is a private club seeking a Dispenser Class "B" license under ORS 472.105(3) and the applicant has fewer than 200 members or has been chartered less than one year. "Member" means an individual with voting rights and privileges in the private club equal to any other individual in the club whose club dues are fully paid on the date upon which membership is counted.

(5) The applicant is a private club seeking a Dispenser Class "B" license under ORS 472.100(3) and has fewer than 100 members or has been chartered less than six months. "Member" has the same meaning as in section (4) of this rule.

(6) The applicant is a retail sales agent of the Commission with a contract for an exclusive agency or seeks to exercise the license privileges in an exclusive sales agent's premises.

(7) The applicant fails to successfully complete an approved alcohol server education program as ORS 471.542 and the Commission rules require.

(8) The applicant has not paid an outstanding fine to the Commission. ORS 471.295(4)(g) allows the Commission to deny a license if the applicant had a poor compliance record when previously licensed. Nonpayment of a fine is one indicator of a poor compliance record.

(9) The applicant for a license listed in ORS 471.218 or OAR 845-005-0100 has not met the requirements of ORS 471.218, ORS 471.295(2) & (4)(i), and OAR 845-005-0100.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d).

Stats. Implemented: ORS 471.295 & ORS 471.218

Hist.: LCC 46(Temp), f. & ef. 1-21-74; LCC 47, f. 3-28-74, ef. 5-1-74; LCC 6-1978, f. 6-23-78, ef. 7-1-78; LCC 30-1979, f. 12-4-79, ef. 1-1-80; Renumbered from 845-010-0052; LCC 16-1979, f. 8-28-79, ef. 8-29-79; LCC 3-1980, f. 1-28-80, ef. 2-1-80; Renumbered from 845-010-0715; LCC 12-1982(Temp), f. & ef. 12-3-82; LCC 3-1983, f. & ef. 3-8-83; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 3-1988 f. 6-14-88, cert. ef. 7-1-88; OLCC 7-1994, f. 12-23-94, cert. ef. 1-1-95, OLCC 2-1998, f. 3-5-98, cert. ef. 3-15-98

845-005-0025**Criteria Creating Presumption Against Issuing License**

If any of the following criteria apply, the Commission will deny a license unless the applicant shows good cause that overcomes the criterion involved:

(1) The applicant has or will have inadequate financial resources or facilities to build and operate the licensed premises as the applicant proposed. If the application is for renewal, the applicant has not built or operated the licensed premises substantially as proposed by the applicant and previously approved by the Commission.

(2) The applicant seeks a dispenser license at a commercial establishment and has less than or is unable reasonably to project at least a 25 percent ratio of food sales to gross sales of food and alcoholic beverages. In place of this provision an applicant for renewal must meet the requirements of OAR 845-005-0061(1)(b) and 845-006-0032.

(3) The on-premises manager is unable to understand and communicate in the English language to a sufficient extent to cooperate in the enforcement of liquor and other applicable laws.

(4) Alcohol or Controlled Substance History or Record:

(a) The applicant has a recent history or record of using alco-

hol or controlled substances to excess. Some of the types of records the Commission uses to establish a record of using to excess include court, Motor Vehicles Division, police, or medical records;

(b) Good cause to overcome this criterion is a showing by the applicant that the applicant no longer uses alcohol or controlled substances to excess and is not likely to do so in the future. Some of the factors the Commission considers in determining good cause are: successful participation in treatment program(s), counselor, employer or probation officer recommendations, severity of the applicant's record, passage of time since last relevant incident and previous record of compliance.

(5) The applicant has been convicted of a felony when there is a relationship between the facts that support the conviction and applicant's fitness to exercise the license privileges. When there is a relationship between the applicant's fitness and the felony, the Commission considers any intervening circumstances in determining whether to deny the license based on this criterion.

(6) The applicant provides material false or misleading information to the Commission.

(7) The applicant is not at least 21 years old. Good cause to overcome this criterion includes a showing by the applicant that the minor applicant will not participate in the management or control of alcohol-related business decisions or of employees involved in alcoholic beverage sale or service.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295

Hist.: LCC 46(Temp), f. & ef. 1-21-74; LCC 47, f. 3-28-74, ef. 5-1-74; LCC 6-1978, f. 6-23-78, ef. 7-1-78; LCC 16-1979, f. 8-28-79, ef. 8-29-79; Renumbered from 845-010-0720; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 5-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 13-1990(Temp), f. 6-5-90, cert. ef. 4-1-90

845-005-0026**License not Demanded by Public Interest or Convenience**

ORS 471.295(1) allows the Commission to deny a license that public interest or convenience does not demand. The following are some of the public interest or convenience reasons for which the Commission may deny a license unless the applicant shows good cause to overcome the criteria:

(1) Alcohol-Related Problems at Other Licensed Premises:

(a) The applicant has had repeated problems at another licensed location during the two years preceding this application or has had a license canceled or renewal refused because of problems with disturbances, lewd or unlawful activities or noise. These problems:

(A) Must occur on the licensed premises or be caused by patrons in the immediate vicinity of the licensed premises;

(B) Include, but are not limited to, obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alcohol-related litter; trespassing on private property; and public urination; and

(C) Must be related to the sale or service of alcohol under the exercise of the license privileges.

(b) Good cause to overcome this criterion is a showing by the applicant that the applicant will reasonably control all of the applicant's licensed premises to prevent problems described in paragraphs (1)(a)(A), (B) and (C) of this rule. Factors that affect this good cause determination may include, but are not limited to:

(A) Applicant is currently licensed at an outlet that has not had the problems described in paragraphs (1)(a)(A), (B), and (C) of this rule in the past year;

(B) Applicant successfully regained control of premises that had problems described in paragraphs (1)(a)(A), (B) and (C) of this rule;

(C) Applicant has a corrective plan that is likely to be effective;

(D) License conditions or restrictions would enable control of applicant's premises; and

(E) Applicant did not participate in the daily operation of the problem outlet, and there has not been a pattern of problems described in paragraphs (1)(a)(A), (B) and (C) of this rule at other

outlets where applicant has been licensed.

(c) This criterion does not apply to renewal applications.

(2) Proximity to Facilities:

(a) The licensed premises:

(A) Will be located within 500 feet in urban or suburban area or within 1,500 feet in a rural area of the boundary (measured property line to property line) of a licensed child care facility or elementary or secondary school; a church; a hospital, nursing care facility or convalescent care facility; a park or children-oriented recreational facility; and alcohol and other drug treatment or rehabilitation facility; and

(B) Will adversely impact the facility.

(b) Good cause to overcome this criterion includes, but is not limited to, a showing by the applicant that:

(A) The proposed operation is consistent with the zoning where the proposed premises will be located, is consistent with the general character of the area and the adverse impact will not unreasonably affect the facility; or

(B) The size of the proposed premises' community is so small that the proposed location is a reasonable location for the proposed operation.

(c) This criterion does not apply to renewal applications or to changes of ownership with no change in license privileges or operation.

(3) Problem Areas:

(a) The licensed premises will be located in an area that has a history of serious or persistent problems with unlawful activities, noise or disturbances. These problems need not be alcohol-related;

(b) Good cause to overcome this criterion includes, but is not limited to, a showing by the applicant that:

(A) Alcoholic beverage sale or service at the premises will not substantially contribute to the problems; or

(B) The applicant has a plan that demonstrates a willingness and ability to adequately control the proposed premises and patrons' behavior near the licensed premises.

(c) This criterion does not apply to renewal applications or to changes of ownership with no change in license privileges or operation.

(4) Package Store License:

(a) The applicant seeks a package store license in conjunction with a dispenser license. Good cause to overcome this criterion is a showing by the applicant that the community is inadequately served by other package store licenses or that the package store license will not detract from the dispenser's primary operation as a restaurant;

(b) The applicant seeks a package store license at an outlet that sells petroleum products and does not or will not maintain a wide variety of grocery items that is available immediate sale. "Wide variety" means an inventory at a cost to the applicant of not less than \$5,000 of foods that satisfy the general public's ordinary eating habits and personal and household products. "Wide variety" does not include alcoholic beverages or tobacco products. It also does not include snack food items that exceed ten percent of the inventory's value.

(5) Multiple Locations.

(a) An applicant or applicants seek/s multiple Dispenser licenses for locations or areas that the Commission may license together under one Dispenser license.

(b) When there is more than one applicant, the Commission applies subsection (a) of this rule only if there is substantial common ownership between any of the applicants.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295(1)

Hist.: OLCC 4-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 2-1996(Temp), f. & cert. ef. 3-12-96; OLCC 11-1996, f. 6-27-96, cert. ef. 8-1-96

845-005-0030

Criteria Weighing Against Issuing License

The following criteria will weigh against issuing a license:

(1) There is insufficient demand for the license in the applicant's community. The Commission may consider factors such as

declining or static population, business or industrial development in the applicant's community, or decreasing sales or patronage at other similarly licensed outlets in that community. "The applicant's community" means the applicant's city, or if located in an unincorporated area, the applicant's county, unless a substantial portion of the patronage of the premises is or would be from a larger or smaller area.

(2) Licensed physician or other professional evaluations of the applicant or any on-premises manager's mental, emotional or physical condition that show incompetence or physical inability to manage the business the applicant wants licensed. ORS 471.295(4)(b) allows the Commission to deny a license if the applicant is incompetent or physically unable to manage the business the applicant wants licensed. These evaluations are some indicators of this incompetence or physical inability.

(3) There is a final order of a court or administrative agency in a criminal or civil proceeding finding that the applicant failed to comply with the liquor laws of this or any other state ORS 471.295(4)(d) allows the Commission to deny a license if the applicant has violated liquor laws. These final orders are some but not the only indicators of liquor law violations.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295(1)

Hist.: LCC 46(Temp), f. & ef. 1-21-74; LCC 47, f. 3-28-74, ef. 5-1-74; LCC 6-1978, f. 6-23-78, ef. 7-1-78; LCC 16-1979, f. 8-28-79, ef. 8-29-79; Renumbered from 845-010-0725; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 3-1988, f. 6-14-88, cert. ef. 7-1-88

845-005-0040

Additional Criteria for Dispenser Class A, Dispenser Class C, and Seasonal Dispenser Licenses

To qualify for a Dispenser Class A, Dispenser Class C, or Seasonal Dispenser license the applicant must show in writing specifically how the applicant will comply with the food service standards of OAR 845-006-0032, and receive Commission approval of the proposal.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295(1), ORS 472.100, ORS 472.105 & ORS 472.114

Hist.: LCC 16-1979, f. 8-28-79, ef. 8-29-79; LCC 15-1980, f. 6-4-80, ef. 6-5-80; LCC 23-1980, f. 8-25-80, ef. 9-1-80; Renumbered from 845-010-0735; LCC 8-1981, f. 12-18-81, ef. 1-1-82; LCC 1-1983, f. & ef. 1-3-83; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 3-1988, f. 6-14-88, cert. ef. 7-1-88; OLCC 1-1996, f. 1-5-96, cert. ef. 1-15-96; OLCC 7-1998, f. 8-13-98, cert. ef. 11-1-98

845-005-0045

Additional Criteria for Dispenser Class "C" Licenses

Although an applicant for a Dispenser Class "C" license meets all other licensing criteria, the Commission may deny the application if:

(1) Alcoholic beverage service is from an area that is accessible to patrons of the restaurant.

(2) Patrons are served alcoholic beverages other than at tables as an incident to food service.

(3) The restaurant has a lounge or public bar.

(4) The applicant will not operate the premises as a restaurant that primarily sells and serves regular meals. "Regular meals" has the same meaning as in OAR 845-006-0032(2)(a).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.100(4)

Hist.: LCC 16-1979, f. 8-28-79, ef. 8-29-79; LCC 9-1980, f. 3-3-80, ef. 3-5-80; Renumbered from 845-010-0737; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92

845-005-0046

Additional Criteria for Caterer's License (ORS 472.119)

(1) Unless the applicant shows good cause to overcome this criterion, the Commission will deny or refuse to renew a Caterer license application if the applicant has less than or is unable to

reasonably project at least a 25 percent ratio of annual food sales to annual gross sales of food and alcoholic beverages for catered events where the licensee provides alcoholic beverages as a part of the catering contract. In determining this ratio, the licensee may not include food sales for catered events at which the licensee provided no alcoholic beverages.

(2) A Caterer licensee must provide food service at each catered event at which the licensee provides distilled spirits. This food service must be a regular meal or a variety of food, some of which the caterer prepares and cooks, in sufficient quantities to provide at least one serving of each item for each person at the event. It does not include snack foods like peanuts, popcorn, chips and dips.

(3) A Caterer licensee must keep a record of the date, time and location of each event where the caterer has contracted to sell or serve alcoholic beverages and records of food and alcoholic beverage sales for these events. The licensee must keep these records separate from any food sales records of catered events where the licensee does not provide alcoholic beverages. The licensee must keep these records for two years.

(4) As used in section (2) of this rule, "regular meal" means any combination of foods, excluding sandwiches, the caterer prepares that is generally considered to be a complete meal and requires the use of dining implements for consumption.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.119

Hist.: OLCC 14-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 5-1995(Temp), f. 7-20-95, cert. ef. 8-1-95

845-005-0048

Tour Boat License

(1) ORS 472.211 allows the Commission to issue a dispenser license to a tour boat owner or operator. The statute also allows the Commission to waive a regulation for a tour boat operator or owner that would otherwise apply to a commercial establishment.

(2) The Commission may allow more than one tour boat to be operated under one dispenser license if:

(a) The licensee owns or leases the tour boats. The Commission does not license a tour boat operator's agent or representative.

(b) Each boat is a "tour boat" as defined by ORS 472.211 (2).

(c) The licensee notifies the Commission in writing at least 10 days before adding an additional tour boat to be operated under the license.

(d) The licensee meets all applicable licensing criteria.

(3) Requirements for boats that will be in Oregon waters 30 days or less in a calendar year:

(a) Law Orientation. The applicant or legal representative must attend an OLCC Law Orientation Class.

(b) Server Education. The applicant or designee, as defined in OAR 845-005-0200, must successfully complete an approved Alcohol Server Education Program.

(c) Service Permits. Except for those covered by subsection (3)(b), the Commission waives the service permit requirement for alcohol servers and for those who supervise the sale or service of alcohol. However, the applicant, licensee or Server Education designee must ensure that all alcohol servers, and those who supervise the sale of service of alcohol, read the OLCC brochure, What Every Volunteer Alcohol Server Needs to Know.

(d) Minor Postings. The Commission generally does not assign minor postings. However, the Commission instructs tour boat licensees that minors must not be in areas with drinking environments during the hours that drinking predominates.

(4) Requirements for boats that will be in Oregon waters over 30 days in a calendar year:

(a) Law Orientation. The applicant or legal representative must attend an OLCC Law Orientation Class.

(b) Server Education. The applicant or designee, as defined in OAR 845-005-0200, must successfully complete an approved Alcohol Server Education Program.

(c) Service Permits. The licensee, applicant, or Server Educa-

tion designee must ensure that all employees engaged in the sale or service of alcohol, or supervising the sale or service of alcohol, have a service permit.

(d) Minor Postings. The Commission assigns minor postings according to the Minor Posting rule, OAR 845-006-0040.

(5) Additional Standards. ORS 472.211 sets certain standards for tour boat licenses and also allows the Commission to waive regulations for tour boat licenses that would otherwise apply to a commercial establishment. The following standards apply to tour boat applicants and licensees:

(a) A tour boat licensee does not need to:

(A) Designate regular meal hours;

(B) Operate a minimum of five days per week; or

(C) Have regular hours of operation.

(b) A tour boat licensee may:

(A) Operate on a charter basis;

(B) Contract with a caterer to provide food. If the caterer provides food to the tour boat for direct compensation, the caterer does not have a licensable interest in the business. If the caterer provides food or kitchen service on board and has a licensable interest in the business as defined in OAR 845-005-0011, the caterer must be a co-licensee.

(c) ORS 472.211 requires a tour boat licensee, during the times alcohol is served or consumed, to provide at least three different types of food, exclusive of sandwiches. The law also requires tour boat licensees to serve regular meals as required by the Commission. The meals may be prepared and cooked off the tour boat.

(6) Liquor Liability. An applicant for a tour boat license must meet the liquor liability requirement as required in OAR 845-005-0100.

(7) The Commission may refuse a license or renewal application from a tour boat operator who does not meet the standards of this rule.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.060(1) & ORS 472.060(2)(d).

Stats. Implemented: ORS 472.211

Hist.: OLCC 6-1997, f. 2-28-97, cert. ef. 3-15-97

845-005-0055

Restricting License Privileges and Conduct of Operations

(1) The Commission may restrict a license or service permit when:

(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;

(b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s); or

(c) The Commission determines that a restriction is in the public interest or convenience.

(2) In determining public interest or convenience reasons to restrict a license or permit, the Commission considers factors that include but are not limited to:

(a) The character or environment of the neighborhood in which the licensed premises operate;

(b) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor or criminal law violations by the licensee, patrons of the licensed premises or the public; or

(c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.

(3) The Commission has determined that it is not in the public interest or convenience to issue or renew:

(a) A license that allows package sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;

(b) A Retail Malt Beverage license that allows minors on the licensed premises, unless the Commission restricts the sales of kegs;

(c) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the

Commission restricts the relative or associate from permitting the person from being on the premises;

(d) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.

(4) When the Commission restricts a license or service permit, it notifies the licensee or permittee. If the licensee or permittee disagrees with the restriction, the licensee or permittee has the right to a hearing under the procedures in ORS Chapter 183 and OAR Chapter 845, Division 003.

(5) A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a violation of ORS 471.405(1), a operating other than the license or permit permits. Operating other than the license or permit permits is a Category I violation.

(6) A restriction remains in effect until the Commission removes it. The licensee or permittee may ask the Commission to remove or modify a restriction. The written request must explain why the licensee or permittee believes the Commission should remove or modify the restriction. The Commission will notify the licensee or permittee, in writing, of its decision to approve or deny the request and the basis for its decision. If the Commission denies the request, the licensee or permittee has the right to a hearing under the procedures in ORS Chapter 183 and OAR Chapter 845, Division 003.

(7) As used in subsections (2)(c) and (3)(a) of this rule, "street drinkers" means people who drink unlawfully in streets, alleys, parks and other similar public places.

(8) As used in subsection (2)(b) of this rule, "conditions" means conditions in the immediate vicinity of the premises that are related to the exercise of the license privileges and conditions in the premises or in the areas around the premises that the applicant/licensee controls.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.405(1) & ORS 471.415

Hist.: LCC 62(Temp), f. & ef. 7-21-77; LCC 63, f. 9-22-77, ef. 10-1-77; Renumbered from 845-010-0740; OLCC 19-1990, f. 9-28-90, cert. ef. 10-1-90

845-005-0057

Alcohol Impact Areas

(1) Purpose. In some of Oregon's larger cities, there are areas with very serious alcohol-related problems where it would take extraordinary resources to identify the particular licensed businesses whose customers contribute to the problems. In these circumstances, the Commission may designate an alcohol impact area and set uniform limitations and requirements that specify how alcohol may be sold in the area. The purpose of this rule is to describe how the Commission, through the rulemaking process, designates an alcohol impact area and sets uniform limitations and requirements within it.

(2) Requesting an Alcohol Impact Area. In order for the Commission to consider designating an alcohol impact area, it must receive a petition for rulemaking. The Commission initiates rulemaking only on petitions from an authorized representative of an incorporated city with a population over 300,000. The petition must propose rule language to reduce street drinking and public intoxication associated with off-premises sales, or noisy conduct and late night disturbances associated with on-premises consumption.

(3) Prerequisites for Petitioning. The Commission requires voluntary efforts to address problems of street drinking and public intoxication, or noisy conduct and late night disturbances, and requires the city to seek public input before petitioning the Commission. A city that plans to petition for an alcohol impact area must:

(a) Require affected businesses, citizens and city staff to make a serious and good faith effort to work cooperatively to develop a voluntary program to address the problems;

(b) Make reasonable efforts to identify and notify those likely to be affected, offering them an opportunity to participate in the city's process;

(c) Hold a public hearing where interested parties may comment on the documentation of problems and the proposed rule language;

(d) Offer in the public hearing an opportunity for affected businesses to explain why their business operation should be exempted from the proposed limitations and requirements; and

(e) Not take into consideration or make any proposal based on age, race, sex, disability, marital status, national origin, sexual orientation, color or religion.

(4) Petition Contents. The city must meet the petitioning requirements of the Administrative Procedures Act (APA), including a comprehensive petition which includes:

(a) An explanation of a serious and good faith effort by the affected businesses, citizens, and city staff to work cooperatively to develop a voluntary program to address the problem;

(b) A description and documentation of a lengthy, pervasive history of:

(A) Street drinking, public intoxication and related problems associated with off-premises sales that affect neighborhood livability. To document these problems, the city must use crime statistics, police reports, detoxification reports or similar records; or

(B) Noisy conduct, late night disturbances and related problems associated with on-premises consumption that affect neighborhood livability. To document these problems, the city must use police reports or other records of government bureaus or departments.

(c) A list of all the licensed businesses in the proposed alcohol impact area, a description of the parts of those businesses which may be contributing to the problem and an explanation why it is not practical to determine the specific sources of the problems;

(d) Proposed rule language that designates the boundaries of the proposed alcohol impact area and a rationale for the boundaries;

(e) Proposed rule language to limit off-premises alcohol sales, to limit hours of alcohol sales or to set any other limitations or requirements for the alcohol impact area designed to reduce the documented problems;

(f) An assessment of the positive and negative impacts the proposed limitations and requirements would have, both short and long range, on:

(A) Each licensed business within the proposed alcohol impact area;

(B) The economic viability of the proposed alcohol impact area as a whole; and

(C) The surrounding areas and the local governing body.

(g) A list of all the licensed businesses in the proposed alcohol impact area that the city intends to not cover by the proposed limitations and requirements and an explanation of why they should not be covered; and

(h) A list of all the licensed businesses in the proposed alcohol impact area that requested an exemption from the limitations and requirements. The city must explain why it thinks each requesting business operation should or should not be exempted.

(5) Basis for Automatic Denial of Petition. The Commission automatically denies any petition that does not include the information required in section (4) of this rule.

(6) Commission's Notice of Rulemaking. If the Commission initiates rulemaking to consider a proposed alcohol impact area, the Commission follows its Notice of Rulemaking procedures, schedules a public rulemaking hearing and also:

(a) Makes a reasonable effort to identify and notify all neighborhood and business associations (registered with the Commission) and all licensees located in, or within 500 feet, of the proposed alcohol impact area; and

(b) Sends a copy of the city's proposed rule language to each those associations and licensees.

(7) Commission's Rulemaking Process. In the process of

rulemaking to consider the creation of an alcohol impact area, the Commission follows the APA requirements and also holds a public hearing at which interested parties may present additional information, and comment on the documentation of problems and the rule language proposed by the city.

(8) Designating an Alcohol Impact Area by the Commission. After reviewing the rulemaking record, the Commissioners consider whether or not to designate an alcohol impact area. In designating an alcohol impact area, the Commissioners set boundaries and uniform limitations and requirements which specify how alcohol may be sold in the area:

(a) In setting the boundaries of an alcohol impact area, the Commission identifies the boundaries by designating thoroughfares, waterways, or other similar boundaries. The Commission may extend the boundaries beyond the actual area where problems are concentrated;

(b) In setting limitations and requirements, the Commission may:

(A) Limit off-premises alcohol sales;

(B) Limit hours of alcohol sales; or

(C) Set any other limitations or requirements for the alcohol impact area that may reduce the documented problems such as limiting the number of new outlets in the area.

(c) The Commission does not take into consideration the age, race, sex, disability, marital status, national origin, sexual orientation, color or religion of the licensees or the patrons of the licensed businesses within the alcohol impact area.

(9) Exemptions. After the Commission has established an alcohol impact area and the limitations and requirements are in effect, licensed businesses may apply for an exemption their business operation:

(a) The request must be in writing and include:

(A) A list of the limitations and requirements from which the licensee wants to be exempted; and

(B) An explanation of how the licensee's business operation did not and will not contribute to the problem, and why their business operation should be exempted from each of the limitations and requirements from which they are requesting exemption.

(b) The burden is on the licensee to convince the Commission that their business operation did not and will not contribute to the problems in the area and should be exempted from each of the limitations and requirements from which they are requesting exemption;

(c) If the Commission denies a request for an exemption, the licensee has the right to a hearing to contest the decision. However, the licensee must comply with all the limitations and requirements unless the Commission issues a final order which reverses the administrator's decision;

(d) The Commission notifies the originally petitioning city of requests for exemption;

(e) For this rule, "business operation" refers to basic business concepts, such as a "gift shop" or a "hotel". It does not refer to retailing practices, such as "selling alcohol only to people with rent receipts";

(f) Licensees must reapply for an exemption with each license renewal. The burden is on the licensee to convince the Commission that their business operation did not and will not contribute to the problems in the area and should be exempted from each of the limitations and requirements from which they are requesting exemption.

(10) Petitioning the Commission to Change an Alcohol Impact Area Rule. Any interested person may petition the Commission to amend or repeal an Alcohol Impact Area rule. The petitioner must follow the steps listed in OAR 137-001-0070. In a petition to amend an Alcohol Impact Area rule, a person may ask for changes to the boundaries and/or the limitations and requirements for the Alcohol Impact Area.

(11) Automatic Review of an Alcohol Impact Area. Twelve months after an alcohol impact area goes into effect, the Commissioners offer a public forum for comment. After considering the comments, the Commissioners may decide to initiate the rulemaking process to consider whether to continue, change or repeal the

rule establishing that alcohol impact area:

(a) Before holding the public forum, the Commission makes a reasonable effort to notify:

(A) Licensees and registered neighborhood and business associations located in the alcohol impact area;

(B) Anyone who commented or testified during the original rulemaking process which established the alcohol impact area; and

(C) The city which originally petitioned the Commission.

(b) If the Commissioners initiate rulemaking after the public forum, the Commission follows the notice procedures described in section (6) of this rule.

(12) Sanction. A violation of a limitation or requirement in an alcohol impact area rule is a Category III violation.

(13) Other Commission Action. Nothing in this rule prevents the Commission from imposing additional restrictions on any license in the alcohol impact area or refusing licenses within a designated alcohol impact area if warranted by any other law or rule of the Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183, ORS 471 & ORS 472, including ORS 183.390, ORS 471.030 & ORS 472.030

Hist.: OLCC 8-1994, f. 12-23-94, cert. ef. 1-1-95

845-005-0060

License Renewal: Process

(1) Filing a Renewal Application:

(a) Any licensee who files a completed renewal application with the Commission at least 20 days before the date the license expires may continue to operate as if the license were renewed, pending a decision by the Commission;

(b) Any licensee who does not file a completed renewal application at least 20 days before the existing license expires must stop selling or serving alcoholic beverages when the license expires. However:

(A) If the Commission receives a completed license renewal application less than 20 days before the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee that ORS 471.290(3) requires, issue a letter of authority to operate beyond the expiration of the license, pending a decision by the Commission;

(B) A licensee must not sell or serve alcoholic beverages after the license expires; a violation of this subsection is a Category III violation. If the Commission receives a completed license renewal application within 30 days after the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee that ORS 471.290(3) requires, issue a letter of authority to resume operation, pending a decision by the Commission.

(c) The Commission will not renew a license if the Commission receives the renewal application more than 30 days after the license expires. A person who wants to resume selling or serving alcoholic beverages in this circumstance:

(A) Must submit a completed new application, including the documents and information required by the Commission.

(B) Must not sell or serve alcoholic beverages unless and until they receive authority to operate from the Commission after submitting the completed new application.

(d) A person relicensed under section (1)(c) of this rule who sold or served alcoholic beverages in violation of section (1)(b)(B) of this rule is subject to administrative sanctions.

(e) A person who sells or serves alcoholic beverages without a liquor license is in violation of ORS 471.475, a misdemeanor, and is subject to criminal prosecution.

(f) For purposes of this rule, a completed application is considered filed or received according to its postmark date, if legible, or according to the date the Commission actually receives the completed application, whichever is earlier.

(2) Completed Application: As used in this rule, a completed application is one that is completely filled out, is signed by the applicant and includes the appropriate fee(s), the local governing

body recommendation, the bond or equivalent that ORS 471.210 requires and the liquor liability insurance or bond that ORS 471.218 and OAR 845-005-0100 require. The Commission will not require a new local governing body endorsement:

(a) If the license renewal date is less than 90 days after the initial issuance; or

(b) For any manufacturer or wholesaler license renewal, except Brewery-Public House licenses;

(c) For Public Passenger, Druggist and Health Care Facility licenses.

(3) Late Renewal Fee:

(a) ORS 471.290(3) requires the Commission to charge a late fee for renewal applications received less than 20 days before the license expires or not more than 30 days after the license expires. In computing this 20 or 30 day period, the Commission does not count the day the license expires. For example, a license expires on the 31st. The 20 day period ends on the 11th unless the 11th is a Saturday, Sunday or legal holiday. If the 20th or 30th day is a Saturday, Sunday or legal holiday, the period ends at 5 p.m. on the first working day after the Saturday, Sunday or legal holiday;

(b) The Commission may waive the late renewal fee if the licensee fails to file a timely application due to unforeseen circumstances, such as a death or illness of the licensee or to a delay in Commission or local governing body processing of the application through no fault of the licensee.

Stat. Auth: ORS 471, ORS 472, including ORS 471.030, ORS 471.730(1) & (5), ORS 472.030 & ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.210, ORS 471.290(3), (4) & (5), ORS 471.295 & ORS 471.218.

Hist.: LCC 9-1978, f. & ef. 8-25-78; LCC 8-1980, f. 1-28-80, ef. 3-1-80; Renumbered from 845-010-0750; OLCC 8-1981, f. 12-18-81, ef. 1-1-82; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 17-1990, f. 8-1-90, cert. ef. 9-1-90; OLCC 11-1991, f. 9-9-91, cert. ef. 10-1-91; OLCC 7-1994, f. 12-23-94, cert. ef. 1-1-95; OLCC 19-1997, f. 11-3-97, cert. ef. 1-1-98; OLCC 2-1998, f. 3-5-98, cert. ef. 3-15-98

845-005-0061

License Renewal: Criteria

(1) A licensee who applies for license renewal must meet the same criteria as any other applicant except:

(a) OAR 845-005-0025(1), Adequate Resources. The Commission may, however, deny license renewal if the licensee has not built or operated the licensed premises substantially as the applicant proposed and the Commission approved;

(b) OAR 845-005-0025(2), Food Service. The Commission may, however, deny license renewal at a commercial establishment if the licensee fails to provide at least the food service the Commission last approved, including the number of meal periods, hours of meal service and type of cuisine. The Commission may also deny renewal for a commercial establishment if the licensee fails to maintain at least a 25 percent ratio of food sales to gross sales of food and alcoholic beverages during the 12 month period required on the Commission renewal form. The Commission will waive the criterion if:

(A) The licensee has complied with the regular meal requirements and the minimum food service requirements in OAR 845-006-0032;

(B) The licensee shows that the licensee has made a serious and substantial effort to increase the food sales during the current license year; and

(C) The licensee has shown a willingness to make a serious and substantial effort to promote food sales by adopting a reasonable plan designed to increase food sales during the course of the next license year.

(c) OAR 845-005-0026(1), Alcohol-Related Problems at Other Premises; (2), Proximity to Facilities; and (3), Problem Areas;

(d) OAR 845-005-0040, Additional Criteria for Dispenser Licenses.

(2) Serious and Substantial Effort:

(a) The following are some of the factors the Commission considers in determining whether the licensee has made or is

proposing to make a serious and substantial effort to increase the food sales. The list is not all-inclusive. The Commission may consider other factors:

(A) Improvements in food preparation and presentation;

(B) Improvements in customer service;

(C) The addition of menu items with greater appeal to the licensee's customers;

(D) An increase in the hours of food service operation;

(E) An increase in the ratio of seating capacity for food service compared to seating for alcoholic beverage service;

(F) The reduction or elimination of conditions that diminish the appeal of the licensee's business as a place to dine;

(G) An increase in food service advertising;

(H) Consistent promotions to increase food sales;

(I) Ongoing, active food sales promotion in the lounge;

(J) An increase in the number of hours worked by food service personnel;

(K) Any Community economic conditions or competition from other Dispenser licenses that directly affect the licensee's food sales.

(b) Licensees are responsible for:

(A) Showing that the main foreseeable effect of their efforts will be increased food sales;

(B) Offering evidence of their efforts to increase food sales;

(C) Showing the reasonable basis for their projections for increasing or improving food sales.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.218 & ORS 471.295

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 65, f. 9-22-77, ef. 10-4-77; LCC 12-1978, f. 9-28-78, ef. 10-1-78; LCC 16-1979, f. 8-28-79, ef. 8-29-79; Renumbered from 845-010-0745; LCC 6-1980, f. 1-28-80, ef. 3-1-80; Renumbered from 845-010-0185; LCC 9-1982, f. 8-27-82, ef. 10-1-82; LCC 4-1984, f. 8-2-84, ef. 9-1-84; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 17-1990, f. 8-1-90, cert. ef. 9-1-90; Renumbered from 845-008-0015(5) and 845-005-0050; OLCC 7-1994, f. 12-23-94, cert. ef. 1-1-95; OLCC 2-1998, f. 3-5-98, cert. ef. 3-15-98

845-005-0065

Change of Licensee; Change of Location

(1) The Commission may allow a change of licensee at a licensed business if the proposed new owner qualifies under the criteria set forth in OAR 845-005-0015 through 845-005-0075 and the statutory criteria in ORS 471.295. The proposed new owner must apply for a new license.

(2) The Commission may allow a change of location of licensed operations to any licensee that qualifies under the criteria set forth in OAR 845-005-0015 through 845-005-0075 when the proposed new location serves the community of the existing licensed premises. The licensee must apply for a new license for the new location.

(3) For purposes of this rule, "community" means the area primarily served by the existing licensed premises. The applicant has the burden of establishing the geographic area served by the existing licensed premises and showing that the new location will serve adequately the same area. The new location may serve a community larger than the existing community.

(4) When applying OAR 845-005-0040 to dispenser change of licensee or change of locations applications, the Commission will consider only subsections (3)(b), (c) and (e). The Commission may waive unfavorable consideration under these subsections if the applicant establishes good cause to do so. An applicant for a dispenser license at a business that has a history of emphasizing the sale of alcoholic liquor to a greater degree than food service may show good cause by adopting a reasonable corrective plan to increase food sales on both a short and long term basis.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295, ORS 471.301(1)(e) & ORS 471.301(2)(d)

Hist.: LCC 10-1978, f. & ef. 8-25-78; LCC 32-1979, f. 12-14-79, ef. 1-1-80; Renumbered from 845-010-0755; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; OLCC 21-1987, f. & ef. 10-1-87

845-005-0066**License Surrender**

A licensee may ask the Commission to accept the surrender of a license. The license remains in effect until the Commission accepts the surrender. If the Commission accepts it, the Commission will notify the licensee of the date the Commission accepts the surrender. The licensee must stop selling or serving alcoholic beverages from this date through the remainder of the licensing period. If the licensee wants to sell or serve alcoholic beverages after this date, the licensee must apply for and receive a new license.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471 & ORS 472, including ORS 471.030, ORS 471.301 & ORS 472.030

Hist.: OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92

845-005-0070**Additional Criteria for Unenclosed Areas**

(1) The following criteria shall preclude licensing of an exterior and/or unenclosed area unless good cause which outweighs the criteria involved is shown by the applicant:

(a) Failure or inability of the applicant to obtain a favorable endorsement by the local governing body for licensure of the area;

(b) The area proposed to be licensed is not adjacent to the existing or proposed licensed premises;

(c) Failure to demonstrate that there will be adequate supervision of the area so as to prevent violations of the Liquor Control statutes and administrative rules of the Commission;

(d) Failure of the applicant to show control and legal access of the area to be licensed;

(e) If the application is in conjunction with a Dispenser Class "A" or Seasonal Dispenser licensed premises, the licensing of the area would provide less food service than is required by the food service rule (OAR 845-008-0015);

(f) Licensing of the unenclosed area would require persons entering or exiting the premises to travel through an area where the sale of alcoholic liquor and/or entertainment is emphasized to a greater degree than the sale of food;

(g) The area proposed to be licensed is heavily patronized by minors unaccompanied by adults.

(2) For purposes of this rule, "unenclosed area" means an area which is not completely enclosed, from floor to ceiling, by some barrier which would make it physically impossible for a person to enter or leave, or an alcoholic beverage container to be taken from, the area other than through a normal door or window.

(3) These criteria will not be applied to applications for Special Retail Beer, Special Retail Wine, Special Events Winery, Special Dispenser and Community Events Dispenser licenses.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295, ORS 472.100(2) & ORS 472.205(2)

Hist.: LCC 10-1982, f. 10-11-82, ef. 1-1-83

845-005-0075**Additional Criteria for Seasonal Dispenser Licenses**

(1) An applicant may obtain a Seasonal Dispenser License for up to nine months in a 12 month period. The license periods may vary from season to season.

(2) The applicant must identify a seasonal demand resulting from tourism or other activities that are determined by weather conditions, such as skiing, or by state regulations, such as fishing and hunting.

(3) The applicant must offer food service conforming to the requirements of OAR 845-006-0032.

(4) The Commission may give unfavorable consideration to an applicant for any of the reasons cited in OAR 845-005-0040(3)(b), (c) and (e).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.205

Hist.: LCC 19-1979, f. 9-24-79, ef. 10-3-79; LCC 5-1980, f. 1-28-80, ef. 2-1-80; Renumbered from 845-010-0780; LCC 2-1986, f. 2-6-86, ef. 4-1-86; OLCC 2-1987, f. 2-9-87, ef. 3-1-87; Renumbered from 845-004-0040

845-005-0080**Out-of-State Wine Shipper License.**

(1) A retailer or winery licensed in another state that wants to ship wine to Oregon residents as ORS 471.229 allows must complete a Commission-supplied application for an Out-of-State Wine Shipper license. There is no fee for this license. The license is valid for five years and expires at 12 midnight on December 31 of the fifth year following issuance.

(2) An Out-of-State Wine Shipper licensee:

(a) May accept written or telephone orders for wine. The licensee must wait until the next day to ship a telephone order.

(b) May use only a common carrier who has a Commission-approved delivery plan. The Commission requires plan approval to assure appropriate alcoholic beverage delivery. To approve a plan, the Commission considers:

(A) The specifics of the plan;

(B) The length of time the carrier has been in business and its record of compliance with the law;

(C) The carrier's ability to comply with the plan; and

(D) The carrier's training program for delivery personnel and delivery practices.

(c) Must comply with the requirements of ORS 471.229 and all other Oregon alcoholic beverage statutes and rules applicable to the sale of wine in Oregon.

(d) Must prominently label each shipping container of any wine shipped under this subsection: **"Alcoholic Beverages - Do not deliver to a person who is under 21 years of age or visibly intoxicated."**

(e) Is authorized to ship not more than two cases of wine containing not more than nine liters per case per month to any resident of this state who is at least 21 years of age, for personal use and not for resale.

(3) The Commission may cancel or suspend a wine shipper's license:

(a) If the delivery person delivers to a minor or a visibly intoxicated person or does not comply with subsection (2)(b) of this rule;

(b) If the licensee fails to comply with the requirements of ORS 471.229 and all other Oregon alcoholic beverage statutes and rules applicable to the sale of wine in Oregon.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.229, ORS 471.730(1), ORS 471.730(5) & ORS 471.730(6)

Stats. Implemented: ORS 471.229

Hist.: OLCC 12-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 8-1991(Temp), f. 5-24-91, cert. ef. 6-1-91; OLCC 18-1991, f. 10-31-91, cert. ef. 11-1-91; OLCC 1-1997, f. 2-3-97, cert. ef. 3-15-97

845-005-0082**Community Events Dispenser License**

(1) ORS 472.116 allows the Commission to issue a Community Events Dispenser license to a municipal corporation, an association or non-profit corporation that is engaged in production or promotion of a convention, festival, fair, rodeo, civic event or community event. As used in ORS 472.116 and this rule, an association or not-for-profit (non-profit) corporation means an association or a corporation that distributes none of its income to its members, directors or officers.

(2) For purposes of this rule, a city, county or other municipal corporation, or an association or non-profit corporation that owns or operates the premises used for a Community Events Dispenser Event is engaged in the production or promotion of the event.

(3) The Commission issues Community Events Dispenser licenses for use only in convention centers, fairgrounds, or similar facilities and only for conventions, festivals, fairs, rodeos or civic or community events. The Commission may grant an annual Community Events Dispenser license for a calendar year to an applicant that maintains a permanent convention center, fair-

grounds, or similar facility used for conventions, festivals, fairs, rodeos or civic or community events at least 100 days in the calendar year. An applicant that does not qualify for an annual license must obtain a separate license for each event. The Commission will not issue non-annual Community Events Dispenser licenses for use in conjunction with repetitive events as a substitute for a regular license. Repetitive events are events of a similar nature that occur more than four times a year.

(4) The fee for an annual Community Event Dispenser license is \$400 per calendar year. The fee for any other Community Events Dispenser license is \$25 for each day the license is used. As used in this section, a day begins at 7 a.m. and ends at 2:30 a.m.

(5) The application will:

(a) Give the name of the applicant and, if not a governmental body, certify the applicant's non-profit status;

(b) State the purpose of the event(s), the area(s) to be licensed, and the date(s) and time(s) for alcoholic beverage service;

(c) The name of the person responsible;

(d) The distribution of the proceeds, if any; and

(e) Include a favorable local governing body recommendation, unless the applicant is a city or county.

(6) The licensee must obtain approval from the Commission for each event or activity. The licensee may obtain approval at one time for a number of scheduled events or activities.

(7) During all times that the licensee sells or serves alcoholic beverages the licensee must insure that a variety of short order or other similar foods are cooked and served on the premises where the event is being held, but not necessarily within the portion of those premises where the licensee sells or serves alcoholic beverages. Peanuts, popcorn, pretzels and other such snacks are not sufficient to meet this food requirement.

(8) Service permits:

(a) Any person who sells or serves alcoholic beverages for on premises consumption under an annual Community Events Dispenser license must have a valid service permit;

(b) ORS 471.360(2) allows the Commission to waive the service permit requirement for licensees whose primary business is not the sale or service of food or alcoholic beverages. The Commission finds that persons who receive non-annual Community Events Dispenser licenses are not primarily in the food or alcoholic beverage business. Therefore, the Commission waives the service permit requirement for all non-annual Community Events Dispenser licenses.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.116

Hist.: LCC 12-1979(Temp), f. & ef. 7-20-79; LCC 23-1979, f. 10-26-79, ef. 10-29-79; Renumbered from 845-010-0775; LCC 4-1983, f. 4-29-83, ef. 7-1-83; OLCC 21-1990, f. 10-30-90, cert. ef. 11-1-90; Renumbered from 845-004-0035

845-005-0090

Standards for Authority to Operate a Licensed Business as a Secured Party, a Trustee, a Receiver, a Debtor-in-Possession or an Administrator

(1) ORS 471.301(2)(c) allows the Commission to issue, for a reasonable period of time, a temporary authority to operate a licensed business to a person holding a security interest in the business to allow orderly disposition of the business. The secured party must provide the Commission with the following information:

(a) Proof of a substantial security interest as defined in ORS 79.1050 in the licensed business;

(b) Proof of the licensee's default on the secured debt;

(c) Proof of legal access to the real property; and

(d) A written request for authority to operate as a secured party listing the secured party's address and telephone number.

(2) ORS 471.301(2)(b) allows the Commission to issue a temporary authority to operate a licensed business to the trustee, the receiver of an insolvent or bankrupt licensed business or the

administrator of a deceased licensee. The purpose of this authority is to provide for the operation of the licensed business for a reasonable period of time to allow orderly disposition of the business. The trustee, the receiver, debtor-in-possession must provide the Commission with the following information:

(a) Proof that the person is the legal trustee, receiver, debtor-in-possession for the business; and

(b) A written request for authority to operate that lists the trustee, the receiver, debtor-in-possession's address and telephone number.

(3) The Commission may revoke or refuse to issue or extend authority for secured party, trustee, receiver, debtor-in-possession to operate:

(a) If the secured party, trustee, receiver, debtor-in-possession does not propose to operate the business immediately or does not begin to operate the business immediately upon receiving the temporary authority;

(b) For any of the reasons that the Commission may revoke or refuse to issue or renew a license;

(c) If the secured party, trustee, receiver, debtor-in-possession operates the business in violation of ORS Chapter 471 or 472 or OAR Chapter 845;

(d) If a reasonable time for disposition of the business has elapsed; or

(e) If the Commission has approved a change of location for the existing license.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.301(2)

Hist.: OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92

845-005-0100

Liquor Liability Insurance or Bond Requirement

(1) ORS 471.295(4)(i) requires applicants for a liquor license to demonstrate financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed. ORS 471.295 (2) requires applicants listed in ORS 471.218 to maintain liquor liability insurance or bond. In addition to other requirements, the Commission has determined that licensees listed in ORS 471.218 and Hotel Dispenser licensees must demonstrate financial responsibility for licensees' liability for damages to third parties caused by patrons off the licensed premises by meeting the requirements in section (1)(a) or (b) of this rule. ORS 471.218 requires certain licensees to provide coverage for injuries suffered because of the conduct of visibly intoxicated persons who were served in licensed premises by:

(a) Maintaining liquor liability insurance of not less than \$300,000; or

(b) Maintaining a bond with a corporate surety authorized to transact business in this state in the amount of not less than \$300,000.

(2) The requirement applies to the covered licenses issued or renewed on or after March 15, 1998.

(3) ORS 471.218 also requires licensees subject to the requirement to supply proof of compliance at the time the license is issued or renewed. For insurance, licensees must provide proof by naming the Commission as Certificate Holder on the policy and giving the Commission a copy of the certificate. For a bond, proof may be satisfied by identifying the name of the surety and providing the bond identification number.

(4) Failure to maintain insurance or a bond as required is a Category I violation and the Commission may cancel the license.

Stat. Auth.: ORS 471, ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295(4)(i) & ORS 471.218

Hist.: OLCC 9-1994, f. 12-23-94, cert. ef. 1-1-95; OLCC 14-1997, f. 7-1-97, cert. ef. 8-1-97; OLCC 2-1998, f. 3-5-98, cert. ef. 3-15-98

Alcohol Server Education Program Licensee Requirements

845-005-0200

Licensee Requirements

(1) ORS 471.542 requires applicants to complete an approved alcohol server education program to qualify or requalify for certain licenses. After an applicant completes an approved alcohol server education course and passes the exam, the applicant has met the alcohol server education requirement for any license issued within five years from the completion date. The licensee, except a winery salesperson licensee, must again complete an approved course and pass the exam before the Commission will issue any license for a licensing period that begins after the date this five year period expires. A winery-salesperson licensee must complete the course any time within two years before his/her license expires to qualify for a license.

(2) When the Commission issues a license in the name of a corporation, limited partnership or business entity other than individual persons, the licensee must designate a person or persons (depending on business' structure) to take the course and pass the exam on the licensee's behalf. The designee must have the authority to set, implement or change the licensee's practices for selling and serving alcoholic beverages. The licensee may change its designee. If the designee no longer qualifies to act on the licensee's behalf, the licensee must appoint a new designee within 20 days. The licensee must give the Commission written notification within ten days of the appointment. The new designee must take the course and pass the exam within 45 days of appointment.

(3) A license applicant must include the alcohol server education administrative fee with each initial application and with each renewal application. The alcohol server education administrative fee for annual licenses is \$2.60 and is \$13 for five-year licenses.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 7-1988, f. 9-13-88, cert. ef. 10-1-88; OLCC 8-1988(Temp), f. 11-8-88, cert. ef. 12-1-88; OLCC 5-1989, f. 5-24-89, cert. ef. 5-29-89; OLCC 2-1990, f. 2-21-90, cert. ef. 3-1-90; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0105

845-005-0205

Extensions and Exemptions

(1) ORS 471.542 allows the Commission:

(a) To extend the time limit for completing the course and passing the exam for hardship reasons; and

(b) To exempt licensees who do not participate in the management of the business.

(2) The Commission may grant an extension to an applicant or licensee for a length of time less than the licensing period but no more than 360 days if:

(a) An applicant or licensee is seriously ill or injured;

(b) A member of an applicant or licensee's family is seriously ill, injured or has died;

(c) There is no course available within 100 miles of an applicant, or licensee's residence;

(d) The Commission approved the applicant as a security interest holder within 30 days before the license expiration; or

(e) An applicant, or licensee shows other good cause to grant a hardship extension.

(3) Except for a winery salesperson applicant or licensee, the Commission may exempt an applicant or licensee who:

(a) Does not participate in the sale or service of alcoholic beverages;

(b) Does not participate in setting, implementing or changing the business' alcoholic beverage sales or service practices; and

(c) Has a co-licensee or manager who meets the alcohol server education requirement.

(4) An applicant or licensee must send the Commission a written request for an extension or exemption that explains the reason for the request. Requests for extensions should include the amount of time needed. The Commission will notify the applicant or licensee in writing of its approval or denial. Extension approval notices will include the length of the extension.

(5) The Commission may deny, cancel or suspend the

license:

(a) If the applicant or licensee fails to complete an approved alcohol server education course and pass the exam by the date the extension expires; or

(b) If the licensee fails to complete an approved alcohol server education course and pass the exam within 45 days of the date the exemption no longer applies.

(6) If the applicant or licensee requests a contested case hearing:

(a) The Commission will not deny, cancel or suspend the license if the applicant or licensee completes an approved alcohol server education course before the hearing;

(b) The hearing examiner will consider whether the length of the extension the Commission granted was appropriate if the extension granted was less than the applicant or licensee requested.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 23-1987, f. & ef. 12-2-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0115

845-005-0210

The Examination

(1) A passing grade on the exam is 70 percent.

(2) After the applicant or licensee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A license applicant, other than a winery-salesperson applicant, or licensee who does not pass this exam may retake the exam at a Commission field office up to two times within 90 days of the date the applicant or licensee took the course. If he/she does not take and pass the exam as this section requires, he/she must complete a course again and pass the exam before the Commission will issue or renew his/her license.

(4) A winery-salesperson applicant, who does not pass this exam, may retake the exam at the Commission field office up to two times within 45 days of the application date. If the applicant does not take and pass the exam within the 45 days or request an extension, the Commission will deny the application. When the applicant receives the denial letter, the winery-salesperson applicant must stop selling and serving alcoholic beverages immediately. The applicant is not entitled to a contested case hearing. If the person still wants a winery salesperson license, the person must:

(a) Retake the server education course and pass the exam, if it has been 90 days or more since the date the person took the course or if the person has failed both exam retakes at a Commission field office; or

(b) Retake the exam at a Commission field office, if it is within 90 days of the date the person took the course and the person has not taken or has failed the two exam retakes; and

(c) Complete and file a new application along with the appropriate fee.

(4) The applicant or licensee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0120

845-005-0215

Oral Option

An applicant or licensee may take the exam either in writing or orally at the completion of the course. He/she may also take the retake exams either in writing or orally. The applicant or licensee must make arrangements with the provider or field office for an oral exam.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.542
 Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0125

845-005-0220

Hearings

(1) If the Commission denies a license because the applicant or licensee fails to meet the alcohol server education requirement, the applicant or licensee is entitled to a hearing under the procedures in OAR Chapter 845, Division 003.

(2) Despite section (1) of this rule, the applicant or licensee is not entitled to a hearing if the applicant or licensee failed to pass the alcohol server exam.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.542
 Hist.: OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0130

DIVISION 6

APPLICATIONS; REQUIREMENTS; RESTRICTIONS; PROHIBITED CONDUCT

845-006-0020

License Changes Requiring Notice/Prior Approval

(1) As used in this rule:

(a) "Manager" means any person who has decision making authority and whose primary duties include control over the operation of the licensed premises and its employees with respect to the sale/service of alcoholic beverages. This definition may apply to more than one person at a particular licensed premises;

(b) "Partnership" means an association of two or more persons who carry on a business jointly and who demonstrate an intent to be treated as partners by signing a partnership agreement;

(c) "Person" includes individuals, corporations, partnerships or other business organizations;

(d) "Principal officer" includes the president, any vice president with responsibility over the operation of a licensed business, the secretary, the treasurer, or any other officer designated by the Commission.

(2) All licensees:

(a) Except as this rule allows, no person will obtain an interest in a licensed business as defined in OAR 845-005-0011 without prior Commission approval;

(b) Whenever a person named on the license wants to remove his/her name from the license, the licensee(s) must notify the Commission on the appropriate form and provide documentation that shows the person no longer has an interest in the licensed business;

(c) The Commission may suspend or cancel a license if the licensee fails to notify the Commission, obtain prior approval or to take corrective action as this rule requires. Where extraordinary circumstances make it impossible or impractical to obtain prior approval, the Commission may give conditional approval immediately. After investigation, the Commission may withdraw its conditional approval and give the licensee a reasonable deadline to rescind the action, prior to any hearing to contest the disapproval;

(d) The Commission may disapprove a manager, a change or acquisition described in this rule for any of the grounds for which it may deny a license. If the Commission disapproves a change, acquisition or manager, it will notify the licensee in writing and set a reasonable time for divestiture or for removal of the person;

(e) Any change in an investment interest in a business that holds a committed license and is not yet in operation may result in the Commission withdrawing that committed license.

(3) Managers: The Commission may require a manager to

complete an individual history if there is a violation or a compliance problem with the licensed premises.

(4) Corporate licensees (not publicly traded corporation):

(a) The corporate licensee must obtain prior written approval from the Commission whenever a person intends to acquire or accumulate ownership or control of ten percent or more of any class of stock in a licensed corporation;

(b) The corporate licensee must notify the Commission immediately in writing when there has been a change in an officer or director.

(5) Corporate licensees (publicly-traded):

(a) The corporate licensee must notify the Commission within 60 days of the acquisition whenever a person acquires or accumulates ownership or control of ten percent or more of any class of stock;

(b) The corporate licensee must notify the Commission by July 1 of each year of changes in officers and directors. The Commission can take immediate action to disapprove a change that it learns of prior to the annual notification date.

(6) Partnership licensees:

(a) The licensee must obtain prior written approval from the Commission whenever a person intends to become a general partner in a partnership or intends to acquire or control ten percent or more of the total investment commitment in a licensed limited partnership;

(b) The licensee must notify the Commission in writing whenever an existing approved partner increases or decreases his/her investment interest.

(7) Other legal entities: The Commission may require any legal entity other than a corporation, partnership or individual to provide notice and/or obtain approval of persons who have business relationships with the licensed entity. Commission staff will specify those requirements depending upon the nature of the licensed entity.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.295(4)(h)
 Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67, ef. 12-26-67; LCC 31-1979, f. 12-14-79, ef. 1-1-80; Renumbered from 845-010-0060; LCC 11-1983, f. 9-30-82, ef. 10-1-83; OLCC 7-1990, f. 3-16-90, cert. ef. 4-1-90

845-006-0025

Responsibility of Licensees for Conduct of Others

Each licensee may be held responsible for violation of any liquor control law or administrative rule or regulation of the Commission affecting his license privileges and for any act or omission of his servant, agent, employee, or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730 & ORS 472.030
 Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; Renumbered from 845-010-0075

845-006-0026

Training Brochure Requirement for Package Store Alcohol Sellers

(1) Purpose. The Commission is charged with regulating the sale of alcoholic beverages in a manner which protects the safety and welfare of the citizens, and ensures that alcoholic beverages are used legally. One of the ways the Commission accomplishes this is to educate alcohol sellers about liquor laws and the risks involved in violating those laws. The purpose of this rule is to help package store licensees educate their employees to help ensure that they do not sell alcoholic beverages to minors and visibly intoxicated persons.

(2) Before allowing an employee to sell alcoholic beverages, the licensee must have the employee read, sign and date the Commission-provided brochure, "What Every Grocery Clerk Needs to

Know About Selling Alcohol". The licensee must retain a record according to section (6) of this rule.

(3) To help ensure legal alcohol sales, the brochure explains:

(a) Why it is important not to sell to minors and visibly intoxicated persons;

(b) How to recognize minors and visibly intoxicated persons;

(c) How to check identification; and

(d) How to refuse a sale to a minor or visibly intoxicated person.

(4) As an added tool to help licensees, the Commission provides a test of the material covered in the brochure. Licensees may choose to give the test to an employee to help determine if the employee is qualified to sell alcoholic beverages.

(5) Despite section (2) of this rule, the Commission does not require a licensee to have each employee read and sign the Commission-provided brochure if the licensee requires each employee to complete a licensee-provided brochure or other alcohol management training material. A licensee who chooses not to use the Commission-provided brochure must:

(a) Ensure that the material the licensee uses clearly and completely covers, at a minimum, all the material in the Commission brochure;

(b) Ensure that each employee completes and signs the brochure or other training before selling alcoholic beverages; and

(c) Retain a record according to section (6) of this rule.

(6) Record Keeping:

(a) The licensee must maintain the signed Commission-provided brochure, or the licensee's training brochure/material, on the licensed premises as long as the person is employed by the licensee;

(b) Despite subsection (a) of this section, a licensee may maintain the signed brochure/training material off the licensed premises if the licensee also maintains a current list on the licensed premises of trained employees. The list must include the name of each current employee who sells alcoholic beverages, the date the employee read and signed the brochure and the date the employee started selling alcoholic beverages;

(c) The licensee or person on duty must make the signed training brochure or list immediately available upon request for inspection by a Commission employee;

(d) The licensee must retain the record for an employee as long as the person is employed by the licensee.

(7) Violation of section (2) or (5) of this rule is a Category IV violation.

Stat. Auth.: ORS 471.730(5)

Stats. Implemented: ORS 471.730(1)

Hist.: OLCC 4-1996, f. 5-6-96, cert. ef. 10-1-96

845-006-0027

Shipments of Alcoholic Beverages to Oregon Residents

(1) Definitions for purposes of this rule:

(a) "Alcoholic beverage" and "alcoholic liquor" mean any liquid or solid containing more than one-half of one percent alcohol by volume, and capable of being consumed by a human being;

(b) "Distilled liquor" means any alcoholic beverage other than a wine or malt beverage. "Distilled liquor" includes distilled spirits;

(c) "Malt beverage" means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume. "Malt beverage" includes beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume. "Malt beverage" does not include an alcoholic beverage obtained by fermentation of rice.

(d) To "ship" includes any one or more of the following acts: To import, transport, deliver and sell alcoholic beverages to any resident of this state.

(e) "Wine" means any wine containing not more than 21 percent alcohol by volume and produced in all respects in conformity with the laws of the United States and the regulations of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

(2) Wine may be shipped to Oregon residents from out-of-

state wine shipper licensees pursuant to ORS 471.229 and OAR 845-005-0080. Wine may be shipped to Oregon residents from in-state licensees pursuant to ORS 471.229, OAR 845-006-0028 and 845-006-0029.

(3) Malt beverages may not be shipped to Oregon residents from out-of-state. Malt beverages may be shipped to Oregon residents from in-state licensees pursuant to OAR 845-006-0028 and 845-006-0029.

(4) Distilled liquor may not be shipped to Oregon residents from out-of-state or from within the state, except in-person sales from state agents are permitted.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 471.730(6) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.229 & ORS 471.335

Hist.: OLCC 2-1997, f. 2-3-97, cert. ef. 3-15-97

845-006-0028

Same Day Retail Licensee Delivery of Wine and Malt Beverages Within Oregon

(1) ORS 471.305 restricts retail wine and malt beverage sales to the licensed premises. It allows deliveries within Oregon "made by the licensee to customers pursuant to bona fide orders received on the premises prior to delivery".

(2) As used in this rule:

(a) "Made by the licensee" includes deliveries by the licensee's employee who is a service permittee, is at least 21 years old and has successfully completed an approved Alcohol Server Education Program. If the licensee's employee does not comply with the requirements of section (3) of this rule, the licensee has violated this rule;

(b) "Orders received on the licensed premises" means an order placed in person on the licensed premises and an order received by mail, telephone, telegraph, facsimile or other similar means.

(c) "Regular meal" means any combination of foods, excluding sandwiches, that is generally considered to be a complete meal, at least a part of which is prepared and cooked on the licensed premises, and requires the use of dining implements for consumption.

(3) Requirements for Same Day Delivery. A licensee may make deliveries the same day that the licensee receives the order only under the following conditions:

(a) The licensee must be a Retail Malt Beverage or Brewery-Public House licensee who is in the business of preparing and serving regular meals on the licensed premises;

(b) Before making any deliveries, the licensee must notify the Commission on a Commission supplied form that the licensee plans to provide this delivery service;

(c) Malt beverages and wine may account for no more than 25 percent of the retail cost of the delivered order; at least 75 percent must be food;

(d) The licensee must use delivery vehicles that prominently display the licensee's trade name;

(e) The licensee must make all deliveries before 9:00 p.m.;

(f) The licensee must prominently label each shipping container: "Alcoholic Beverages - Do not deliver to a person who is under 21 years of age or visibly intoxicated";

(g) The licensee must deliver only to a person who is at least 21 years old and must not deliver to a visibly intoxicated person;

(h) The licensee must deliver only to a home or business;

(i) The licensee must not deliver kegs;

(j) At the time of delivery, the delivery person must complete a Commission-approved form. The delivery person must use the form to record the verification that the person who receives the delivery is at least 21 years old, the delivery address and the identity of the delivery person. The delivery person must give the completed form to the retail licensee who must keep this verification record for two years.

(4) Exemption Requests. Licensees may make same day deliveries only as this rule allows. A Retail Malt Beverage or Brewery-Public House licensee may, however, request an exemption from the requirements of this rule. The written request must

include the licensee's delivery plan and the reason for the exemption request. The Commission will give the licensee written notice of its decision and the reason for the decision. If the Commission approves the request, the notice will describe the specific exemption granted. In making this decision, the Commission will consider the extent to which:

- (a) The licensee plans to deliver small quantities of alcoholic beverages;
- (b) The food that the licensee offers are not fast foods, short order foods or snacks. Examples include hamburgers, sandwiches and pizza;
- (c) The licensee has a good compliance history.
- (5) Sanction. The sanction for a violation of this rule is a Category III violation. The sanction may include a restriction that prohibits further deliveries.

Stat. Auth.: ORS 471, ORS 471.305 & ORS 471.730(5)

Stats. Implemented: ORS 471.305

Hist.: OLCC 22-1990, f. 10-3-90, cert. ef. 11-1-90; OLCC 3-1997, f. 2-3-97, cert. ef. 3-15-97

845-006-0029

Next Day Retail Licensee Delivery of Wine and Malt Beverages Within Oregon

(1) ORS 471.305 restricts retail wine and malt beverages sales to the licensed premises. It allows deliveries within Oregon "made by the licensee to customers pursuant to bona fide orders received on the premises prior to delivery."

(2) As used in this rule:

(a) "Made by the licensee" includes deliveries by the licensee's employee and by a common carrier:

(A) An employee delivery person must be a service permittee or winery salesperson who is at least 21 years old and has successfully completed an approved Alcohol Server Education Program;

(B) A common carrier must have a Public Utilities Commission certificate and the common carrier delivery person must be at least 18 years old;

(C) If the common carrier delivers to a person who is under 21 years of age or visibly intoxicated person or does not comply with subsection (3)(h) of this rule, the licensee has violated this rule. If the licensee's employee does not comply with the requirements of section (3) of this rule, the licensee has violated this rule.

(b) "Orders received on the licensed premises" means an order placed in person on the licensed premises and an order received by mail, telephone, telegraph, facsimile or other similar means.

(3) Requirements for Next Day Delivery. A licensee may deliver wine or malt beverages on any day after the day the licensee receives the order only under the following conditions:

(a) The licensee's license must include off-premises sales privileges for malt beverages to deliver malt beverages and off-premises sales privileges for wine to deliver wine;

(b) Before making the first delivery, the licensee must notify the Commission on a Commission supplied form that the licensee plans to provide this delivery service;

(c) The licensee must prominently label each shipping container: **"Alcoholic Beverages - Do not deliver to a person who is under 21 years of age or visibly intoxicated"** or similar message that the Commission approves;

(d) The licensee must deliver only to a person who is at least 21 years old and must not deliver to a visibly intoxicated person;

(e) The licensee must deliver only to a home or business;

(f) The licensee must not deliver kegs unless the licensee gets prior written Commission approval for the delivery;

(g) The delivery vehicles driven by the licensee or the licensee's employee must prominently display the licensee's trade name;

(h) If the licensee or licensee's employee makes the delivery, he/she must record the signature of the person who receives the delivery, proof of age (if age verification is required), the delivery address and the identity of the delivery person. (See OAR 845-006-0035 for age verification requirements.) The licensee must keep these records for at least 18 months after the delivery.

(i) If the licensee delivers through a common carrier, the licensee may use only a common carrier who has a Commission-approved delivery plan. The Commission requires plan approval to assure appropriate alcoholic beverage delivery. To approve a plan, the Commission considers:

(A) The specifics of the plan;

(B) The length of time the carrier has been in business and its record of compliance with the law;

(C) The carrier's ability to comply with the plan; and

(D) The carrier's training program for delivery personnel and delivery practices.

(4) A winery licensee is authorized to ship not more than two cases of wine containing not more than nine liters per case per month to any resident of this state who is at least 21 years of age, for personal use and not for resale.

(5) Sanction. Violation of this rule is a Category III violation. The sanction may include a restriction that prohibits further deliveries.

(6) Any person who knowingly or negligently delivers wine which has been shipped under the provisions of ORS 471.229 to a person under 21 years of age, or who knowingly or negligently delivers wine which has been shipped under the provisions of ORS 471.229 to a visibly intoxicated person, violates ORS 471.410 and commits a Class A misdemeanor, whether or not the person is licensed or appointed under the provisions of ORS chapter 471 or 472.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.305, ORS 471.730(1), ORS 471.730(5) & ORS 471.730(6)

Stats. Implemented: ORS 471.223 & ORS 471.305

Hist.: OLCC 2-1988, f. 5-20-88, cert. ef. 7-1-88; OLCC 22-1990, f. 10-30-90, cert. ef. 11-1-90; OLCC 8-1991(Temp), f. 5-24-91, cert. ef. 6-1-91; OLCC 18-1991, f. 10-31-91, cert. ef. 11-1-91; OLCC 4-1997, f. 2-3-97, cert. ef. 3-15-97

845-006-0030

Hours of Sale

(1) Except as provided by section (2) of this rule, and OAR 845-015-0035, alcoholic liquor may be sold, dispensed, served, consumed on, or removed from licensed premises only between the hours of 7 a.m. and 2:30 a.m.

(2) Licensees whose license privileges permit the sale and distribution of malt beverages and wines for resale may make deliveries to licensees at any time.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471 & ORS 472, including ORS 471.030 & ORS 472.030

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 30, f. 1-20-66; LCC 50, f. 12-18-74, ef. 1-15-75; LCC 3-1979, f. 1-26-79, ef. 2-1-79; LCC 5-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0005; LCC 7-1981, f. 11-2-81, ef. 1-1-82; LCC 4-1986, f. 3-3-86, ef. 4-1-86; OLCC 14-1987, f. 4-6-87, ef. 5-1-87

845-006-0031

Minimum Operation of Certain Dispenser Outlets

Premises licensed with a Dispenser Class "A" or Dispenser Class "C" license shall be open for business serving the general public a minimum of five days per week, during the normal hours the business is open, unless excused from this requirement by the Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.100

Hist.: LCC 20-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0078; OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90; Renumbered from 845-008-0020

845-006-0032

Food Service Requirements for Dispenser Class A, Dispenser Class C, and Seasonal Dispenser Licenses

(1) Purpose: The Oregon Distilled Liquor Control Act allows licensed commercial establishments with food service to sell distilled spirits by the drink. ORS 471.001 (2) defines a commercial establishment as a place of business open to the general public

where food is cooked and served, which has adequate kitchen facilities for the preparation and serving of meals and which has for that purpose proper dining space. This rule sets the food service requirements for businesses with Dispenser Class A, Dispenser Class C, and Seasonal Dispenser licenses, and applies to licenses in existence, issued or renewed on or after November 1, 1998.

(2) Food Service Required at Meal Periods:

(a) A business open after 5 p.m. must make available to its patrons an offering of five distinctly different regular meals during its normal dinner meal period which must last at least three hours. The requirement of five distinctly different meals does not apply if the clearly dominant emphasis of the business after 5 p.m. is food service. "Clearly dominant emphasis is food service" means the gross receipts from food sales exceed the gross receipts from beverage sales.

(b) A business not open after 5 p.m. must make available to its patrons an offering of five distinctly different regular meals during its normal lunch meal period which must last at least two hours.

(c) "Regular meal" means a combination of food items that are prepared and cooked on the licensed premises that includes one principal item and two side dishes. Examples of principal items are fish, steak, chicken, pasta, burrito, sandwich, and hamburger. Examples of side dishes are potatoes, potato salad, rice, french fries, beans, and vegetables.

(d) "Distinctly different" means meals that differ substantially in their principal item. For example, different kinds of sandwiches are not distinct from each other and different kinds of pizza are not distinct from each other.

(3) Minimum Food Requirements at Other Hours:

(a) At all other times alcohol service is available, businesses must make available to their patrons an offering of at least five different substantial minimum food items prepared on the licensed premises. Different means significantly differing ingredients. For example, a turkey sandwich differs from a salami sandwich. Different sizes of the same item do not count as different items under this rule. For instance, a large cheese pizza and a small cheese pizza do not differ.

(b) "Substantial minimum food item" means items such as sandwiches, appetizers, pizza, hot dogs, soup, and sausages. Snack items such as popcorn, peanuts, chips, and crackers do not qualify as substantial food items.

(4) Seating Requirements: Proper dining space is determined by the size of the business. The size of the business is determined by the number of indoor seats, excluding seats in banquet and meeting areas. Bar stools, seats at cocktail tables, seats at buddy-bar tables, banquette seating, and dining seating are included in determining the size of the business. "Dining seating" means indoor table seating that is designed to accommodate patrons for the purpose of consuming food, and located in areas of the premises regularly used by patrons daily during normal business hours. Such tables must provide a minimum of 288 square inches of surface for dining space for each seat at the table. Bars and tables seating only one patron and counters at entertainment areas do not qualify as dining seating. Buddy bar tables may be counted toward required dining seating only if they are set up for dining during meal periods by placement of flatware, glassware and napkins for each patron able to be accommodated under the minimum dining space requirements of this rule. Banquet and meeting areas are excluded from consideration as dining seating.

(a) If the business has seating for fewer than 60 patrons, at least 30 seats or 60% of all seats, whichever is greater, must be dining seating during regular meal periods. Dispenser Class C licenses are exempt from the 30-seat minimum.

(b) If the business has seating for more than 60 but less than 100 patrons, at least 36 seats or 40% of all seats, whichever is greater, must be dining seating during regular meal periods.

(c) If the business has seating for 100 or more patrons, at least 40 seats or 30% of all seats, whichever is greater, must be dining seating during regular meal periods.

(5) Other Requirements:

(a) Equipment: Businesses must have a kitchen area, equipment, and food supplies adequate to prepare, cook, and serve food to meet the requirements of this rule.

(b) Employees: Businesses must have food service employees, including a cook during regular meal periods, adequate to prepare, cook, and serve food to meet the requirements of this rule. The duties of the cook on duty during regular meal periods may not include ID checker, security, bouncer, or selling or serving alcoholic beverages. If the premises seats more than 60 patrons, the duties of the cook on duty during regular meal periods may not include taking orders for or serving food.

(c) Menus: Menus must be posted or placed for ready viewing by patrons at the principal public entrance to the business showing the regular meal and minimum food offerings and the regular meal period hours.

(d) Drive-up windows: Businesses may not sell or serve food or beverages for off-premises consumption through a drive-up window.

(e) Discouraging Food Service: Businesses may not discourage or attempt to discourage a customer from ordering food. Examples of discouraging a customer from ordering food are failure to take or deliver an order in a timely manner, clearly overpricing food for the business's clientele, or serving unpalatable food.

(6) Violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.100

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 65, f. 9-22-77, ef. 10-4-77; LCC 12-1978, f. 9-28-78, ef. 10-1-78; LCC 6-1980, f. 1-28-80, ef. 3-1-80; Renumbered from 845-010-0185; LCC 9-1982, f. 8-27-82, ef. 10-1-82; LCC 4-1984, f. 8-2-84, ef. 9-1-84; OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90; Renumbered from 845-008-0015; OLCC 7-1998, f. 8-13-98, cert. ef. 11-1-98

845-006-0033

Minibars in Hotel Guest Rooms

Senate Bill 665 allows a restaurant or dispenser licensee who operates a hotel to make alcoholic beverages, stored in locked cabinets (minibars) in individual guest rooms, available to guests. Licensees may provide these alcoholic beverages under the following conditions:

(1) Only a service permittee or trained employee may give guests the key to minibars. A trained employee is one who has participated in a training program that meets, at least, the requirements in the Commission's Alcohol Server Education Model Curriculum on identifying minors and recognizing the signs of visible intoxication.

(2) The licensee must not give a minibar key to minors or visibly intoxicated persons. The licensee may not give a minibar key to a guest if the licensee has reason to believe the guest is accompanied by a minor and is not the minor's parent or caretaker.

(3) Restocking:

(a) Any employee who is at least 18 years old may restock minibar when restocking is not in response to guest request for immediate restocking;

(b) Only a service permittee may restock a minibar in response to guest request for immediate restocking (restocking is the same as selling/serving in this instance);

(c) In response to guest request for restocking, employees will not restock a minibar:

(A) If there are visibly intoxicated persons or minors unaccompanied by their parents in the room;

(B) After 2 a.m.;

(C) With amounts of alcohol that the people in the room cannot reasonably consume by 2:30 a.m.

(4) Limitations:

(a) On container size: The individual containers in a minibar may be no larger than 50 ml. for distilled spirits, 12 oz. for malt beverages and 375 ml. for wine;

(b) On number of containers: The total number of alcoholic

beverage containers in a minibar may not exceed 30.

(5) Each minibar will have a clearly visible sign on the outside or inside of the minibar. The sign will explain the following liquor laws: minors and visible intoxicated persons may not drink alcohol from the minibar; guests/visitors may not drink alcohol from the minibar between 2:30 a.m. and 7 a.m.; and guests/visitors may not take alcohol from a minibar off the premises.

(6) Food: At a minimum, the licensee must have a variety of snacks available during the hours that a guest may lawfully access the minibar.

(7) The Commission will hold a licensee responsible for liquor law violations that occur in guest rooms only if the licensee or employee permitted the violation.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.307

Hist.: OLCC 1-1992, f. 2-27-92, cert. ef. 4-1-92

845-006-0034

Minibars in Arena Suites

(1) ORS 471.307 allows a restaurant or dispenser licensee who operates suites in an arena to store alcoholic beverages in a minibar and to make those beverages available to guests of arena suites. The purpose of this rule is to regulate the use of minibars in arena suites. The Commission reserves the right to add restrictions regarding the service of alcohol from minibars to the license of any arena licensee when those restrictions are considered by the Commission to be a reasonable response to a potential public safety problem or concern.

(2) Definitions:

(a) "Adults": Persons 21 years of age or older;

(b) "Arena suite": An enclosed, leased, private suite which is separate from the general admission area in an arena. The Commission considers an arena suite as a part of the arena;

(c) "Containers": For purposes of this rule, an individual container of each alcoholic beverage listed below must contain no more than the following amount of alcohol:

(A) Distilled spirits: 1.7 ounces or 50 milliliters;

(B) Bottles or cans of malt beverage; 12 ounces or approximately 355 milliliters;

(C) Malt beverage in kegs: 8 liters;

(D) Wine: 25.4 ounces or 750 milliliters.

(d) "Licensee": For purposes of this rule, licensee refers to an arena which has been issued a restaurant license or a dispenser license under the provisions of ORS Chapters 471 and/or 472;

(e) "Minibar": A locked cabinet and/or locked refrigerator used to store alcoholic beverages;

(f) "Monitoring": An observation of suite guests for a reasonable amount of time by a service permittee who must serve food, alcoholic beverages, non-alcoholic beverages, or perform related duties in the suite during the period of monitoring to provide an opportunity for the permittee to observe whether minors are consuming alcohol, whether guests show any signs of visible intoxication and whether any unlawful acts are occurring;

(g) "Service Permittee": An individual who has successfully completed an approved Alcohol Server Education course and has a valid Service Permit;

(h) "Suite Holder": A person or entity that has entered an agreement to occupy an arena suite. Where such suite holder is a business or a corporation, that suite holder will designate at least one adult as the suite holder's representative for each event.

(3) Operational Rules for Arena Suite: The licensee may provide alcoholic beverages only under the following conditions in arena suites:

(a) Maximum Containers Allowed Per Suite:

(A) Each suite must be stocked with no more than:

(i) One 8 liter keg of malt beverage and 60 additional containers of a variety of alcoholic beverages; or

(ii) Eighty (80) containers of a variety of alcoholic beverages; no keg of malt beverage is permitted.

(B) Only one 8 liter keg of malt beverage may be present in a suite at any one time. Alcoholic beverages which are brought into

the suite from other areas in the arena for immediate consumption by suite guests will not be counted in the maximum number of containers of alcohol allowed in the arena suite.

(b) Responsibilities of Suite Holder and Suite Guests:

(A) When the suite holder will not be present for an event, the suite holder must designate one adult as the suite holder's representative for that event. The suite holder or suite holder's representative must be present in the suite throughout each event;

(B) For purposes of OAR 845-006-0025 and 845-006-0045, the suite holder or suite holder's representative and suite guests are deemed to be the licensee's agents or representatives. The Commission holds the suite holder, the suite holder's representative and suite guests to the same standard of care in serving alcohol as the licensee.

(c) Responsibilities of the Licensee:

(A) A service permittee must monitor each suite for alcohol-related problems a minimum of four times each hour while the suite is occupied. However, the Commission may enter an agreement with a licensee to defer enforcement of this provision and to require less frequent monitoring when the Commission has reason to believe that less frequent monitoring will be adequate to insure that alcohol-related problems will not occur. The Commission will reserve the right to revoke the agreement and to require compliance with this subsection of the rule if the Commission has reason to believe more frequent monitoring is necessary to prevent alcohol-related problems;

(B) No alcohol may be consumed in an arena suite from one hour after an arena event has ended until 7:00 a.m. Notwithstanding this portion of the rule, if the arena suite is used for a private party when no arena event is occurring, no alcohol may be consumed in the arena suite from 12:00 midnight until 7:00 a.m. Under no circumstances may alcohol be served or consumed between 2:30 and 7:00 a.m.;

(C) If a service permittee observes a minor or visibly intoxicated person being served or consuming alcoholic beverages, the service permittee must:

(i) Remove the alcohol from the minor or visibly intoxicated person;

(ii) Lock the minibar;

(iii) Notify the licensee about the minor or visibly intoxicated person who was consuming alcohol;

(iv) Call arena security to carry out the arena's operational plan with regard to minors or visibly intoxicated persons; and

(v) Serve all alcohol in the suite during the remainder of the event. After locking the minibar, a service permittee may either remain in the suite to serve alcohol throughout the remainder of the event or a permittee may serve alcohol to suite guests when monitoring the suite.

(D) If a minor has consumed alcohol in an arena suite, the minor must be removed from the arena suite.

(d) Keys to a Minibar. Only the licensee or a service permittee may unlock a minibar. The licensee or a service permittee must unlock a minibar only for a suite holder or suite holder's representative.

(e) Restocking a Minibar:

(A) Any employee who is at least 18 years old may restock a minibar when there are no suite guests present and no event is occurring;

(B) Only a service permittee may restock a minibar during an event or when guests are present in the suite;

(C) Before restocking a minibar during an event or when guests are present in the suite, the service permittee must observe the guests to insure that there are no visibly intoxicated persons or minors consuming alcohol in the suite. A service permittee must not restock after 10 p.m.

(f) Posted Signs. Each minibar must have a clearly visible sign on the outside or inside of the minibar. The sign must explain the following liquor laws and rules: minors and visibly intoxicated persons must not drink alcohol; the suite holder, suite holder's representative and suite guests must remove the alcohol from any visibly intoxicated person; and no alcohol may be consumed in the suite from one hour after an event in the arena has ended until

7:00 a.m., or if no event is occurring in the arena, between 12 midnight and 7 a.m.;

(g) Food in Arena Suites. At a minimum, each suite must contain a variety of snacks for guests to eat during the hours the minibar is unlocked.

(4) Records.

(a) The licensee must keep records of all sales of alcohol and food for each suite during the license term and must maintain the records for a period of at least two years.

(b) The licensee must make available for inspection by Commission staff on an annual basis the average total food and total alcohol sales for all arena suites.

(5) Violations. Violation of the provisions of paragraph (3)(c)(C) (response to minor or visibly intoxicated person consuming) and subsection (3)(e) (restocking minibar) of this rule are Category III violations in the Commission's sanction schedule. All other violations of sections (3) and (4) of this rule are Category IV violations under the Commission's sanction schedule:

(a) The licensee is responsible for knowing when minors and visibly intoxicated persons are present in arena suites and for taking reasonable steps to insure that they do not consume alcohol. If a minor or visibly intoxicated person consumes alcohol in an arena suite, the licensee is responsible for permitting the minor or visibly intoxicated person to consume alcohol in violation of liquor laws.

(b) Adherence to the provisions of this rule is not a defense to a charge of violating liquor laws. If the Commission determines that minibar use causes or creates liquor law violations or a public safety problem, the Commission reserves the right to require the licensee to use service permittees to serve all alcohol in arena suites.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.307

Hist.: OLCC 7-1995, f. 8-31-95, cert. ef. 9-1-95

845-006-0035

Age Verification; Minors on Licensed Premises

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages or is in an area prohibited to minors if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person is under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it.

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

(2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys, is served or drinks an alcoholic beverage at the licensed premises (Category III violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for selling to or serving a minor, allowing a minor to drink or allowing a minor in an area prohibited to minors, the Commission will not also sanction the licensee or permittee for failure to verify age;

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To buy, be served or drink any alcoholic beverage on licensed premises;

(b) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482 and this rule. (The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0040, Minor Postings.)

(4) Minor Employee and Service Permittee:

(a) A minor employee may be in a Number II, III-A after 9 pm, IV or V posted area only to restock supplies and do food service related activities such as setting and clearing tables and delivering food. In addition, a minor employee may be in a Number IV posted area to take orders for and serve food during the specified meal periods.

(b) A minor service permittee may do the duties described in subsection (a) of this section as well as the alcohol-related duties ORS 471.482 allows.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose may be in the area of the licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area.)

(6) Minor Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted. If there is no break room, dressing room or patron area where minors are permitted, the license may, with prior Commission approval, designate space for a minor entertainers in an area normally prohibited to them. At a minimum, the place must be within the bartender's sight but not at the bar and there must be no alcoholic beverages in this place;

(b) If the minor is under 18 years old, the licensee and minor must make sure the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840 (2). Minors under 14 must also get a work permit if one is required by the Oregon Bureau of Labor and Industries.

(7) Minor Patron: A minor patron may be in areas of licensed premises normally prohibited to minors in the following circumstances:

(a) If the licensee permits it, a minor may be in the immediate company of his/her spouse who is at least 21 years old. The minor must not buy, have, or drink alcoholic beverages.

(b) A minor may order and eat a meal in a Number IV posted area during the specified meal periods. This meal must at least meet the minimum food service requirements of OAR 845-006-0032.

(8) Sanctions: A violation of subsection (3)(a) of this rule is a Category III violation. A violation of subsection (3)(b) through section (7) of this rule is a Category IV violation.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.430(3)

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67; LCC 36, f. 9-29-71, ef. 10-2-71; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 1-1979, f. 1-26-79, ef. 2-1-79; LCC 17-1979, f. 9-24-79, ef. 10-1-79; LCC 15-1980, f. 6-4-80, ef. 6-5-80; Renumbered from 845-010-0175; LCC 9-1981, f. 12-18-81, ef. 1-1-82; LCC 2-1984, f. 5-14-84, ef. 7-1-84; LCC 8-1986, f. 4-3-86, ef. 7-1-86; OLCC 2-1992, f. 2-27-92, cert. ef. 7-1-92; OLCC 3-1996, f. 3-19-96, cert. ef. 5-1-96; OLCC 10-1997, f. 5-12-97, cert. ef. 6-1-97

845-006-0040

Minor Postings

(1) Purpose. The Commission is charged with regulating the sale of alcohol in a manner which protects the safety and welfare of the citizens, and ensures that alcohol is used legally. As a policy making body, the Commission has a responsibility to send a clear message to the community and its youth that drinking alcohol is an adult activity, and that drinking environments are for adults. At the same time, the Commission recognizes the need to maximize opportunities for minors to eat at licensed premises

while minimizing their exposure to drinking environments. This rule applies only to licenses that allow on-premises consumption.

NOTE: Words or phrases followed by an asterisk (*) are defined in Section (8) Definitions, of this rule.

(2) When Minor Patrons Are Allowed. Unless prohibited under Section 3, the Commission uses the criteria in this section to assign minor postings. The Commission allows minors on licensed premises where the license allows on-premises consumption only under the following circumstances:

(a) Minors may be in an area for the purpose of consuming food or refreshments during hours when eating predominates* in that area;

(b) Minors may be in concert halls and at performing arts centers if drinking is minimal and allowed in lobby areas preceding the event and during intermissions or if drinking is physically confined to areas prohibited to minors. The licensee must give the Commission a written security plan that convinces the Commission minors will not get alcohol;

(c) Minors may be in a foyer or similar area if the area does not have a drinking environment*;

(d) Minors may be in an area of a hotel, convention center, golf course, bowling alley, zoo, amusement park, museum, laundromat or bookstore where there is no drinking environment as defined in section (8)(b)(B) of this rule, and where drinking is minimal;

(e) Minors may be in a separate game room if no alcohol is allowed in the room and if minors are otherwise allowed in the premises;

(f) Minors may accompany their parent or legal guardian in the tasting room or tasting area of a package store, winery, brewery, brandy distillery or business with a grower sales privilege license;

(g) Minors may be in areas of a package store, winery, brewery, brandy distillery or business with a grower sales privilege license where there is no drinking;

(h) Minors may be in an area prohibited to minors while in the immediate company of their spouse who is at least 21 years old, if the licensee permits it;

(i) Minors may be allowed in other circumstances where the licensee's operating plan is consistent with the intent of this rule, and the Administrator approves it. The Administrator periodically reports these circumstances to the Commissioners to determine whether clarifying rulemaking is needed.

(3) Exceptions. Even when allowed under the above circumstances:

(a) Minors may not sit at a bar;

(b) Minors may not be in an area where there is a drinking environment during happy-hours or similar reduced-price drink hours*;

(c) Minors may not be in a Number IV posted area except for the purpose of consuming food, and may not use entertainment devices in that area;

(d) Minors may not be in an area where there is video poker or other gambling (except parimutuel gambling, bingo, raffles, keno monitors, pull tabs and lottery scratch tickets authorized and regulated by the State of Oregon), nude entertainment or stage revues* which are often found in adult* drinking environments. Minors may not be in an area where this entertainment is visible;

(e) Section (3) of this rule does not apply to minor spouses, as provided in subsection (2)(h) of this rule.

(4) Minor Postings. The Commission uses the following minor posting signs to tell the public where minors are allowed or prohibited, and to assist licensees in controlling the presence of minors. When the facts do not clearly and convincingly meet the criteria for allowing minors, the Commission interprets the rule to prohibit minors. The Commission does not assign more than one type of minor posting to an area unless there are definable boundaries. The following information is intended as general guidance to Commission staff:

(a) **"No Minors Permitted Anywhere on These Premises"**, (Number I Minor Posting). The Commission typically assigns this posting to entire premises where there is a drinking environment.

Some examples are taverns and one-room bars;

(b) **"No Minors Permitted in This Portion of The Premises"**, (Number II Minor Posting). The Commission typically assigns this posting to areas of premises where there is a drinking environment. Some examples are lounges, gambling rooms, the bar and other drinking areas;

(c) **"Minors Allowed in This Area"**, (Number III Minor Posting). The Commission typically assigns this posting to areas or entire premises where eating or some other activity generally predominates over drinking. The Commission does not assign this posting to areas where there is a drinking environment. The Commission does not generally require the Number III sign to be physically posted. Minors may use entertainment devices in Number III posted areas. Some examples are restaurants, dining rooms in premises with separate lounges, hotel lobbies, bowling alley concourses and golf courses;

(d) **"Minors Allowed Only on____(days) and from____(Hours)"**, (Number III-A Minor Posting). The Commission typically assigns this posting to allow minors in restaurants or dining rooms during times when eating predominates and where there is not a drinking environment (as defined in Section (8)(b)(B)), and to prohibit minors during times when more people are drinking alcohol than eating meals. Minors may use entertainment devices. Minors may not be in Number III-A posted areas after 9:00 p.m. An example is a pizza parlor with karaoke in an area that does not have a likeness to a tavern, bar or lounge (Section (8)(b)(B)), and eating predominates during some hours. Minors are allowed in the area and may participate in karaoke during the hours when eating predominates, but minors are not allowed during the hours when eating does not predominate;

(e) **"No Minors Permitted Except During Meal Hours and Only for Consumption of Food on____(Days and from____(Hours)"**, (Number IV Minor Posting). The Commission typically assigns this posting to an area or entire premises that often has a drinking environment to let minors consume food during times when eating predominates. An example is a tavern or pub where eating predominates over drinking during lunch or dinner;

(f) **"No Minors Permitted Unless with a Parent"**, (Number V Minor Posting). The Commission typically assigns this posting to tasting rooms.

(5) Temporary Relaxation Of Minor Postings. The Commission recognizes that under special, limited circumstances, it may be appropriate to allow minors in areas where minors are normally prohibited. The Commission does this to meet a community need or to offer minors a controlled alternative to alcohol-oriented private parties. Therefore, the Commission may grant a temporary relaxation of a minor posting for an occasional event held on a licensed premises.

(a) The Commission does not grant relaxations when:

(A) There has been a recent serious violation history* in the room, area or entire premises; or

(B) During the activity, the area has video poker or other gambling (except parimutuel gambling, bingo, raffles, keno monitors, pull tabs and lottery scratch tickets authorized and regulated by the State of Oregon), stage revues, wet t-shirt events, mud wrestling or nude entertainment which are often found in adult drinking environments. The Commission does not grant relaxations if any of this entertainment is visible from the area where the activity is held.

(b) The Commission may temporarily allow minors into a normally prohibited area under these circumstances:

(A) The licensee needs additional space for overflow family dining for widely recognized holidays, such as Mother's Day, Father's Day and Thanksgiving, and eating predominates;

(B) The activity is a special family event held in a physically separate room or area. The general public is not allowed at the event. Some examples are wedding receptions and family reunions;

(C) The activity is sponsored and promoted by a civic group*. An example is a school-sponsored party. The following conditions apply:

(i) The group must make a written statement that no other facility in the community is available that can reasonably accommodate the activity;

(ii) A group may sponsor one activity at a licensed premises per quarter;

(iii) The licensed premises has no recent serious violation history;

(iv) All alcohol must be covered and may not be served or consumed in the room or area;

(v) No imitation cocktails or non-alcoholic beer or non-alcoholic wine are allowed;

(vi) No alcohol advertising is visible; and,

(vii) Minor posting signs which prohibit minors must be covered during the activity.

(c) If the Commission grants a relaxation and the licensee violates any of the conditions, it is a Category IV violation.

(6) Temporary And Permanent Changes To Minor Postings:

(a) A licensee may not change a minor posting without prior written approval of the Commission. A licensee must submit a change request in writing. The Commission approves or denies a licensee's request in writing.

(b) The Commission may change a minor posting if:

(A) The posting is inconsistent with this rule;

(B) A licensee requests a posting that is consistent with this rule; or

(C) As a result of a liquor law violation, minors should be prohibited.

(7) Licensee Responsibilities:

(a) The burden is on the licensee to convince the Commission that "eating predominates", that the premises does not have a "drinking environment" or that drinking is minimal;

(b) The licensee is responsible to develop and complete any required written security plan;

(c) A licensee must place minor posting signs in full public view as directed by the Commission. A licensee must immediately replace any altered, unreadable or missing sign. Failure to do so is a Category V violation.

(8) Definitions. For this rule:

(a) "Eating predominates" means at least two of the following conditions exist in the area proposed for minor patronage during the time minors are present:

(A) More people eat meals than drink alcohol (or the licensee reasonably projects this);

(B) Gross sales of food exceed gross sales of alcohol (or the licensee reasonably projects this);

(C) More floor or table space is used for eating meals than for drinking alcohol.

(b) "Drinking environment" means:

(A) More people drink alcohol than eat meals; or

(B) There is a combination of conditions and factors which collectively create a likeness to a tavern, bar or lounge. Examples are cocktail tables, a bar, bar equipment and accessories, dance floor, dim lighting, alcohol advertising, entertainment devices, games, music and multiple televisions.

(c) "Recent serious violation history" generally means two violations involving minors, visibly intoxicated people, illegal activities, disorderly conduct or drinking on duty. However, if the circumstances of a violation are severe, one violation may be sufficient. Recent means within the last two years while operating with a liquor license;

(d) "Civic group" means a non-profit corporation, association or political entity, or any authorized representative of a governmental entity. Examples are parent-teacher associations, Rotary and Toastmasters. Civic group does not include any group made up primarily of minors;

(e) "Stage revue" means a live performance with adult or sexual themes of a type usually performed on a stage, involving players performing such activities as skits, song, dance and comedy routines;

(f) "Adult" means 21 years of age or older.

(9) Other Information On Minor Postings.

(a) The Commission does not usually assign minor postings

in:

(A) Dispenser Class B premises;

(B) Caterer and Special event licenses;

(C) Areas of annually licensed businesses which are used for a variety of events, except those areas where there is a drinking environment as defined in paragraph (8)(b)(B) of this rule. Some examples are convention centers, sports arenas, operations with banquet rooms, and multi-use outdoor areas; or

(D) Designated package store tasting areas that are not used primarily for tasting.

(b) However, the Commission may assign a minor posting to these businesses for the following reasons:

(A) To prevent violations from occurring or reoccurring;

(B) In response to the licensee's request; or

(C) To manage special events on annually licensed premises.

However, the Commission generally regulates the presence and activities of minors on these premises by placing conditions and/or restrictions on the license, or by approving or rejecting the licensee's plan for premises and patron management.

(c) Minor Postings apply 24 hours a day.

(10) Hearing Rights. If Commission staff deny a licensee's written request to change or temporarily relax a minor posting, the licensee has the right to a hearing to contest the decision. However, the licensee must comply with the decision unless the Commission issues a final order which reverses the staff decision.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.430 (3)

Hist.: LCC 2-1979, f. 1-26-79, ef. 2-1-79; LCC 13-1979, f. & ef. 7-30-79; Renumbered from 845-010-0176; LCC 2-1984, f. 5-14-84, ef. 7-1-84; LCC 8-1986, f. 4-3-86, ef. 7-1-86; OLCC 3-1992, f. 2-27-92, cert. ef. 4-1-92; OLCC 4-1994, f. 10-31-94, cert. ef. 11-1-94; OLCC 1-1995(Temp), f. & cert. ef. 3-1-95; OLCC 6-1995, f. 7-28-95, cert. ef. 8-29-95; OLCC 12-1996, f. 6-27-96, cert. ef. 8-1-96

845-006-0043

Nonbeverage Food Products Containing Alcoholic Beverages

(1) ORS 471.038 authorizes any licensee whose license allows the sale of alcoholic liquor at retail and any retail liquor agent to sell nonbeverage food products containing alcohol, such as fruits preserved in brandy or candies filled with alcoholic liquor. This rule regulates the sale and delivery of those nonbeverage food products, and clarifies which licensees may sell nonbeverage food products containing alcohol.

(2) For this rule, licensee means any licensee authorized to sell alcoholic liquor at retail for consumption either on or off the licensed premises.

(3) ORS 471.038 requires licensees and retail liquor agents to clearly label:

(a) The product to show the alcohol content; and

(b) The front of the package to say that it may not be sold to persons under 21 years.

(4) Licensees may deliver nonbeverage food products containing alcoholic beverages to Oregon residents only under the following conditions:

(a) The product must be clearly labeled to show the alcohol content and clearly labeled on the front of the package to say the product may not be sold to minors or visibly intoxicated persons.

(b) Licensees must not deliver nonbeverage food products containing alcohol to minors or visibly intoxicated persons.

(c) If the licensee delivers through a common carrier, the licensee may use only a common carrier who has a Commission-approved delivery plan. The Commission requires plan approval to assure appropriate alcoholic beverage delivery.

(5) This rule applies only to nonbeverage food products that contain not more than five percent alcohol by weight or 10 percent alcohol by volume, whichever is greater.

(6) Nonbeverage food products containing alcoholic beverages may not be sent from outside the State of Oregon to residents in the state.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 471.730(6) & ORS 472.060 (2)(d)

Stats. Implemented: ORS 471.038 & ORS 471.305.

Hist.: OLCC 5-1997, f. 2-3-97, cert. ef. 3-15-97; OLCC 3-1998, f. 3-5-98, cert. ef. 4-1-98

845-006-0045

Prohibited Conduct

(1) Drinking on Duty:

(a) No licensee, permittee, employee or agent will drink or be under the influence of intoxicants while on duty. "On duty" means from the beginning of a work shift that involves the sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including coffee and meal breaks. "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who sell or serve, check identification or control the premises;

(b) Subsection (a) of this section does not apply to a salesperson or agent licensee unless this licensee operates a delivery vehicle.

(2) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call.

(3) Evidence: No licensee or permittee will:

(a) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(b) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(c) Ask or encourage another person to do subsections (a) or (b) of this section.

(4) Access to Premises:

(a) No licensee or permittee will deny entrance to the licensed premises during regular business hours to a Commission regulatory employee or police officer who enters or wants to enter to conduct reasonable search to ensure compliance with alcoholic beverage law. Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee will refuse or fail to promptly admit a Commission regulatory employee or police officer to the licensed premises when the regulatory employee or officer identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(5) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.250, 471.253, 471.265, and 472.100 allow.

(6) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve.

(7) Drive-up Window: No licensee or permittee who sells alcoholic beverages for off-premises consumption will sell or deliver any alcoholic beverages through a drive-up window.

(8) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, or any competition of any kind on the licensed premises.

(9) "Good Faith Effort": ORS 471.315(1)(g), and 471.412(2) prohibit a licensee or permittee from knowingly allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes.

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a

disturbance.

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.250, ORS 471.253, ORS 471.265, ORS 471.315(1)(g), ORS 471.412(2), ORS 471.338, ORS 471.408 & ORS 471.675
Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67, ef. 12-26-67; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 53, f. 5-22-75, ef. 7-1-75; LCC 64, f. 9-22-77, ef. 10-4-77; LCC 11-1978, f. & ef. 8-25-78; LCC 20-1979, f. 9-24-79, ef. 10-3-79; LCC 2-1980(Temp), f. & ef. 1-28-80; LCC 12-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 845-010-0065; LCC 2-1982, f. 2-23-82, ef. 3-1-82; LCC 8-1986, f. 4-3-86, ef. 7-1-86; OLCC 11-1987, f. 3-13-87, ef. 4-1-87; OLCC 6-1988, f. 9-13-88, cert. ef. 10-1-88; OLCC 2-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 12-1991, f. 9-9-91, cert. ef. 10-1-91; Renumbered to 845-006-0047; OLCC 4-1998, f. 3-5-98, cert. ef. 4-1-98

845-006-0046

Public Interests and Convenience Reasons for Cancellation or Suspension

(1) ORS 471.315(3) allows the Commission to cancel or suspend a license for public convenience or necessity reasons. Under this authority, the Commission requires a licensee to have someone who can communicate effectively with customers and Commission regulatory employees. This person must be on the licensed premises during the licensee's business hours. "Communicate effectively" means:

(a) Knowing how to lawfully sell and serve alcoholic beverages and communicating this to customers;

(b) Understanding Commission regulatory employees when the employees explain lawful sale and service of alcoholic beverages and responding in a way the employee understands.

(2) Failure of a licensee to comply with section (1) of this rule is a Category III violation.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.315(1)(d)

Hist.: OLCC 2-1991, f. 3-1-91, cert. ef. 4-1-91

845-006-0047

Noisy, Lewd, Disorderly or Unlawful Activity, Restrictions on Entertainers and Drinking Alcohol Outside the Premises

(1) Definitions. As used in this rule:

(a) "Disorderly activities" are those that harass, threaten or physically harm another person;

(b) "Lewd activities" are those that contain lustful, lascivious or lecherous behavior. Examples include sexual intercourse and masturbation;

(c) "Noisy activities" are those that a reasonable person would conclude interfere with normal living or business activities. The Commission may consider a violation of Department of Environmental Quality or local noise pollution standards as prima facie evidence of noisy activities;

(d) "Nude entertainment" is entertainment that has:

(A) A male entertainer whose genitals or buttocks are uncovered or less than opaquely covered or whose genitals are in a discernably turgid state;

(B) A female entertainer whose genitals, buttocks or breasts are uncovered or less than opaquely covered. A female breast is uncovered even if only the nipple and areola are covered.

(2) Noisy, Lewd or Disorderly Activity:

(a) No licensee or permittee will permit noisy, lewd or disorderly activities on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises;

(b) Violation of this section is a Category III violation. In addition to a fine or suspension for permitting lewd activities between patrons and entertainers, the Commission may restrict the license of a licensee who allows or provides live, nude entertainment. The restriction would require the licensee to have a spatial

separation or a physical barrier between patrons and entertainers for a specified period of time.

(3) Unlawful Activity:

(a) No licensee or permittee will permit any unlawful activity on the licensed premises or in areas the licensee controls that are adjacent to or outside the premises;

(b) Violation of this section is a Category III violation. The Commission does not require a conviction to establish a violation of this section except as ORS 471.700 requires.

(4) Restrictions on Entertainers to Prevent Lewd Behavior:

(a) No licensee or permittee who allows or provides live, nude entertainment will permit a person to touch another person's uncovered genitals, pubic area, buttocks or female breasts or to reach beneath another person's clothing to touch the person's genitals, pubic area, buttocks or female breasts;

(b) A licensee or permittee who allows or provides live, nude entertainment must post a notice stating that patrons and entertainers must not touch another's genitals, pubic area, buttocks or female breasts or participate in lewd activities. The licensee must post this notice in a place that customers can easily see and read, and in all dressing rooms that entertainers use;

(c) Violation of this section is a Category IV violation. If, however, the violation involves lewd touching, it is a Category III violation. In addition to a fine or suspension, the Commission may restrict the license of a licensee who permits any touching that subsection (a) of this section prohibits. The restriction would require the licensee to have a spatial separation or a physical barrier between patrons and entertainers for a specified period of time.

(5) Eviction of Patrons:

(a) A licensee or permittee who knows that a patron has engaged in noisy, lewd, disorderly or unlawful activities or any touching that subsection (4)(a) of this rule prohibits must evict that patron from the premises for at least a 24-hour period. The 24-hour period begins at the time the licensee evicts the patron;

(b) Failure to evict the patron is a Category IV violation.

(6) Drinking Alcohol Outside the Premises:

(a) No licensee or permittee will permit anyone to drink alcohol in any parking lot that the licensee controls that is associated with the licensed business unless the Commission has approved the sale or service of alcoholic beverages in the area;

(b) Violation of this section is a Category III violation.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.425(2)

Hist.: OLCC 1-1990, f. 1-4-90, cert. ef. 4-1-90; OLCC 14-1990(Temp), f. & cert. ef. 6-5-90; OLCC 12-1991, f. 9-9-91, cert. ef. 10-1-91; Sections (1)(a) & (c), (2) & (3) Renumbered from 845-006-0045(2) & (3)

845-006-0049

Activities on College Campuses

(1) No manufacturer, importer, wholesaler, retailer, their agent or campus representative will conduct promotional activities for any liquor product on any college or university campus or for student living groups that include students under 21 years of age. Examples of promotional activities include:

(a) Giving free alcoholic beverages;

(b) Giveaways such as t-shirts, glasses, cups, coasters and signs bearing brand name identification;

(c) Giving student living groups bar equipment such as taps, cleaning equipment, and coolers.

(2) No manufacturer, importer, wholesaler, retailer, their agent or campus representative will hold or sponsor activities on any campus or for student living groups that encourage students under 21 years of age to drink alcoholic beverages. Prohibited activities do not include:

(a) Sponsoring of broadcasting services for events on campus;

(b) Liquor advertising in campus publications; or

(c) Financial support and acknowledgement of the source of the support for activities such as educational programs, programs encouraging moderation, film festivals, concerts and similar activities.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.730(7)

Hist.: OLCC 1-1987, f. 1-5-87, ef. 4-1-87

845-006-0052

Requirements for In-Store Wine and Malt Beverage Tastings to the Public on Retail Premises

Manufacturers, certificate of approval holders and retailers may hold in-store tastings on most retail premises to promote their wine and malt beverage products to the public. The tastings must comply with the financial assistance statute (ORS 471.398) and rules (Division 013 of the Oregon Administrative Rules), and all other liquor laws and rules regulating the responsible and legal sale and service of alcohol.

(1) Purpose. The purpose of this rule is to list the requirements and limitations for conducting in-store tastings.

(2) Definitions. For this rule:

(a) "In-store tasting" means an event held on a retail premises at which the public may taste small amounts of wine or malt beverages. A one day event equals one tasting.

(b) "Manufacturer-conducted tasting" means a tasting held by an Oregon business licensed to manufacture or warehouse malt beverage or wine products, and businesses holding certificates of approval. Sections (3), (4) and (5) of this rule list the kinds of licensed premises in which these licensees may conduct in-store tastings.

(c) "Retailer-conducted tasting" means a tasting held by a retailer on their retail premises.

(d) "On-premises" license means a retail license that allows alcoholic beverages to be consumed on the licensed premises.

(e) "Manufacturer" means Oregon winery, grower sales privilege, brewery, brew pub and warehouse licensees as well as certificate of approval holders (which includes some Oregon wholesalers).

(3) General Limitations and Requirements.

(a) Oregon winery and grower sales privilege licensees may conduct:

(A) Wine and malt beverage tastings on retail premises with Package Store, Restaurant, Retail Malt Beverage or Dispenser Class A, B and C licenses. Winery and grower sales privilege licensees need no special license to conduct these tastings. (ORS 471.402)

(B) Wine tastings on retail premises with Caterer, Special Events Dispenser, Community Events Dispenser or Public Passenger Carrier licenses. Winery licensees must have a Special Events Winery license; grower sales privilege licensees must have a Special Events Grower license to conduct these tastings. (ORS 471.223 and 471.227)

(b) Oregon brew pub licensees may conduct:

(A) Wine and malt beverage tastings on retail premises with Package Store, Restaurant, Retail Malt Beverage or Dispenser Class A, B and C licenses. Brew pub licensees need no special license to conduct the tastings. (ORS 471.402)

(B) Wine and malt beverage tastings on retail premises with Caterer, Special Events Dispenser, Community Events Dispenser or Public Passenger Carrier licenses. Brew pub licensees must have a Special Retail Beer license to conduct malt beverage tastings or a Special Retail Wine license to conduct wine tastings. (ORS 471.253 and 471.267)

(c) Certificate of approval holders (which includes some Oregon wholesalers) and Oregon brewery and warehouse licensees may conduct tastings for wine or malt beverages only on retail premises with Package Store, Restaurant, Retail Malt Beverage or Dispenser Class A, B and C licenses. The manufacturers need no special license to conduct these tastings. (ORS 471.402)

(d) Sample Sizes. The size of each sample must not exceed one and a half ounces for wine and three ounces for malt beverages.

(e) Identified Tasting Area. Any Package Store retailer who conducts tastings or who allows manufacturers to conduct tastings on the retail premises must identify a specific tasting area or areas.

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. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retailer must keep on file at the premises a floor plan identifying the tasting area/s. 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.

(f) Number of In-Store Tastings.

(A) A manufacturer may be in each retail premises no more than eight times 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 per calendar year for the purposes of tastings.

(g) 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.

(h) Server Requirements. Servers who are employees or agents of retail licensees must have a valid Service Permit. Servers who are employees or agents of manufacturers or wholesalers must have a Winery Salesperson license, a Service Permit, or a Salesperson license. Although Server Education is not a requirement for a Salesperson license, any Salesperson licensee who conducts or assists at tastings must have successfully completed an approved Server Education course within the last five years.

(i) 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.

(4) Manufacturer-Conducted In-Store Tastings on Certain Retail Premises. Oregon law allows Oregon wineries, growers, breweries, brew pubs and warehouses, as well as certificate of approval holders, to conduct tastings at businesses licensed with a Package Store, Restaurant, Retail Malt Beverage or Dispenser Class A, B or C license. These manufacturers may conduct tastings on these retail premises if they:

(a) Provide the product to be tasted, and remove any remaining product at the end of the tasting;

(b) Provide or pay for a person to serve the wine 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) Do not advertise the tasting. The retailer may advertise the tasting only inside the licensed premises.

(5) Manufacturer-Conducted In-Store Tastings on Other Retail Premises. Oregon law allows Oregon winery, grower and brew pub licensees to get special licenses to conduct tastings on most retail premises. Oregon law allows Oregon winery, grower and brew pub licensees to conduct tastings in some retail premises where other manufacturers may not conduct tastings. Section (4) lists the retail premises where they (and other manufacturers) may conduct tastings without a special license. This section lists the other retail premises where winery, grower sales privilege and brew pub licensees may conduct tastings, and the requirements for conducting the tastings.

(a) Oregon winery, grower and brew pub licensees may conduct tastings on retail premises with Caterer, Special Events Dispenser, Community Events Dispenser or Public Passenger Carrier licenses.

(b) Manufacturers must get the appropriate special license to serve the following products:

(A) Oregon wineries must get a Special Events Winery license which allows them to serve and sell only wine. They are

not eligible for a special license allowing the sale or service of malt beverages.

(B) Oregon growers must get a Special Events Grower license which allows them to serve and sell only wine. They are not eligible for a special license allowing the sale or service of malt beverages.

(C) Oregon brew pubs must get a Special Retail Wine license to sell or serve wine. They must get a Special Retail Beer license to sell or serve malt beverages.

(c) Manufacturers must conduct the tastings according to the following requirements. They must:

(A) Provide the product to be tasted, and remove any remaining product at the end of the tasting;

(B) Provide or pay for a person to serve the wine or malt beverages. The server must be the manufacturer's employee or agent. The supplier must not compensate any employee or agent of the retail licensee to participate in the tasting;

(C) Not advertise the tasting. The retailer may advertise the tasting only inside the licensed premises.

(6) Retailer-Conducted Tastings. Retailers with Package Store or on-premises licenses may conduct tastings on their licensed premises. Retailers may:

(a) Accept assistance from manufacturers, wholesalers and warehouse licensees, and from certificate of approval holders if:

(A) The only assistance provided is an employee to assist. "Assist" includes pouring if the person meets the requirements in subsection (3)(h);

(B) The retailer pays for the wine 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.

(7) Prohibitions.

(a) Health care facility and bed and breakfast licensees may only conduct tastings for their residents and guests. ORS 471.257 and 471.259 prohibit these licensees from serving or selling to the general public.

(b) Package Store licensees that sell petroleum products must not conduct tastings or allow manufacturers to conduct tastings on the retail premises.

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

Stats. Implemented: ORS 471.398, ORS 471.260, ORS 471.223, ORS 471.227, & ORS 471.253

Hist.: OLCC 6-1996, f. 5-6-96, cert. ef. 7-1-96

845-006-0060

Posting of Certificates and Placards; Alteration Prohibited

No licensee or permittee shall alter any certificate of license or permit issued by the Commission. All licenses and placards issued or posted by the Commission must be maintained upon the premises in full public view. Any mutilation, destruction, or removal of any such license or placard shall be reported to the Commission immediately.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471 & ORS 472, including ORS 471.030 & ORS 472.030

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; Renumbered from 845-010-0055

845-006-0065

Payment for Alcoholic Beverages; NSF Checks, Including Third Party Checks

(1) No retail licensee will pay for malt beverages or wines purchased from a wholesale licensee with an NSF check.

(2) A wholesale licensee must report any NSF check(s), including third party NSF checks, received during a calendar month to the Commission. The written report must include the trade name of licensed premises, name of maker, amount of check, date wholesaler received check, date wholesaler was notified check was NSF, date wholesaler informed retailer of NSF

check, and the date redeemed. The Commission must receive this report by the 20th day of the month following the month being reported. (Example: The Commission must receive the NSF check report for January by February 20.) Wholesale licensees must maintain a legible photocopy of the front and back of each NSF check at the licensed premises for two years.

(3) Any wholesale licensee who fails to make immediate and reasonable efforts to redeem a NSF check or who continues to accept checks from a retail licensee whose checks, including third party checks, are repeatedly returned violates the prohibition against extending credit in ORS 471.398.

(4) No dispenser licensee will pay for distilled spirits purchased from or through the Commission with an NSF check.

(5) Any retail licensee who fails to immediately redeem an NSF check or who continues to give a wholesaler checks, including third party checks, that are repeatedly returned violates the prohibition against accepting gratuities from wholesalers in ORS 471.470.

(6) As used in this rule:

(a) "NSF check" includes any check or other instrument that is not immediately paid upon presentation or that is later dishonored;

(b) "Third-party check" means a check or other negotiable instrument written by anyone other than the retailer.

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

Stats. Implemented: ORS 471.398

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 37, f. 9-29-71, ef. 10-2-71; LCC 14-1980, f. 4-25-80, ef. 5-1-80; Renumbered from 845-010-0145; LCC 14-1982, f. 12-10-82, ef. 1-1-83; OLCC 12-1990, f. 6-4-90, cert. ef. 7-1-90

845-006-0070

Financial Assistance; Retailer Responsibility

(1) "Manufacturer" and "wholesaler" have the same meaning as in ORS 471.392.

(2) "Retailer" has the same meaning as in OAR 845-010-0121.

(3) The Commission interprets ORS 471.392 to also prohibit a retailer from soliciting from a manufacturer or wholesaler any item or service these statutes prohibits, except as OAR 845-013-0001 through 845-013-0110 allow.

(4) A retailer does not violate ORS 471.415 or 471.470 if the retailer accepts the items or services that OAR 845-013-0001 through 845-013-0110 allow.

(5) A retailer may not sell the samples a wholesaler or manufacturer gives the retailer under OAR 845-013-0060.

(6) No dispenser licensee or officer, director, manager, agent, or employee of a dispenser licensee will solicit or accept any gift, gratuity, special individualized discount, or other incentive from any retail sales agent of the Commission, or anyone representing the retail sales agent, if such may be reasonably construed to be an enticement to obtain, maintain or increase the recipient's business with the retail sales agent.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.398

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 34, f. 1-23-70, ef. 2-26-70; LCC 17-1979, f. 9-24-79, ef. 10-1-79; LCC 13-1980(Temp), f. & ef. 4-25-80; LCC 24-1980, f. 9-30-80, ef. 10-1-80; Renumbered from 840-010-0155; LCC 7-1981, f. 11-2-81, ef. 1-1-82; LCC 8-1983(Temp), f. & ef. 7-20-83; LCC 13-1983, f. 12-27-83, ef. 1-1-84; LCC 3-1984, f. 8-2-84, ef. 9-1-84; LCC 5-1984, f. 9-12-84, ef. 1-1-85; OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1990, f. 3-16-90, cert. ef. 4-1-90; Renumbered from 845-006-0125

845-006-0071

Maintaining Records: Retail Licensees

(1) Each retail licensee must keep an invoice of all alcoholic beverage deliveries to the licensed premises, together with the purchase particulars thereof, and any discount, rebate or allowance given by any manufacturer, importer or wholesaler of

alcoholic beverages. Licensees will keep these records for a period of two years. Licensee will have these records available for inspection by the Commission at all times during business hours.

(2) Commercial Establishments: Each commercial establishment holding a license issued under ORS Chapter 472 must keep daily records, purchase invoices and sales receipts for each of the following:

(a) All purchases of alcoholic beverages, showing the date of purchase, the seller, the quantity purchased and the price;

(b) All alcoholic beverage sales, including the full price of an alcoholic beverage drink which contains other ingredients;

(c) All purchases of food stuffs;

(d) All food sales, excluding items such as cover charges, sale of non-edible products and sale of alcoholic beverages.

(3)(a) Licensees will summarize purchase invoices and sales receipts that section (2) of this rule requires on a daily basis with separate summaries for each category (alcoholic beverage purchases, food purchases, alcoholic beverage sales and food sales). Licensees must also keep all supporting source documents such as invoices, receipts, guest checks and cash register tapes. If the Commission determines a licensee is not meeting food service requirements, it may ask the licensee to further summarize these records on a monthly or quarterly basis for the period in question. A licensee who is on a food service compliance-building plan must keep any additional records the Commission reasonably requires to ensure compliance with the plan;

(b) Licensees must keep all of the invoices, receipts, source documents and summaries described in this rule for two years and have them available for inspection by the Commission at all times during business hours.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.330 & ORS 471.760

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 65, Amended 8-30-71, ef. 9-1-71; LCC 43, f. 11-20-73, ef. 12-11-73; f. 9-22-77, ef. 10-4-77; Renumbered from 845-010-0165; LCC 65, f. 9-22-77, ef. 10-4-77; LCC 69, f. & ef. 12-20-77; Renumbered from 845-010-0195; LCC 4-1984, f. 8-2-84, ef. 9-1-84; OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90; Renumbered from 845-008-0005 and 845-008-0010

845-006-0080

Deposits on Draft Malt Beverage and Wine Containers

(1) A brewery, importer, manufacturer, or wholesaler of malt beverages or wine may charge a deposit for the return of draft malt beverage and wine containers (kegs, barrels, half barrels, and quarter barrels). They must include the amount of the deposit, if any, in their price posting (OAR 845-010-0210).

(2) If the brewery, importer, or manufacturer charges a deposit, the wholesaler must then charge the retail licensee the amount of this deposit.

(3) The retail licensee must pay the deposit, if any, at the time he/she purchases the draft malt beverage or wine in cash or by valid check, money order, or voucher payable to the wholesaler.

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

Stats. Implemented: ORS 471.398

Hist.: LCC 51, f. 3-20-75, ef. 5-1-75; Renumbered from 845-010-0156; LCC 11-1986, f. 6-4-86, ef. 7-1-86

845-006-0085

Sale of Malt Beverages in Kegs

(1) Before selling a keg of malt beverages as ORS 471.478 allows, a licensee will:

(a) Complete a receipt (Form 760);

(b) Have the purchaser read and sign the receipt;

(c) Give the purchaser a copy of the signed receipt;

(d) Make sure the information on the receipt is accurate; and

(e) Securely attach a Commission-issued, serially-numbered identification label (keg tag) to each keg.

(2) If the licensee has reason to question the purchaser's legal age or identity, the licensee will ask the purchaser for two addi-

tional pieces of identification. One of these pieces must include the purchaser's physical description or picture, date of birth, and signature.

(3) A licensee must keep the original of the receipt (Form 760) for six months.

(4) The licensee must allow an authorized representative of the Commission or any person authorized under ORS 471.605 to inspect receipts and keg tags at any time during the licensee's business hours.

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

Stats. Implemented: ORS 471.478

Hist.: LCC 66, f. 9-22-77, ef. 1-1-78; LCC 26-1979, f. 10-26-79, ef. 10-29-79; Renumbered from 845-010-0320; LCC 12-1986, f. 7-1-86, ef. 10-1-86

845-006-0090

Transportation by Licensed Retailer from Licensed Wholesaler Premises

A licensed malt beverage or wine retailer may transport the malt beverages or wine the retailer purchases from a licensed wholesaler from the wholesaler's premises to the retailer's premises. The purchase price of such malt beverages or wine shall be the price posted pursuant to OAR 845-010-0210.

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

Stats. Implemented: ORS 471.305 & ORS 471.398

Hist.: LCC 40, f. 8-2-72, ef. 8-5-72; Renumbered from 845-010-0211; LCC 32-1980, f. 12-22-80, ef. 2-1-81; OLCC 7-1990, f. 3-16-90, cert. ef. 4-1-90

845-006-0100

Changes in Premises or Operation: Prior Approval Required

(1) The Commission issues licenses with the understanding that the licensee will operate the business as proposed at the time of licensing. The Commission also realizes that a licensee may need to change the business during the licensing year. This rule provides a way for a licensee to make changes, and for the Commission to be assured that the changes will meet the criteria for licensing. The Commission may cancel, suspend or refuse to renew a license if the licensee fails to get the approval this rule requires.

(2) A licensee licensed to sell alcoholic beverages at retail for on-premises consumption must request and receive Commission approval before the licensee:

(a) Increases the area(s) in which the licensee sells or serves alcoholic beverages; or

(b) Changes the principal use of any room or area, other than to accommodate a particular activity on a one-time basis, including no longer using a room or area.

(3) A Dispenser licensee must also request and receive approval before the licensee:

(a) Removes or adds walls or partitions other than to accommodate a particular activity on a one-time basis;

(b) Changes the number of seats in a dining area or lounge by ten percent or more;

(c) Eliminates a meal period, substantially reduces meal service hours, or substantially increases lounge or bar hours;

(d) Changes the type of food, if a special type was a part of the basis for licensing, or the method of food service. Examples include changing from Chinese food to Mexican or French to American, or changing from table service to cafeteria style or cafeteria style to counter service;

(e) Substantially reduces the food service last approved by the Commission. Examples include substantially reducing the number or variety of regular meals offered.

(4) A retail licensee must notify the Commission whenever the licensee changes the business trade name within 30 days of the change.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295, ORS 471.315 & ORS 472.100

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; Renumbered from 845-010-0070; LCC 28-1980, f. 11-19-80, ef.

12-1-80; OLCC 4-1987, f. 2-9-87, ef. 4-1-87; OLCC 7-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 6-1991, f. 5-8-91, cert. ef. 7-1-91

845-006-0105

Notification When Premises Closed; Time Limit for Operation

(1) A licensee must give the Commission written notice when the licensed premises are closed for more than 14 days. The notice must include the reason for closure and the estimated reopening date. The Commission must receive this notice within 21 days after closure began. Failure to give this closure notice may result in fine, suspension or refusal to renew.

(2) The Commission does not allow a dispenser licensee to close his/her business in order to sell it. However, the Commission does allow closure while it completes a pending change of ownership application.

(3) In addition to section (1) of this rule, dispenser licensees must get Commission approval of the reopening date. When Commission staff believes that the licensee intends to personally reopen the business, it either approves the estimated reopening date or sets a reopening or relocation date. It notifies the licensee in writing. The Commission may grant an extension if the licensee shows good cause. Failure to reopen by the approved date may result in fine, suspension or cancellation.

(4) When the Commission approves issuing a license upon completion of construction or remodeling, it sets a reasonable time limit for the licensee or applicant to begin operation. The licensee or applicant may request and the Commission may grant an extension if the licensee or applicant shows a serious effort to open the business.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295, ORS 471.315 & ORS 472.100

Hist.: LCC 8-1978, f. 6-23-78, ef. 7-1-78; LCC 20-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0076; LCC 14-1986, f. 9-2-86, ef. 10-1-86

845-006-0106

Closure of Premises for Private Parties

(1) A Dispenser Class "A", Dispenser Class "C", Seasonal Dispenser or Restaurant licensee may close the premises for private parties under the following circumstances:

(a) The licensed premises are open to the general public at least five days a week during the regular hours of operation of the premises, unless exempted at the time of licensing;

(b) The licensee notifies the Commission at least 48 hours before any closure of the premises in order to cater to a private party. However, the licensee may close a portion of the premises at any time without notice to the Commission.

(2) A Retail Malt Beverage licensee may close the entire premises to the general public at any time to cater to private parties but must notify the Commission at least 48 hours before the closure. Private clubs or sports facilities, such as athletic clubs, tennis or racquetball clubs or health spas, that have Retail Malt Beverage licenses may choose to sell to or serve only members and guests of members without notice to the Commission.

(3) Whenever a licensee closes any licensed premises to the public for a private party, at least one door, normally used for public entry, must remain unlocked so that Commission inspectors may have unrestricted access to the premises.

(4) The Commission may, at its discretion, require that licensed premises be open to the public should the Commission determine that the community needs are not being met within a particular locality.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295, ORS 471.315 & ORS 472.100

Hist.: LCC 6-1979, f. 4-2-79, ef. 4-5-79; LCC 20-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0077; OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90; Renumbered from 845-008-0025

845-006-0110

Operating While Suspended

No licensee, or no agent, servant or employee of such licensee, for a financial consideration by way of a charge for service, membership fee, admission fee, initiation fee, club dues, contribution, or other fee or charge, shall serve or permit to be served any alcoholic liquor during the period of time that the license is under suspension pursuant to ORS 471.315 or 183.415.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.315

Hist.: LCC 14-1980, f. 4-25-80, ef. 5-1-80; Renumbered from 845-010-0365

845-006-0115

“Family Member” Defined

“Family Member” defined. For purposes of ORS 471.396(3) and 471.396(4), “family member” means a person residing in the same household as the licensee as part of the family unit.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.396(3) & ORS 471.396(4)

Hist.: LCC 1-1981, f. & ef. 3-2-81

845-006-0120

“Applicant” and “Licensee” Defined

Unless the context requires otherwise, “applicant” (as used in ORS 471.295) and “licensee” (as used in ORS 471.315) includes any director, principal officer (as defined in OAR 845-006-0020(1)(b)), stockholder who owns or controls ten percent or more of any class of stock, general partner, or limited partner whose investment commitment is ten percent or more of the total investment commitment.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.295 & ORS 471.315

Hist.: LCC 9-1981, f. 12-18-81, ef. 1-1-82; LCC 9-1983, f. 7-28-83, ef. 10-1-83

845-006-0200

Suspensions and Fines

(1) The Commission cancels or suspends a licensee under its authority in:

(a) ORS 471-315 for violations of any provision of ORS Chapter 471 or 472 or any administrative rule (OAR Chapter 845) the Commission adopts pursuant to these chapters;

(b) ORS 459.992(4) for violations of any provision of ORS 459.820, 459.830 or 459.850 or any administrative rule the Commission adopts pursuant to these statutes;

(c) ORS 471.315(1)(d) and 472.180(1)(l) for public interest or necessity reasons.

(2) The Commission cancels or suspends a service permit under its authority in ORS 471.385 for violations of ORS Chapter 471 or 472 or any administrative rule (OAR Chapter 845) the Commission adopts pursuant to these chapters.

(3) The Commission cancels or suspends an alcohol server education provider certificate under its authority in ORS 471.547.

(4) ORS 471.322 and 471.327 allow the Commission to impose a fine instead of suspension. In most cases, the Commission allows the licensee or permittee the option of serving the suspension or paying the fine.

(5) ORS 471.315 allows the Commission to impose either a suspension or a fine or both. The Commission imposes mandatory suspensions when necessary to ensure future licensee, permittee or patron compliance.

(6) ORS 471.322 and 471.327 limit the amount of a fine the commission may impose. To stay within these limits, the Commission usually computes fines by multiplying the number of days in the suspension by \$165 for manufacturer and wholesale licensees, by \$65 for retail licensees and by \$25 for service permittees.

(7) Violation Categories:

(a) The Commission has the following violation categories:

(A) I — Violations that make licensee ineligible for a license;

(B) II — Violations that create an immediate threat to public health or safety;

(C) III — Violations that create a potential threat to public health or safety;

(D) IV — Violations that create a climate conducive to abuses associated with the sale or service of alcoholic beverages;

(E) V — Violations inconsistent with the orderly regulation of the sale or service of alcoholic beverages.

(b) **Exhibit 1** lists the proposed sanctions for the first and subsequent violations within each category described in subsection (7)(a) of this rule. **Exhibit 1** also gives the categories for the most common violations;

(c) These sanctions are guidelines. If the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction. Some of the reasons the Commission may mitigate a sanction are: previous lengthy history of compliance; good faith effort to prevent a violation; and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Some of the reasons the Commission may aggravate a sanction are: prior warning about compliance problems; repeated failure to comply with laws; efforts to conceal a violation; intentional violations; the violation involved more than one patron or employee; the violation involved a juvenile; and the violation resulted in injury or death. The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.

(8) The Commission increases sanctions based on successive violations in the same category within a two-year period. For example, if a licensee or permittee, who has committed one Category III violation and one Category IV violation within the past two years, commits another Category III violation, the Commission assesses the sanction at the second level for the pending Class III violation. Numerous violations within the two-year period, regardless of the type, may indicate such a disregard for the law or failure to control the premises so as to warrant cancellation of the license or permit.

(9) A licensee may not avoid the sanction for a violation or the application of the provision for successive violations by merely adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate or control the business are substantially similar.

[ED. NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 183.090, ORS 471.315, ORS 471.322 & ORS 471.327

Hist.: LCC 14-1980, f. 4-25-80, ef. 5-1-80; Renumbered from 845-010-0900; LCC 4-1982, f. 3-26-82, ef. 4-1-82; OLCC 1-1989, f. 1-4-89, cert. ef. 4-1-89

845-006-0210

Alcohol Management in Public Venues

(1) Purpose. The Commission is charged with regulating the sale and service of alcoholic beverages in a way which protects the safety and welfare of the citizens, and helps ensure that alcohol is used legally. The purpose of this rule is to set minimum standards to help licensees manage large public events, ensuring that minors and visibly intoxicated persons do not get or consume alcohol. The Commission may place additional requirements on individual events to help ensure legal, well-managed events.

(2) Definitions.

(a) Attendance means reasonably projected attendance.

(b) Confined area means an area within the event to which alcohol sales and consumption are restricted and where minors are prohibited. Alcohol Monitors are required if 2000 or more people are allowed in the confined area at any one time.

(c) Alcohol Monitor means a licensee’s employee or agent who monitors the sale and consumption of alcoholic beverages, supplementing alcohol servers and security staff.

(d) Walk around means an event where people are allowed to walk around the entire event or some defined part of the event while consuming alcohol, and minors are allowed. Alcohol Moni-

tors are required if there will be a daily attendance at the event of 2000 or more.

(3) This rule applies to:

(a) All annually licensed premises that do not have a Commission-approved operating plan and have any event with a daily attendance of 2000 or more. Annual licensees with a Commission-approved operating plan are exempt from this rule no matter what size events are held at the premises.

(b) All events held by a caterer licensee with a daily attendance of 2000 or more. If a caterer holds an event at an annually licensed premises that has a Commission-approved operating plan, the caterer must comply with the annual licensee's operating plan.

(c) All special licensed events with a daily attendance of 2000 or more. If a special licensed event is held at an annually licensed premises that has a Commission-approved operating plan, the special licensed event must comply with the annual licensee's operating plan.

(d) All events included in Section (3) (a), (b), and (c) that are held on or after February 1, 1998.

(e) To determine if this rule applies to an event, the licensee counts the total daily attendance. (It does not matter how many people may consume alcohol or how many people are allowed in a confined area; what matters is the total daily attendance.) To determine if an event needs Alcohol Monitors, see Section (2), Definitions, and Section (5), Assignment of Alcohol Monitors.

(4) Responsibilities and Requirements for Alcohol Monitors:

(a) Alcohol Monitors are responsible for ensuring that unlawful sales, service and consumption of alcoholic beverages do not occur on the licensed premises. Alcohol Monitors' duties include observing people, monitoring their alcohol consumption, looking for minors who are consuming alcoholic beverages, and preventing visibly intoxicated persons and minors from consuming alcoholic beverages.

(b) Alcohol Monitors must wear clothing or other designation, such as a button, which readily identifies them to the public as Alcohol Monitors.

(c) Alcohol Monitors must have completed Alcohol Server Education and hold a valid service permit or winery salesperson license. For annual licensees, this requirement applies to volunteer Alcohol Monitors and to compensated Alcohol Monitors.

(d) Despite Section (4)(c), Alcohol Monitors do not need to complete Alcohol Server Education or hold a service permit if:

(A) They are uncompensated volunteers for a special licensee who is not a repeat user. A repeat user is a special licensee who has been licensed for 14 or more special events in the 365 days immediately preceding receipt of the current application; and

(B) The special licensee has the volunteers read, before the event, the Commission pamphlet (What Every Volunteer Alcohol Server Needs to Know) that explains the laws regarding alcoholic beverage sale and service.

(5) Assignment of Alcohol Monitors. When determining the required number of Alcohol Monitors, licensees must use the total daily attendance if all or part of the event is a walk around event. See Section (2)(d) for a definition of walk around event. However, if alcohol sales and consumption will be limited to a confined area, the licensee uses the number of people allowed in the confined area at any one time to determine how many Alcohol Monitors are required. See Section (2)(b) for a definition of confined area. Alcohol Monitors must be on duty at all times of alcohol service as follows:

(a) For 2000 to 7500 people, at least three Alcohol Monitors;

(b) For each additional one to 2,500 people, at least one more Alcohol Monitor. For example, 7,501 to 10,000 people require at least four Alcohol Monitors; 10,001 to 12,500 people require at least five Alcohol Monitors; and

(c) One additional Alcohol Monitor for each point of sale that is not readily visible to the minimum number of Alcohol Monitors required in Section (5)(a) and (b). Point of sale means each stand, booth or other concession area where alcoholic beverages are sold and served.

(6) Approved Containers for On-premises Consumption.

(a) Container sizes. Alcoholic beverages for consumption on the premises must be served as follows:

(A) Malt beverages:

(i) In a container no larger than 16 ounces;

(ii) For tastings, no more than 3 ounces of product.

(B) Wine:

(i) In a container no larger than 8 ounces;

(ii) For tastings, no more than 1-1/2 ounces of product;

(iii) A bottle of wine no larger than 750 ml sold for more than one person and for on-premises consumption only, with containers no larger than 8 ounces.

(C) Distilled Spirits:

(i) Up to 1 ounce of distilled spirits without mixer in a container no larger than 4 ounces;

(ii) Up to 1 ounce of distilled spirits with mixer served in a container no larger than 9 ounces.

(b) Container color or type. Containers used to serve alcoholic beverages must be of a visibly and distinctively different color or type when compared to containers used to serve nonalcoholic beverages.

(7) Limits on Alcohol Sales.

(a) Each purchaser of alcoholic beverages may buy no more than two drinks at any one time, or one bottle of wine for consumption on the premises that is no larger than 750 ml at any one time.

(b) Alcoholic beverages must be sold and served consistent with Section (6).

(c) If it is reasonably projected that 30 percent or more of the people at the event will be between 15 and 20 years of age, the licensee must limit the sale of alcoholic beverages to a confined area where minors are prohibited unless the licensee gets a variance under Section (9).

(d) Walk around events must have sufficient lighting to ensure that Alcohol Monitors, alcohol servers, security staff, OLCC staff, and law enforcement staff can observe and monitor for over consumption, minors consuming or in possession, and other liquor law violations.

(8) Transportation. The Commission encourages messages before and at events reminding people of the risks of drinking and driving, and encourages alternatives such as designated drivers and, when possible, offering alternate transportation.

(9) Request for Variance. The Commission may grant a variance to part or all of this rule if the request is consistent with the intent of the rule. Any licensee or applicant who requests a variance from any of the criterion stated above must submit the request along with a detailed security plan at least 30 days prior to the event. The Commission will discuss requests for variances with the recommending authority when appropriate. When the Commission grants a variance, the Commission may add other requirements to ensure that the event operates in a way consistent with the intent of the rule. For example, if the Commission were to allow the sale of bottles of wine larger than 750 ml, the Commission might require that the licensee increase the number of Alcohol Monitors to help ensure that the larger bottles did not result in over consumption or in alcohol getting to minors. Other examples of when the Commission will consider granting a variance include events where minors are not permitted to attend and family events (events where minors are accompanied by adults).

(10) Sanction for Violation.

(a) A licensee who violates this rule with respect to the proper training, assignment and use of Alcohol Monitors or by failing to comply with Section (6) related to containers commits a Category IV violation under the Commission's sanction schedule (OAR 845-006-0200).

(b) If a licensee holds a walk around event and violations related to the sale or service of alcoholic beverages to minors or visibly intoxicated persons occur, or a violation of Section (7) (d) occurs, the next time this event or similar event is held alcohol must be limited to a confined area unless the licensee get a variance under Section (9).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.030, ORS 471.115, ORS 471.360, ORS 471.410, ORS 471.412, ORS 471.430, ORS 471.730(1), ORS 472.030 & ORS 472.060(1)
Hist.: OLCC 18-1997, f. 10-6-97, cert. ef. 2-1-98

DIVISION 7

ADVERTISING

845-007-0005

Purpose and Application of Rules

(1) The Commission serves the interests of the citizens of Oregon by regulating alcoholic beverage advertising for these purposes:

- (a) To minimize health or safety problems caused by the misuse of alcoholic beverages;
- (b) To encourage moderation in the use of alcoholic beverages;
- (c) To discourage the appeal of alcoholic beverages to minors;
- (d) To ensure accurate presentation of the product;
- (e) To ensure compliance with all laws relating to alcoholic beverages.

(2) The Commission also serves the interests of Oregonians by allowing competitive advertising for the purpose of informing the public of the availability and characteristics of alcoholic beverages.

(3) All alcoholic beverage advertising any licensee uses must conform to these rules. Prior approval of advertising material is not normally required. The Commission may, however, require a licensee who fails to comply with these rules to submit all advertising material for prior approval for a reasonable period specified by the Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 471.730(7)
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0081; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0010

Definitions

As used in OAR 845-007-0005 through 845-007-0035:

(1) "Advertising" is publicizing the trade name of a licensee together with words or symbols referring to alcoholic beverages or publicizing the brand name of an alcoholic beverage.

(2) "Alcoholic Beverage" contains more than one-half of one percent alcohol by volume and is intended for human consumption.

(3) "Discount Coupon" means any cut out or detachable coupon, ticket, certificate or any other material that a person may use to obtain a price reduction or rebate on alcoholic beverages. This definition applies whether the coupon requires a purchase or not.

(4) "Handbill" is a flyer, leaflet, or sheet that advertises alcoholic beverages.

(5) "Point of sale" item is a display, sign, or other material that advertises alcoholic beverages at a licensed premises.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 471.730(7)
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0086; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0015

Advertising Media

(1) The Commission prohibits advertising through:

- (a) Handbills that are posted or passed out in public areas such as parking lots and publicly owned property;
- (b) Discount coupons, except those permitted under OAR 845-015-0055;

(c) Point of sale items on premises where the advertised product is not sold.

(2) The Commission may prohibit advertising through additional media consistent with the objectives in OAR 845-007-0005.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1) & (5), ORS 472.030 & ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; LCC 7-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0091; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 6-1998, f. 5-21-98, cert. ef. 6-1-98

845-007-0020

Restrictions

(1) The Commission prohibits advertising if it contains:

- (a) False or misleading information;
- (b) Claims that the alcoholic beverage has curative or therapeutic effects;
- (c) Claims that any government agency endorses or supports the alcoholic beverage;
- (d) The requirement of purchasing an alcoholic beverage in order to receive a prize or merchandise unless the manufacturer or wholesaler donates the prize or merchandise to a charitable cause or community non-profit entity;
- (e) Material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages;
- (f) A person displayed drinking an alcoholic beverage;
- (g) Material that encourages the use of an alcoholic beverage because of its intoxicating effect;
- (h) Statements or illustrations that an alcoholic beverage causes athletic or artistic success;
- (i) Material that encourages excessive or rapid consumption.

(2) The Commission prohibits references to temporary price reductions for alcoholic beverages to be consumed on the licensed premises. These references include "happy hour", "dimers", "two-for-one", "social adjustment hour", "free", or similar terms. The licensee may make references to temporary price reductions inside the licensed premises if the reference is not visible from the outside.

(3) The Commission prohibits advertising that violates OAR 845-015-0090 (Advertising a retail liquor store).

(4) The Commission prohibits manufacturers and wholesalers from giving retailers point-of-sale items and advertising that the financial assistance laws prohibit (ORS 471.398 and 471.400 and OAR 845-013-0050).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0096; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0025

Advertising Signs on Licensed Premises

The Commission limits each licensed premises to four signs referring to alcoholic beverages that are visible from the outside. The Commission's financial assistance rule, OAR 845-013-0050, limits the size of the sign a wholesaler or manufacturer may give a retailer to 630 square inches.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0101; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0035

Removal of Objectionable and Non-Conforming Advertising

(1) Licensees must remove any sign, display, or advertisement if the Commission finds it violates these rules.

(2) The Commission will specify a reasonable time period in which to remove the objectionable advertisements.

Stat. Auth.: ORS 471 & 472, including ORS 471.030, ORS 471.730(1), ORS

471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.730(7)
 Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0111;
 LCC 7-1985, f. 7-30-85, ef. 9-1-85

DIVISION 8

RETAIL LICENSEES

845-008-0030

Tap Labeling

Licensees retailing draught beer must disclose at all times the true brand name of the beer by attaching the brand name to the tap or pipe from which the beer is drawn, in such a manner as to make the brand name visible to the customer.

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

Stats. Implemented: ORS 471.445

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67, ef. 12-26-67; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 4-1979(Temp), f. & ef. 4-2-79; LCC 9-1979, f. 5-24-79, ef. 5-25-79; Renumbered from 845-010-0205(4) and (5); OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90

845-008-0045

Service to Guests by Class "B" Dispenser Licensees

(1) Purpose. The Commission grants Class B dispenser licenses to private clubs so that they may sell and serve alcoholic beverages to members and guests. The purpose of this rule is to define member and guest.

(2) Prohibited Sale of Alcoholic Liquor. Licensees holding a Class "B" dispenser's license may not sell or make alcoholic beverages available except to members and guest, as defined in this rule.

(3) Member Defined. A member is a person or entity who pays due and has full time membership privileges in the club or who is a full time member of an organization that has reciprocal privileges with the club.

(4) Guests of Member. A guest is an individual who enjoys a bona fide guest-host relationship with a member at the private club. A bona fide guest-host relationship exists only if the individual:

(a) Is a spouse of a member, or a full time auxiliary member of the club;

(b) Is invited by a member and the member pays for all cost incurred by the guest, without reimbursement in whole or in part from anyone. The sponsoring member must be on the premises while the guest is on the premises. (Sign-in or guest list required);

(c) Is invited by the club and the club pays for all costs incurred by the individual without reimbursement in whole or in part from anyone. (Payment of standard membership fees and regular monthly dues by members does not constitute reimbursement);

(d) Is attending a family reunion of a member, or a wedding, wedding reception, or wedding anniversary of a member or of a person in a member's family;

(e) Was personally and individually invited by the member prior to arrival at the licensed premises, and is accompanied by the sponsoring member at all reasonable times while in the licensed premises. (Sign-in or guest list required). However, if a member invites more than ten individuals affiliated with the same company, firm, or organization, the Commission will consider the invitation to be based on that affiliation. The Commission will not recognize this to be a bona fide guest host relationship under this subsection, unless the company, firm, or organization:

(A) Is a sole proprietorship, and the hosting member is the sole proprietor;

(B) Is a partnership, and the hosting member is a general partner;

(C) Is a corporation, and the hosting member is a major stockholder;

(D) Is itself a member or has been paying the hosting member's dues for at least three consecutive months prior to the activity. The member and a corporate officer or local general manager must sign an affidavit attesting to the fact that the corporation has been and will be paying all or part of the member's monthly dues. The club must keep the affidavit on file for at least one year after the activity;

(E) Is a fraternity, sorority, or alumni association, and the private club is organized primarily for members of those organizations;

(F) Is an organization made up of representatives of private clubs;

(G) Is another private club participating in an athletic exchange. (Sign-in or guest list required, unless prior approval is obtained);

(H) Is sponsoring a special activity, held no more than once per year, of the company, firm, or organization, if at least ten percent of the people attending the event are members of the private club. (Prior written authorization required).

(5) Guests of Club. In order to serve the public interest, an individual will be recognized as a bona fide guest of the club if the individual:

(a) Is participating in a special event specifically designed to provide significant economic benefit to a charity. (Prior written authorization required);

(b) Is participating in an activity that is being held in conjunction with a community-wide event or festival, such as Phil Sheridan Days and Junction City's Scandinavian Festival. (Prior written authorization required);

(c) Is participating in a sporting event that requires the special facilities of a private club. (Prior written authorization required);

(d)(A) Is participating in an activity that no Class "A" dispenser licensee in the area has facilities available to accommodate. (Prior written request required; sign-in or guest list required). For an activity to qualify under this subsection, the private club must send the Commission's nearest regional office a written request to host the activity and sell alcoholic beverages to the participants. The request must contain facts that show that the private club has the only adequate facilities available to accommodate the activity within a ten mile radius of the club. The Commission will determine adequacy of the facilities based on factors such as size, seating, and the willingness to provide desired food or equipment necessary for the activity. The commission will also consider whether the facilities are available for the date and hours of the activity at a price competitive with other commercial establishments;

(B) The Commission will deny the request if it receives the written request less than 20 days before the activity, unless it determines that extraordinary circumstances exist. Therefore, if the request is not mailed to the Commission more than 20 days before the activity, the private club must explain in the request why it could not have been mailed earlier;

(C) The Commission may disapprove sale of alcoholic beverages at the activity if the request does not comply with the rule or if the Commission determines that the private club facilities are not the only adequate facilities available.

(6) Duty to Investigate. Private clubs must investigate when group reservations are made to ensure that non-members in the group are eligible to be treated as guests and served alcoholic beverages under this rule.

(7) Prior Approval. Private clubs must obtain prior written authorization from the Commission to host any activity described in subsections (5)(a) (special event for charity), (5)(b) (community-wide event), (5)(c) (special facilities), and (4)(e)(H) (special activity — one time per year) of this rule. The Commission's nearest regional office must receive the request for approval at least 20 days before the activity, except in unforeseen circumstances. The Commission will notify the private club within ten working days after the receipt of the request whether the activity is approved or denied. Verbal notification shall be confirmed in writing.

(8) Guest List. Private clubs shall maintain a sign-in register or guest list showing the names of all guests, except those attending activities described in subsections (4)(d) (family reunions, wedding receptions), (5)(a) (special event for charity), (5)(b) (community-wide event), and (5)(c) (special facilities) of this rule. The register and list must also show names of sponsoring members and dates involved. They must be kept on the premises for at least one year. Guests attending activities described in subsection (4)(e)(G) (athletic exchange) of this rule must sign in unless the private club has received prior approval for the activity.

(9) Record Keeping. Private clubs shall keep on the premises for at least two years an accurate record of all activities, functions, or meetings hosted where more than ten guests were affiliated with the same company, firm, or organization. The record shall include the date, nature of activity, subsection of the rule under which the activity is authorized, name(s) of sponsoring member(s), if any, and number of people who attended. The record must be available for inspection by the Commission.

(10) When No Alcoholic Beverages are Served. This rule does not prohibit Class "B" licensees from hosting any activity where no alcoholic beverages are sold or made available to non-members.

(11) Severability. The Commission intends that if any part of this rule is held invalid, the remaining parts shall remain in force.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 472.100

Hist.: LCC 22-1980, f. 7-22-80, ef. 10-1-80; Renumbered from 845-010-0770; LCC 8-1982, f. 8-27-82, ef. 10-1-82; LCC 11-1982(Temp), f. & ef. 12-3-82; LCC 1-1985, f. & ef. 2-7-85

DIVISION 9

SERVICE PERMITS

845-009-0005

Return of Applications

The Commission may return an application and any accompanying fee if:

(1) Any of the following information is missing or illegible:

- (a) Applicant's name;
- (b) Applicant's mailing address;
- (c) Applicant's Social Security Number;
- (d) Applicant's date of birth;
- (e) Applicant's signature;
- (f) Applicant's response to conviction history questions;
- (g) Employing licensee's business name;
- (h) Employing licensee's business address; or
- (i) Employing licensee's signature.

(2) The applicant has not included at least the appropriate fee(s) with the application.

(3) The applicant used an outdated application form.

(4) The applicant is under 18 years of age.

(5) The applicant is under 21 years of age, but applying for a service permit at licensed premises where service permittees must be at least 21 years of age.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.375

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91

845-009-0010

Service Permit Requirements

(1) Who Needs a Service Permit. ORS 471.360 requires the following persons to have service permits:

(a) Any person who mixes, sells or serves alcoholic beverages for consumption on licensed premises;

(b) Any person who directly supervises persons who mix, sell or serve alcoholic beverages for consumption on licensed premises;

(c) The individual principals of a licensed corporation or partnership who sell or serve alcoholic beverages for consumption on licensed premises or who directly supervise those who do;

(d) Any licensee's employee who delivers wine or malt beverages as ORS 845-006-0028 or 845-006-0029 (Retail Delivery of Wine and Malt Beverages Within Oregon) allows.

(2) Exceptions. The following are exceptions to the service permit requirement:

(a) An individual named on the license as a licensee does not need a service permit;

(b) ORS 471.360 allows the Commission to waive the service permit requirement if the licensee's primary business is not the sale or service of alcoholic beverages or food. Under this authority, the Commission waives the service permit requirement Public Passenger Carrier, Health Care Facility, non-annual Community Events Dispenser (OAR 845-005-0082) and some special licenses (OAR 845-004-0025). These persons must, however, be at least 21 years old to sell or serve alcoholic beverages on these licensed premises;

(c) ORS 471.259 allows Bed and Breakfast license employees to sell and serve alcoholic beverages for on-premises consumption without a service permit. These employees must be at least 21 years of age to sell or serve alcoholic beverages;

(d) ORS 471.287 allows a Winery license employee, who has a Winery-Salesperson license, to sell and serve wine for consumption on the winery premises or at a special events winery license location without a service permit. These employees must be at least 21 years old to sell or serve alcoholic beverages.

(3) Authority to Sell and Serve Based on an Application:

(a) ORS 471.375 allows some service permit applicants to begin selling or serving alcoholic beverages after the applicant completes an official service permit application and the employing licensee endorses and sends the application to the Commission;

(b) The authority to sell or serve alcoholic beverages based on an application does not apply to any applicant:

(A) Who has had a service permit denied or cancelled within the three years before the current application;

(B) Who has had a service permit denied or cancelled because they failed to complete the required alcohol server education program. When the applicant completes an alcohol server education course and passes the exam, the applicant may then sell and serve alcoholic beverages;

(C) Whose service permit application meets the criteria in OAR 845-009-0005, Return of Applications;

(D) Whose service permit is currently suspended.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.360

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91

845-009-0015

Licensee Responsibility for Verifying Identification

(1) Before allowing anyone, whom OAR 845-009-0010 requires to have a service permit, to mix, sell or serve alcoholic beverages for on premise consumption, a licensee must:

(a) Make sure the person has a valid service permit; and

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description).

(2) If the person does not have a service permit but has filed an application with the Commission, the licensee must, before allowing the person to mix, sell or serve alcoholic beverages for on-premise consumption:

(a) Verify that the person has a pending application (for example, see a copy of the service permit application the person filed or call the person's former employer);

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description); and

(c) Verify the person's age.

(3) If the person does not have a service permit or a pending application, the license must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission by the end of the first work day following the person's first work shift.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1),

ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.375

Hist.: OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91

845-009-0020

Service Permit Denial Criteria

(1) ORS 471.380(1) and (4) allow the Commission to deny a service permit based on the applicant's habit of using alcohol or controlled substances to excess and on the applicant's law violation history. This rule describes how the Commission applies these statutory provisions.

(2) For this rule, references to a period of time mean a period of time ending on the date the Commission receives the application. For example, "within two years" means within two years of the date the Commission receives the application.

(3) Felony Conviction. The Commission will deny a service permit if the applicant has had:

(a) A felony conviction within 12 months for possession, manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions;

(b) A felony conviction within two years for manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions (except possession of a controlled substance). The only good cause to overcome the criterion in this subsection is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used, consumed or been involved with any controlled substance within 18 months;

(B) He/she has successfully completed a drug treatment program or is actively involved in a drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has complied and is currently complying with all parole or probation requirements.

(c) Two controlled substance felony convictions, one of which was within three years;

(d) Three or more controlled substance felony convictions, any one of which was within six years.

(4) Felony Involving the Commission of a Violent Crime. The Commission will deny a service permit if the applicant has had:

(a) A felony conviction within two years for the commission of a violent crime where alcohol or controlled substances were involved;

(b) Two felony convictions for the commission of violent crimes, any one of which was within three years;

(c) Three felony convictions for the commission of violent crimes, any one of which was within six years;

(d) "Violent crime" means crimes which cause, attempt to cause, or threaten physical injury or harm to another person. Examples are: Murder, rape, assault, sodomy, armed robbery.

(5) Felony Driving While Suspended (DWS) Convictions. The Commission will deny a service permit if the applicant has had:

(a) One felony DWS conviction within 12 months;

(b) Two felony DWS convictions, either one of which was within three years;

(c) Three felony DWS convictions, any one of which was

within six years.

(6) Driving Under the Influence of Intoxicants (DUI)/Furnishing Alcohol to Minors/Liquor Law Violations. The Commission will deny a service permit if:

(a) Within three years the applicant has had two DUI convictions or one diversion and one conviction, any one of which was within 12 months;

(b) Within seven years the applicant has had a combination of diversions and convictions for DUI or Furnishing Alcohol to Minors that equal three, any one of which was within 18 months;

(c) Within ten years the applicant has had a combination of diversions and convictions for DUI or Furnishing Alcohol to Minors that equal four or more, any one of which was within three years. The only good cause to overcome the criterion in this subsection is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed any alcohol within 18 months;

(B) He/she has successfully completed an alcohol treatment program or is actively involved in an alcohol treatment program or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has complied and is currently complying with all parole or probation requirements.

(d) Within five years the applicant has had a liquor license or service permit canceled for liquor law violations. The Commission may grant the permit in less than five years if the violations did not involve threats to public safety or demonstrate that the applicant would be a poor compliance risk as an alcohol server.

(7) Habit of Using to Excess. The Commission will deny a service permit if within ten years the applicant has had a combination of four or more diversions or convictions for DUI or felony drug related convictions or diversions, if the most recent conviction/diversion was within two years. The only good cause to overcome the criterion in this section is the applicant's sworn statement on a Commission-supplied form that:

(a) He/she has not used or consumed any alcohol or controlled substances within 18 months; and

(b) He/she has successfully completed an alcohol or drug treatment program or is actively involved in an alcohol or drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other means of proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(c) Within 18 months he/she has had no alcohol or controlled substance related parole or probation violations or convictions.

(8) Pending Charges. If otherwise eligible, the commission may grant a service permit to an applicant who has any drug/ alcohol related charges pending on the date the Commission receives the application. The Commission will issue the permit with a restriction that the permittee must notify the Commission, in writing, of the disposition of the charge(s).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1),

ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.380

Hist.: OLCC 1-1993, f. 1-27-93, cert. ef. 7-1-93

Alcohol Server Education Program Service Permittee Requirements

845-009-0100

Service Permittee Requirements

(1) As ORS 471.542 requires, the Commission may not issue or renew a service permit unless the applicant or permittee has completed an approved alcohol server education program.

(2) An applicant:

(a) May take the course and pass the exam anytime within two years before the date the Commission receives the person's

completed service permit application; or

(b) Must take the course and pass the exam no later than 90 days after the Commission receives the person's completed service permit application. The Commission will deny the application if the applicant has not completed the course and passed the exam within the 90 day limit.

(3) A service permittee:

(a) May complete the course and exam anytime within two years before his/her service permit expires to qualify for renewal; or

(b) May complete the course and exam at any time and apply for a new service permit.

(4) A service permit applicant must include \$13 alcohol server education administrative fee with the service permit application. An application that does not include this administrative fee is incomplete. The Commission may return the application.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 7-1988, f. 9-13-88, cert. ef. 10-1-88; OLCC 8-1988(Temp), f. 11-8-88, cert. ef. 12-1-88; OLCC 5-1989, f. 5-24-89, cert. ef. 5-29-89; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0110

845-009-0105

The Examination

(1) A passing grade on the exam is 70 percent.

(2) After the service permit applicant or permittee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A service permit applicant, who does not pass this exam, may retake the exam at a Commission field office up to two times within 90 days of the application date. If the applicant does not take and pass the exam within the 90 days, the Commission will deny the application. When the applicant receives the denial letter, the applicant must stop selling and serving alcoholic beverages immediately.

The applicant is not entitled to a contested case hearing. If the applicant still wants a service permit, the person must:

(a) Retake the server education course and pass the exam, if it has been 90 or more days since the date the person took the course or if the person has failed both exam retakes at a Commission field office; or

(b) Retake the exam at a Commission field office, if it is within 90 days of the date the person took the course and the person has not taken or failed the two exam retakes; and

(c) Complete and file a new application along with the appropriate fee.

(4) The applicant, or permittee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0120

845-009-0110

Oral Option

An applicant or permittee may take the exam either in writing or orally at the completion of the course. He/she may also take the retake exams either in writing or orally. The applicant or permittee must make arrangements with the provider or field office for an oral exam.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0125

845-009-0115

Hearings

(1) If the Commission denies a service permit because the applicant or permittee fails to meet the alcohol server education requirement, the applicant or service permittee is entitled to a hearing under the procedures in OAR Chapter 845, Division 003.

(2) Despite section (1) of this rule, the applicant or permittee is not entitled to a hearing if the applicant or licensee fails to pass the alcohol server exam.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542

Hist.: OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0130

DIVISION 10

MANUFACTURERS; WHOLESALERS; IMPORTERS

845-010-0151

Deduction of Privilege Tax After Destruction of Defective Product

(1) A wholesaler may claim a deduction for the privilege tax paid on defective malt beverage or wine after the wholesaler has destroyed the defective product. To claim the deduction, the wholesaler:

(a) Notifies the Commission at least 24 hours before the wholesaler destroys the product of the date, time and place of the planned destruction;

(b) Destroys the defective product as indicated;

(c) Sends a bad order claim (Form 434) and an Affidavit of Destruction to the Commission;

(d) Receives the Commission's written approval of the claim;

(e) Completes Schedule V — Authorized Deductions; and

(f) Sends the completed form and the bad order claim approval letter to the Commission with the monthly privilege tax report.

(2) When the wholesaler has given the retailer a credit for more than one case of product, as OAR 845-013-0020(1) allows, the wholesaler, in addition to the procedure in section (1) of this rule:

(a) Gets the retailer's signature on the Bad Order Claim before sending it to the Commission for approval; and

(b) Includes a copy of the Commission's approval of the credit with Schedule V.

(3) When the wholesaler has given the retailer a credit for one case of product or less, as OAR 845-013-0020(1) allows, in addition to the procedure in section (1) of this rule, the wholesaler includes a copy of the wholesaler's credit memorandum with Schedule V.

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

Stats. Implemented: ORS 473.050(4) & ORS 473.060

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 21-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0150; OLCC 3-1987, f. 2-9-87, ef. 4-1-87; Renumbered from 845-006-0075; OLCC 13-1991, f. 9-9-91, cert. ef. 10-1-91

845-010-0166

Territorial Agreements for the Wholesale Sale of Malt Beverages

The Commission interprets ORS 471.503 as follows:

(1) Only one wholesaler may distribute a brand of malt beverage in a designated territory.

(2) When an importer contracts with a wholesaler for exclusive distribution, the importer must give the Commission copies of both its agreement with the wholesaler and its agreement with the manufacturer that documents its authority to designate a wholesaler. The Commission will not allow the wholesaler to post prices without both agreements.

(3) The Commission will accept a filing for a change in an exclusive territorial designation whenever the manufacturer executes and files a notice of change and an affidavit that the level of service will not be affected. This applies even when the existing agreement is between an importer and a wholesaler. When the Commission receives the notice, manufacturer's affidavit, and territorial agreement, the new agreement automatically supercedes any previous agreements.

(4) The manufacturer may base the affidavit on information received from the wholesaler.

(5) "Level of service will not be affected" means that the new wholesaler will comply with all quality control standards and services as required in ORS 471.503(2), and will service all retail licensees within the designated territory who want to sell the product.

(6) The Commission's only responsibilities under ORS 471.503(3) are to accept and file notices, affidavits, and territorial agreements a manufacturer submits.

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

Stats. Implemented: ORS 474.115

Hist.: LCC 5-1986(Temp), f. & ef. 3-26-86; LCC 24-1986, f. 10-30-86, ef. 11-1-86

845-010-0170

Maintaining Records: Manufacturers, Wholesalers, Importers

(1) The Commission requires every manufacturer, wholesaler, or importer of wine or malt beverages, including wineries and brewery public houses, to keep certain records so the Commission can assure appropriate privilege tax payment and compliance with financial assistance laws.

(2) A manufacturer, wholesaler or importer must keep a record of:

(a) Wine and malt beverage purchase, including:

(A) Sources of purchases and dates received in units by brand and container size;

(B) A classification of dollar amounts as cash or credit;

(C) A record of subsequent account payments; and

(D) An indication of whether the percent of alcohol by volume is under or over 14 percent on wine.

(b) Sales and deliveries to any licensee within Oregon, including:

(A) Daily sales and deliveries in units by brand and container size;

(B) Classification of dollar amounts as cash or credit;

(C) A record of subsequent account collections;

(D) Supporting sales invoices filed by days and bearing the purchaser's true name;

(E) An indication of whether the percent of alcohol by volume is under or over 14 percent on wine; and

(F) Any rebate, discount or allowance for empty container returns.

(3) In addition to the requirements in section (1) of this rule:

(a) A manufacturer, winery or brewery public house must keep a record of the amount of wine or malt beverages produced;

(b) A winery must keep a daily record of retail sales including the total dollar amount of each day's sales and the quantity of each sale by variety; and

(c) A wholesaler must record the purchaser's name, address and telephone number on the invoice of any dock sale that ORS 471.235 allows.

(4) A manufacturer, wholesaler or importer must:

(a) Complete a physical inventory by brand and size of container following the close of business on the last day of February, June and October; and

(b) Adjust the book inventories to agree with the physical inventory for each of these months with satisfactory explanations of differences.

(5) The manufacturer, wholesaler or importer must send the Commission monthly reports that summarize the information in sections (2), (3) and (4) of this rule into monthly totals. The Commission must receive these reports in a form the Commission pre-

scribes or permits by the 20th of the following month.

(6) Every wholesaler, manufacturer or importer of wine or malt beverages must maintain records of all salaries, wages, expenses, allowances, bonuses, cash disbursements, gratuities and gifts, in any form, paid to any non-licensee customer, employee or agent. In addition, a wholesaler, manufacturer or importer must keep an itemization of all advertising items charged to advertising within Oregon. Receipts, vouchers or other evidence of obligation must support all these disbursements.

(7) Every wholesaler, manufacturer or importer within Oregon and every out-of-state manufacturer must keep the records that sections (2), (3), (4) and (6) of this rule require for two years and have them available for inspection by authorized representatives of the Commission after 72 hours notice to the licensee or the licensee's agent.

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

Stats. Implemented: ORS 471, ORS 472 & ORS 473, including ORS 471.030, ORS 471.392 - ORS 471.402, ORS 472.030 & ORS 473.140 - ORS 473.160

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 65, f. 9-22-77, ef. 10-4-77; OLCC 11-1989, f. 10-31-89, cert. ef. 1-1-90; OLCC 9-1991, f. 5-24-91, cert. ef. 7-1-91

845-010-0200

Wholesale Licensees; Sales, Prices to Retailers

(1) A wholesale licensee must maintain and operate a permanent place of business with proper and adequate facilities for storing and distributing alcoholic liquor.

(2) No wholesale licensee shall operate for the purpose of selling and distributing a particular brand or brands of alcoholic liquor to a certain few specific retail licensees and to the exclusion of other retailers.

(3) No wholesale licensee shall offer or give quantity discounts to retail licensees. A price charged by a wholesale licensee for a particular brand, type or container size shall be the same to all retail licensees.

(4) Sections (1) and (2) of this rule shall not apply to out-of-state breweries and wineries holding wholesale licenses for the purpose of importing alcoholic liquor for redistribution to other wholesalers or for the purpose of paying privilege taxes pursuant to ORS Chapter 473.

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

Stats. Implemented: ORS 471.398

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 43, f. 11-20-73, ef. 12-11-73; LCC 29-1980, f. 12-22-80, ef. 2-1-81

845-010-0205

Malt Beverage Labeling Requirements, Analysis of Malt Beverages

(1) "Label" means all information-bearing material attached to or a part of a malt beverage container (including the cap).

(2) All malt beverage labels must comply with the requirements of the Commission's advertising rules (OAR Chapter 845, Division 7), the Bottle Bill (ORS 459.810 to 459.890 and OAR Chapter 845, Division 20), ORS 471.220, 471.235, OAR 845-010-0206 and this rule and must be approved by the Bureau of Alcohol, Tobacco and Firearms. If a manufacturer or wholesaler sells a malt beverage in Oregon that does not comply with the labeling requirements, the Commission may, in addition to any other sanction, require the licensee to stop selling and recall the malt beverage.

(3) Any licensee dealing in malt beverages will give the Commission an analysis of the licensee's malt beverage product upon request. The Commission may prohibit the sale of any malt beverage if, in its discretion, it finds that the malt beverage is not of good quality or that the alcohol content does not conform to the law or to the label of the container.

(4) ORS 471.220 and 471.315 prohibit calling a malt beverage "beer" if it contains more than five and seven-tenths percent

alcohol by volume. All malt beverages exceeding five and seven-tenths percent alcohol by volume must show in conspicuous type on the label or container the alcoholic content by volume within a tolerance not to exceed five-tenths of one percent.

(5) No person may alter or remove a label on malt beverages produced, bottled or for sale in Oregon, except to add labeling to comply with federal or state laws.

(6) Violation of this rule is a Category IV violation.

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

Stats. Implemented: ORS 471.730(7) & ORS 471.220

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67, ef. 12-26-67; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 4-1979(Temp), f. & ef. 4-2-79; LCC 9-1979, f. 5-24-79, ef. 5-25-79; OLCC 20-1991, f. 12-4-91, cert. ef. 1-1-92; OLCC 10-1995, f. 12-4-95, cert. ef. 1-1-96

845-010-0206

Private Labels

(1) A manufacturer or wholesaler may produce or sell wine or malt beverages under a private label under the following conditions:

(a) The retailer pays all costs associated with the development, production and application of the private label;

(b) Although both an Oregon and an out-of-state manufacturer may produce a private label product, the out-of-state manufacturer must sell the private label product to a retailer only through an independently owned and controlled wholesaler. ORS 471.220 and 471.223 allow Oregon manufacturers (breweries and wineries) to sell products directly to retailers;

(c) The manufacturer or wholesaler does not develop a new malt beverage or wine product for the private label. The private label product must be the identical malt beverage or wine product the manufacturer or wholesaler sells under another label. The manufacturer or wholesaler must sell the private label product for at least the wholesale-listed price of the product sold under this other label. The purpose of this requirements is to prohibit manufacturers and wholesalers from offering private labels at a discount;

(d) The manufacturer or wholesaler receives Commission approval of the private label before the manufacturer or wholesaler sells any of the private label product;

(e) The manufacturer or wholesaler receives Commission approval of the private label agreement before the manufacturer or wholesaler sells any of the private label product. The private label agreement may not include a guaranteed quantity, a guaranteed price, credit sales, orders more than ten days in advance of delivery, product storage by the manufacturer or wholesaler or any other terms that violate financial assistance or tied-house statutes (ORS 471.394, 471.396, 471.398 and 471.400) or the rules adopted under these statutes;

(f) The identical product sold under another label must be reasonably available to all the manufacturer or wholesaler's customers. The manufacturer or wholesaler may, however, make the private label product available only to a retailer who pays the costs associated with the private label; and

(g) The manufacturer keeps a record of all private label sales for two years. The record must include:

(A) The name of the retailer or wholesaler buying the product;

(B) For each transaction, the quantity of product and the date of sale and delivery;

(C) The price of the product and the total cost of each transaction; and

(D) A list of the quantity of private label products sold to each retailer during each calendar year.

(2) For private label products produced for a special event:

(a) The manufacturer or wholesaler must meet all the conditions in section (1) of this rule;

(b) The special event must be prominently featured on the private label; and

(c) The retailer must receive all the private label product

needed for the special event within ten days of the date the retailer placed the private label order.

(3) As used in this rule:

(a) "Label" means all information-bearing material attached to or a part of a wine or malt beverage package;

(b) "Private Label" means a wine or malt beverage label that contains a retailer's trade name, trademark or other words or symbols identifiable with a retailer;

(c) "Special Event":

(A) For a Special licensee (see OAR 845-004-0025 for definition) other than those issued to an annual licensee, means any event for which a special license is issued;

(B) For an annual licensee, means an event that is not a part of the licensee's usual business operation.

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

Stats. Implemented: ORS 471.398

Hist.: OLCC 8-1990(Temp), f. 3-16-90 & cert. ef. 3-15-90; OLCC 15-1990(Temp), f. 6-5-90, cert. ef. 6-4-90; OLCC 23-1990, f. 10-30-90, cert. ef. 11-1-90; OLCC 10-1991(Temp), f. & cert. ef. 7-1-91; OLCC 20-1991, f. 12-4-91, cert. ef. 1-1-92; OLCC 3-1995, f. 4-27-95, cert. ef. 5-15-95

845-010-0207

Pasteurization of Malt Beverages

(1) "Pasteurized malt beverages" means malt beverages which have been subjected to such process or processes in manufacture and packaging which effectively inhibit continuing microbiological activity by the inactivation, destruction, or removal of organisms capable of such growth, activity or decomposition.

(2) The following methods for pasteurization of malt beverages are acceptable:

(a) Heating the malt beverage after bottling or canning; or

(b) Heating the malt beverage, then bottling or canning under aseptic conditions.

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

Stats. Implemented: ORS 471.345

Hist.: LCC 22-1979, f. 9-24-79, ef. 10-1-79; LCC 26-1980, f. 9-30-80, ef. 10-1-80

845-010-0210

Price Lists

(1) Any wholesale licensee of the Commission must maintain price lists at the licensed business premises for two years. Licensees must have these price lists available for Commission inspection at all times during business hours.

(2) A licensee must charge all retailers the same price excluding any transportation costs.

(3) The price list must show:

(a) Every brand and type of product offered for sale;

(b) The price for each size container;

(c) The effective date of each price;

(d) Any allowance granted for a returnable container;

(e) Any handling fee on wine sold in less than the smallest multiple-package case available for sale; and

(f) Any transportation costs. Since ORS 471.465 and 471.503 prohibit quantity discounts, a wholesaler may not base transportation costs on quantity. The licensee must also show the amount of any transportation cost on the retailer's invoice.

(4) A price list becomes effective on the date the wholesaler indicates on the list.

(5) Once a licensee decreases a price, the licensee must not increase the price for 14 days. Whenever a licensee changes a price, the licensee must prepare a new price list.

(6) After a price becomes effective, the licensee must sell only at that price. If a licensee sells malt beverages or wine at any other price, the Commission considers the sale to be giving financial assistance within the meaning of the Oregon Liquor Control Act and the Commission's administrative rules.

(7) The Commission does not require price lists for dock sales to consumers.

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

471.730(5)

Stats. Implemented: ORS 471.398

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 33, f. 6-12-69; LCC 55, f. 10-20-76, ef. 12-1-76; LCC 31-1980, f. 12-22-80, ef. 2-1-81; OLCC 15-1987, f. 4-6-87, ef. 7-1-87; OLCC 9-1989(Temp), f. 10-2-89, cert. ef. 10-15-89; OLCC 10-1990, f. 4-18-90, cert. ef. 4-19-90

845-010-0212**Distillery Representatives' Activities**

(1) Distilled Spirits Samples:

(a) Distillery representatives, licensed under ORS 471.285, must purchase samples only through the Commission;

(b) Distillery representatives will not give samples to retail sales agents, retail licensees or their employees or to customers in a retail liquor store or on licensed premises;

(c) Despite subsection (1)(b) of this rule, distillery representatives may give:

(A) Retail sales agents samples of not more than four 50 ml factory sealed containers of distilled spirits one time per brand. The sample must be a Commission approved brand. If a product is not available in a 50 ml container, a distillery representative may request prior approval to give a sample in a larger factory sealed container. The distillery representative must make the request in writing to the Listing Committee. Retail agents may give the samples to their employees who are at least 21 years old. Samples must not be consumed in a retail liquor store or within the immediate vicinity;

(B) Retail licensees samples of distilled spirits that the retail licensee does not carry. The sample must not exceed 50 ml.;

(C) Samples of distilled spirits to those attending an industry trade show. The sample must not exceed .25 ounces.

(2) Calls on Dispenser Licensees: Distillery representatives may call on dispenser licensees to promote their products. They will not pay for alcoholic liquor for licensees or their customers. They will not arrange delivery or deliver distilled spirits to licensees.

(3) Distillery representatives may attend and provide product information at educational seminars and tastings of distilled spirits products that a retail licensee conducts for the public as long as:

(a) Distillery representatives do not pour, serve or sell alcoholic beverages;

(b) Distillery representatives participate in these educational seminars and tastings only for the products they represent;

(c) Distillery representatives participate no more than two (2) times per calendar year per retail premises;

(d) Distillery representatives do not compensate any employee or agent of the retail licensee to participate in any educational seminar or tasting;

(e) The retail licensee buys the distilled spirits from a retail liquor agent; and

(f) The retail licensee pays for any advertising for the educational seminar or tasting.

(4) Calls on Commercial or Industrial Businesses: Distillery representatives may call on commercial or industrial businesses to obtain orders for distilled spirits to be purchased only from the Commission. They may take a commercial or industrial business customer's check, payable to the Commission, to the nearest retail liquor store and deliver the purchased distilled spirits to that customer. They must not charge a fee of any kind for this service.

(5) Calls on Retail Sales Agents: Distillery representatives may call on a retail liquor store to educate or give information to personnel about their products, provide signs and displays as OAR 845-015-0091 through 845-015-0093 allow and give literature or material to retail sales agents for distribution to the public. They may give this literature or material only with prior Commission approval.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.030(1), ORS 471.030(5) & ORS 472.060(2)(d).

Stats. Implemented: ORS 471.750 & ORS 471.398

Hist.: LCC 27-1980, f. 10-17-80, ef. 11-1-80; LCC 7-1982, f. 7-30-82, ef. 8-1-82; OLCC 12-1987, f. & ef. 4-2-87; OLCC 7-1991, f. 5-8-91, cert. ef. 7-1-91;

OLCC 19-1991, f. 10-31-91, cert. ef. 11-1-91; OLCC 7-1997, f. 2-28-97, cert. ef. 3-5-97

Wine**845-010-0280****Standards of Identity and Prohibited Practices Concerning Wine**

The Commission adopts, by reference, **27 CFR Sections 4 and 240 (1986)**. These regulations of the Bureau of Alcohol, Tobacco Products and Firearms of the United States Department of Treasury apply to all wine sold in Oregon by a Commission licensee. In any case where OAR 845-010-0905 and 845-010-0940 impose requirements beyond those in these federal regulations, or disallow any practice the federal regulations allow, OAR 845-010-0905 and 845-010-0940 prevail.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the agency.]

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 34, f. 1-23-70, ef. 2-26-70; OLCC 7-1987, f. 3-13-87, ef. 4-1-87

845-010-0290**Labeling Requirements for Wine**

(1) "Label" means all information-bearing material attached to or a part of a wine container, including the cork or cap.

(2) All wine labels must comply with the requirements of the Commission's advertising rules (OAR Chapter 845, Division 007), OAR 845-010-0280 (federal standards for wine identity), 845-010-0206 (Private Labels) and 845-010-0905 to 845-010-0935 (Oregon standards for wine identity) when applicable, and must be approved by the Bureau of Alcohol, Tobacco and Firearms. If a manufacturer or wholesaler sells a wine in Oregon that does not comply with the labeling requirements, the Commission may, in addition to any other sanction, require the licensee to stop selling and recall the wine.

(3) No person may alter or remove a label on wine produced, bottled or for sale in Oregon, except to add labeling to comply with federal or state laws.

(4) Violation of this rule is a Category IV violation.

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; OLCC 16-1987, f. 4-6-87, ef. 7-1-87; OLCC 11-1995, f. 12-4-95, cert. ef. 1-1-96

845-010-0300**Sacramental Wine**

The Commission will issue a permit to import sacramental wine without charge to any religious organization that submits a written application signed by a principal officer. The religious organization may not transfer the permit and may use the permit only to import wine for its own use.

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

Stats. Implemented: ORS 471.335(1)(b)

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 11-1985, f. 12-3-85, ef. 1-1-86

845-010-0310**Seizure of Substandard Wine**

The Commission at its discretion will pick up samples of wine to determine whether or not such wine is in conformity with analysis furnished the Commission and for the further purpose of determining whether the wine meets the standards set by law and the regulations of the Commission. When wine is found to be not in conformity with the standards set by law and the regulations of the Commission, the bottler shall hold or repossess forthwith all

wine of such lot covered by release permit under which the particular wine so found to be substandard was released for sale in the State of Oregon. Such wine will be placed in detention and unless within a period of 30 days from the date of such detention application is made for the return of such merchandise to the point of origin, or permission is granted by the Commission for the restabilization or reconditioning of the wine so that it conforms to the aforementioned standards, the wine shall be destroyed under the supervision of the Commission.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.730(1) & ORS 471.730(5)
 Stats. Implemented: ORS 471.735
 Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64

Wine Produced or Bottled in Oregon from Vitis Vinifera or its Hybrid Grades

845-010-0905

Definitions

As used in OAR 845-010-0905 through 845-010-0940:

- (1) "Wine" means grape wine.
- (2) "Vitis Vinifera" is a species of grapes from which most European wines and a majority of Oregon wines are produced. Some examples of this species are "Pinot noir", "Chardonnay" and "White Riesling".
- (3) "Must" is the juice of crushed grapes, with or without grape skins, seeds and pulp, before or during fermentation.
- (4) "Wine Label" means all information-bearing material attached to or part of a package in which a wine is sold. Some examples of wine labels are printed paper glued to a wine bottle or bag-in-box carton, screen-printing or etching on a wine bottle, information molded into a bottle and a printed bottle closure or cork.
- (5) "Brand Label" means a label carrying the brand name of a wine, its class or type designation and its appellation of origin.
- (6) "Class Designation" is a standard of identity of a wine. Some examples are "grape wine", "table wine", "dessert wine", "sparkling wine" and "carbonated grape".
- (7) "Type Designation" is an alternative standard of identity used in place of a class designation. Examples are a "grape variety name" or "varietal name" and a "semi-generic designation of geographic significance". These rules prohibit the use of all "semi-generic designation of geographic significance".
- (8) "Semi-Generic Designation of Geographic Significance" is a name that identifies both the traditional source of wine produced in a certain region and the name Federal regulations permit to designate a type of wine produced anywhere. Some examples are "Anjelica", "Burgundy", "Chablis", "Champagne", "Chianti", "Claret", "Madeira", "Malaga", "Marsala", "Moselle", "Port", "Rhine Wine" or "Hock", "Sauterne", "Haut Sauterne", "Sherry" and "Tokay".
- (9) "Appellation of Origin" is the name of geographic area in which the grapes used to make a wine were grown. Appellation of origins are limited to the names of a country, state or county or of a viticultural area. Some examples are "American", "Oregon", "Yamhill County", and "Umpqua Valley".
- (10) "Viticultural Area" is a delimited grape growing region that is distinguishable by geographic features and whose boundaries the Bureau of Alcohol, Tobacco and Firearms of the U.S. Department of the Treasury has defined.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.730(1) & ORS 471.730(5)
 Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445
 Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0292

845-010-0910

Purpose and Applicability

(1) The Commission sets rigorous labeling standards for, and limits the addition of water, sugar and sweetening agents to, grape wine produced or bottled in Oregon to:

- (a) Ensure accurate presentation of the product; and
- (b) Encourage Oregon's wine industry by enhancing the quality, image and marketability of Oregon wine.

(2) OAR 845-010-0905 through 845-010-0940 apply to all grape wines produced or bottled in Oregon from *vitis vinifera* or its hybrid grapes, including restored or unrestored concentrated must of those grapes. They also apply to all grape wine on which "Oregon" appears as the appellation of origin, regardless of where the wine was produced or bottled. These rules prevail in any conflict between rules and other rules in Chapter 845, Division 010.

(3) OAR 845-010-0905 through 845-010-0940 apply to grape wines labeled after January 1, 1988.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.730(1) & ORS 471.730(5)
 Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445
 Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0292

845-010-0915

Grape Variety Names

(1) A person may use a single grape variety name as a type designation on a wine brand label only if the wine derives at least 90 percent of its volume from that grape variety.

(2) A person may use the names of two or three grape varieties as the type designation on a wine brand label if:

- (a) The wine is made from only the grape varieties named;
- (b) The brand label shows the percentage of wine derived from each variety from each county or state if a wine has a multi-county or multi-state appellation of origin.

(3) Until July 1, 1999, as an exception to section (1) of this rule, a person may use any of the following type designations for a wine that derives from 75 to 90 percent of its volume from grapes of the named variety, if:

(a) The only other grapes used in its production are those listed in the same section; that is, listed either in section (3)(a)(A) or in section (3)(a)(B):

(A) Cabernet franc, Merlot, Cabernet Sauvignon or Malbec; or

(B) Semillon or Sauvignon blanc; and

(b) The brand label lists all grape varieties used. The listing must be less prominent than the type designation, and arranged in descending order of predominance.

(4) If a grape variety is not used as the type designation but grape variety names appear anywhere on the wine label, the brand label must list all grape varieties used in the wine, arranged in descending order of predominance. This listing must use the same lettering size and style and be less prominent than the class or type designation.

(5) All uses of grape variety names on wine labels other than in type designation must be less prominent than the wine's class or type designation. Only those grape variety names appearing on the brand label of a wine may be mentioned elsewhere on the label.

(6) A person may use only the grape variety names listed in this section on wine labels. The parentheses list acceptable synonyms for the primary name for that grape variety:

- (a) Aligote;
- (b) Arneis;
- (c) Aurora;
- (d) Auxerrois;
- (e) Bacchus;
- (f) Barbera;
- (g) Baco noir;
- (h) Cabernet franc;
- (i) Cabernet Sauvignon;
- (j) Carigan Carmenera;
- (k) Carmenera;
- (l) Carmine;
- (m) Carnelan;
- (n) Cascade;
- (o) Chancellor;

- (p) Chardonnay;
- (q) Chasselas blanc;
- (r) Chasselas dore;
- (s) Chasselas rouge;
- (t) Chelois;
- (u) Chenin blanc;
- (v) Colombard;
- (w) Dolcetto;
- (x) Durif;
- (y) Early Muscat;
- (z) Ehrenfelser;
- (aa) Flora;
- (bb) Folle blanche;
- (cc) Furmint;
- (dd) Gamay noir;
- (ee) Gewurztraminer;
- (ff) Grand noir;
- (gg) Grenache;
- (hh) Grignolino;
- (ii) Kerner;
- (jj) Lemberger (Limberger);
- (kk) Madeleine Angevine;
- (ll) Malbec;
- (mm) Malvasia bianca;
- (nn) Marechal Foch;
- (oo) Melon;
- (pp) Merlot;
- (qq) Morio-Muskat;
- (rr) Muller-Thurgau;
- (ss) Muscat blanc;
- (tt) Muscat of Alexandria;
- (uu) Muscat Ottonel;
- (vv) Muscadelle;
- (ww) Nebbiolo;
- (xx) Petit Verdor;
- (yy) Pinot blanc;
- (zz) Pinot gris;
- (aaa) Pinot Meunier;
- (bbb) Pinot noir;
- (ccc) Royalty;
- (ddd) Sangiovese;
- (eee) Sauvignon blanc (Fume blanc);
- (fff) Scheurebe;
- (ggg) Semillon;
- (hhh) Seyval;
- (iii) Siegerrebe;
- (jjj) Sylvaner (Silvaner);
- (kkk) Symphony;
- (lll) Syrah;
- (mmm) Trebbiano;
- (nnn) Trousseau gris;
- (ooo) Valdiguie;
- (ppp) Viognier;
- (qqq) White Riesling (Riesling);
- (rrr) Zinfandel.

(7) The Commission may revise the list in section (6) of this rule.

(8) A person may not use in any manner on a wine label a name that might be mistaken for a grape variety name listed in section (6) of this rule.

(9) The following limitations apply to the use of certain approved names in section (6) of this rule:

(a) A person may not use the approved name "Gamay noir" for the variety Pinot noir (such as the so-called "Gamay Beaujolais" clones) or for the variety Valdiguie (called "Napa Gamay" in California);

(b) A person may not use the approved name "Pinot blanc" for the variety Melon or "Syrah" for the variety Durif (called "Petit Sirah" in California);

(c) A person may not use the term "Riesling";

(A) As a type designation for a wine unless the wine derives at least 90 percent of its volume from the grape variety, White

Riesling; or

(B) In conjunction with any word except "White" to designate a grape variety name. Some examples of prohibited names are: "Emerald Riesling", "Franken Riesling", "Grey or (Gray) Riesling", "Johannisberg Riesling", "Kleinberger Riesling", "Missouri Riesling", "Okanagan Riesling" and "Walshriesling" ("Welshriesling").

(10) As an exception to section (6) and subsection (9)(c) of this rule, a winery may use the term "Johannisberg Riesling" as the type designation of a wine that derives at least 90 percent of its volume from White Riesling grapes, if the winery has used that term on its approved labels since prior to January 1, 1977.

(11) A person may not use the following federally permitted grape variety names: "Early Burgundy", "French Columbard", "Muscadelle de Bordelais", "Pineau (or Pinot) de la Loire", "Pinot Chardonnay", "Pinot Saint George", "White Pinot", "Gamay", "Gamay Beaujolais" and "Napa Gamay".

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-10-292; OLCC 2-1995, f. & cert. ef. 4-4-95; OLCC 8-1995, f. 11-24-95, cert. ef. 12-1-95

845-010-0920

Appellation of Origin

(1) An appellation of origin must appear on every wine brand label in direct conjunction with, and in lettering as conspicuous as, the wine's class or type designation. The lettering must be at least two millimeters in height.

(2) No person may sell or offer to sell a wine, claiming or implying a certain appellation of origin anywhere on its label, unless 100 percent of the grapes used in its production grew within the legal boundaries of that appellation of origin. If concentrated or unconcentrated pure grape juice is added to a wine anytime during its production, the appellation of origin used on the wine must include the sources of grapes used to produce both the base wine and the juice.

(3) Appellations of origin for wines identified in this rule are limited to:

(a) The names of Oregon counties;

(b) The names of "Viticulural Areas" located wholly or partially in Oregon;

(c) "Oregon";

(d) The names of other states of the United States;

(e) "American"; and

(f) The names of foreign countries.

(4) The following limitations apply to the use of certain appellations of origin listed in section (3) of this rule:

(a) A person may use the names of two or no more than three counties within Oregon as an appellation of origin, if the label shows the percentage of wine derived from each county, with a tolerance of plus or minus two percent;

(b) A person may use the name of a single state other than Oregon as an appellation of origin only if that state is adjacent to Oregon;

(c) A person may use the names of two or no more than three states as an appellation of origin if: the states are all contiguous; one of the states is Oregon; and the label shows the percentage of wine derived from each state, with a tolerance of plus or minus two percent;

(d) A person may use "Oregon" in conjunction with the name of an Oregon county as an appellation of origin. Both words must be in the same lettering size and style;

(e) A person may use the name of an Oregon county or the name of an approved viticultural area located wholly within the state of Oregon as an appellation of origin only for a wine produced and bottled in Oregon;

(f) A person may not use an appellation of origin listed in section (3) of this rule or use words that may be mistaken for an approved appellation of origin in a brand name, in a winery name,

or in any other manner on a wine label unless the wine meets the requirements for use of that appellation of origin. An appellation of origin may appear, however, in a bottler's address, if the address is in less conspicuous lettering than the appellation of origin on the brand label. A winery may continue to use any brand name that it has used on its approved label since before January 1, 1977.

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0292

845-010-0925

Estate Bottled

(1) A person may use "estate bottled" on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

(a) Is located in the labeled viticultural area;

(b) Grew all of the grapes used to make the wine on winery owned or controlled land that is within the boundaries of the labeled viticultural area and within five miles of the winery; and

(c) Crushed the grapes, fermented the resulting must, and aged, finished and bottled the wine in a continuous process without the wine leaving the bottling winery's premises.

(2) In this rule, "controlled" means the bottling winery has a legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least three years duration.

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0292

845-010-0930

Semi-Generic Designation of Geographic Significance

No person may use a semi-generic designation of geographic significance or a name that implies a semi-generic designation as a class or type designation on a wine label.

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0292

845-010-0935

"Champagne Method" or "Methode Champenoise"

(1) A person may use "Champagne Method" or "Methode Champenoise" on a sparkling wine label, if this wine derives its effervescence solely from a secondary fermentation occurring within the same bottle in which the wine is sold.

(2) A person may also use "Champagne Method" or "Methode Champenoise" in a truthful description such as, "fermented in this bottle using the Champagne Method". The words Champagne or Champenoise and method or methode must appear together and be in the same lettering size and style.

(3) The Commission prohibited any other label use of the word "Champagne".

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 59, f. 2-18-77, ef. 3-1-77; LCC 17-1978, f. 12-26-78, ef. 1-1-79; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0292

845-010-0940

Use of Water, Wine Spirits, Sugar and Other Sweetening Agents

(1) A person may not add water to must or wine, except as necessary to flush equipment.

(2) A person may not add wine spirits or alcohol to wine.

(3) A person may add sugar or other sweetening agents,

including concentrated or unconcentrated pure grape juice, to crushed grapes or must to raise its total sugar content by not more than four percent, as measured prior to any addition of sweetening agents.

(4) A person may add sugar or other sweetening agents, including concentrated or unconcentrated pure grape juice, to a wine to raise its sugar content by not more than two percent. To sweeten a wine in excess of this limit, a person may use only concentrated or unconcentrated pure or partially fermented grape juice.

(5) Section (2) of this rule does not apply to dessert wines which will contain 14 percent or more alcohol by volume at the time of bottling.

(6) Sections (2), (3) and (4) of this rule do not apply to the production of sparkling wine from still wine.

(7) This rule does not apply to the production of wine properly labeled as a wine cooler.

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

Stats. Implemented: ORS 471.340, ORS 471.345 & ORS 471.445

Hist.: LCC 159, f. 2-18-77, ef. 3-1-77; OLCC 26-1987, f. 12-30-87, cert. ef. 1-1-88; Renumbered from 845-010-0294

DIVISION 13

FINANCIAL ASSISTANCE

845-013-0001

Financial Assistance; Purpose, Limitation, Definitions and Record Keeping

(1) "Purpose". ORS 471.398 and 471.400 generally prohibits manufacturers and wholesalers from giving services or things to retailers. The statute makes some exceptions to the general prohibition. OAR 845-013-0001 through 845-013-0090 define and explain the exceptions. The Commission's basis for its interpretations of point of sale material, items of nominal value and services of nominal value is that manufacturers and wholesalers may promote their products but may not promote a retailer's business or underwrite a retailer's business expenses.

(2) "Definitions". As used in ORS 471.465 and OAR 845-013-0001 through 845-013-0090:

(a) "Customize" means designing or modifying point of sale material or items of nominal value to promote a specific retail business;

(b) "Exterior" means on the outside of the business or clearly visible from the outside;

(c) "Manufacturer" includes brewery, distillery, winery, brew-pub, growers sales privilege, agent, salesperson and winery-salesperson licensees;

(d) "Retailer" and "any licensee authorized to sell alcoholic liquor at retail" include any officer, director, agent, employee or substantial stockholder of the licensed business;

(e) "Substantial stockholder" as used in subsection (2)(b) of this rule means a person who owns ten percent or more of any class of stock.

(3) General Limitations:

(a) Although Oregon law allows manufacturers and wholesalers to provide the items and services described in these rules, federal laws regarding wine may not. When the federal law is more strict, wine manufacturers and wholesalers must follow the federal law rather than Oregon law. Therefore, manufacturers and wholesalers should check with the Bureau of Alcohol, Tobacco and Firearms before applying these rules to their wine business;

(b) Manufacturers and wholesalers may give or loan the point of sale material (OAR 845-013-0040), items of nominal value (OAR 845-013-0050) and services of nominal value (OAR 845-013-0060) described in these rules:

(A) Only for the manufacturers or wholesaler's alcoholic beverage products; and

(B) To all retailers without discrimination. "Without discrimination" means the manufacturer or wholesaler makes all

allowable point of sale material, items of nominal value and services of nominal value available to all the manufacturer or wholesaler's retailers upon request subject to availability. The Commission will not consider it discrimination if a manufacturer or wholesaler gives allowable material, items or services based on the type of business or in proportion to the size of the account.

(c) In addition to the requirements of subsection (3)(b) of this rule, when manufacturers and wholesalers give the services of nominal value (OAR 845-013-0060) described in these rules, they must not alter or disturb another manufacturer or wholesaler's alcoholic beverage products. This limitation does not apply when a retailer decides to rearrange all the alcoholic beverage products his/her business carries (a general reset). For a general reset, manufacturers and wholesalers may move each other's products as long as the retailer has notified all the manufacturers and wholesalers whose products are being moved and the retailer moves or helps move the products of any manufacturers or wholesalers who are not present;

(d) Manufacturers and wholesalers may not customize point of sale material (OAR 845-013-0040) or items of nominal value (OAR 845-013-0050). Despite this prohibition, a manufacturer or wholesaler may, on items of nominal value and interior point of sale material:

(A) Add the retailer's name or logo;

(B) Add the retailer's price for the advertised product(s); or

(C) Leave a blank space for the retailer to add only the retailer's price for the advertised product(s).

(4) "Records". Manufacturers and wholesalers must keep accurate and complete records of any gratuities the manufacturer or wholesaler gives a retailer and of all activities described in OAR 845-013-0010 (Substantial Gratuities), any credit that OAR 845-013-0020(1)(a) and (b) allow and all exchanges and returns that OAR 845-013-0060 (Services of Nominal Value) allows. These records must include dates, times, amounts and name of all persons and premises involved; be kept for two years; and be available for Commission inspection.

(5) "Retailer Purchase of Items/Services": A Manufacturer or wholesaler may, for a reasonable fee, sell a retailer items, labor or services that ORS 471.685 prohibits. As used in this section, a "reasonable fee" for labor or service is one that covers at least the manufacturer or wholesaler's cost; a "reasonable fee" for the item is at least the cost to the manufacturer or wholesaler who initially purchased or produced the item. Both the manufacturer or wholesaler and retailer must keep a record of the sale.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.398

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0121

845-013-0010

Substantial Gratuities

(1) ORS 471.398(1) prohibits a manufacturer or wholesaler from providing a substantial gratuity to a retailer. This rule lists the only gratuities a manufacturer or wholesaler may give to a retailer and not violate ORS 471.398(1).

(2) Food and Beverages. A manufacturer or wholesaler may give a retailer food and beverages for immediate consumption:

(a) At a meeting at which the primary purpose is the discussion of business;

(b) At a convention when the food and beverages are offered to all participants;

(c) At a sports or entertainment event that the manufacturer or wholesaler attends with the retailer. See section (4) of this rule.

(3) Items at a Convention. A manufacturer or wholesaler may give item(s) to retailers who are participants at a convention as long as the manufacturer or wholesaler offers the item(s) to all the convention participants.

(4) Tickets/Admission Fees:

(a) A manufacturer or wholesaler may pay for a retailer's ticket or admission fee including green, court and lane fees for a sport or entertainment event;

(b) Payment is allowed as long as the manufacturer or wholesaler accompanies the retailer to the event and does not pay associated costs like the retailer's airfare and costs of a similar type.

(5) Campaigns for Responsible Use. A manufacturer or wholesaler may:

(a) Give a retailer inexpensive items that function only to promote responsible use of alcoholic beverages. These items may be for retailer use on the premises or for customer use. They may include an inconspicuous reference to a manufacturer or wholesaler but no reference to the retailer. Examples of allowable items; buttons, posters and static-cling stickers. Examples of non-allowable items: glasses, T-shirts and coasters;

(b) Provide a person as a part of a campaign to promote responsible use of alcoholic beverages on a retailer's premises as long as:

(A) Neither the manufacturer/wholesaler or retailer advertise or promote the person's presence at the premises;

(B) If a celebrity or performer is involved, the celebrity or performer does only a brief performance; if any

(C) The manufacturer or wholesaler provides no alcoholic beverages to the retailer's customers;

(D) The manufacturer or wholesaler does a promotion no more than once per year per retail premises.

(6) Gifts. A manufacturer or wholesaler may give a retailer a gift to acknowledge a grand opening, personal or business anniversary, death in the family, birthday, holiday or similar special occasion. The value of all gifts given to a retailer during any calendar year must not exceed \$30 fair market value. Gifts may not include cash or anything else that ORS 471.465 and OAR Chapter 845, Division 013 regulate. For example, OAR 845-013-0050 limits exterior point of sale material to a 630 square inch maximum. A manufacturer or wholesaler may not use this gift section to expand allowable point of sale material in order to give a retailer a larger exterior sign.

(7) Winery or Brew-Pub Festivals for the Public Held on a Retailer's Premises:

(a) With a Special Events Winery License, one or more wineries may hold and promote a wine-tasting festival (the Timberline Wine Festival, for example) or similar event on a retailer's premises. With a Special Retail Beer License, one or more brewery-public houses (Brew-Pubs) may hold and promote a malt beverage-tasting festival or similar event on retailer's premises;

(b) The purpose of this section is to allow wineries and brew pubs, not retailers, to make any allowable sales of alcoholic beverages at the festival. To accomplish this, the requirements for these festivals are:

(A) Space is all the retailer provides;

(B) At the festival, only the winery(s) or brew-pub(s), not the retailer, makes all the sales, if any, of the products offered for tasting;

(C) A winery or brew-pub participates in no more than two festivals per calendar year per licensed retail premises;

(D) Any one who sells or serves alcoholic beverages at these tastes must have a service permit or winery-salesperson license except the Special Events Winery or Special Retail Beer licensee.

(8) Holding Conventions. Like other business, a manufacturer or wholesaler may want to hold and promote a convention or similar function. A manufacturer or wholesaler may use a retailer's facility for a convention under the following conditions:

(a) The manufacturer or wholesaler holds no more than one convention per calendar year per retail license premises;

(b) The manufacturer or wholesaler pays a reasonable fee for rental of the retailer's facility and anything else the retailer provides;

(c) The manufacturer or wholesaler may include the retailer's name and location in any advertising only as necessary to give directions to the event. The retailer must not pay or receive payment from the manufacturer or wholesaler for any part of the advertising cost.

(9) Donations of Prizes: A manufacturer or wholesaler may donate prize money or prizes to an organization for a public event,

at which a retailer licensee sells or serves alcoholic beverages. He/she may do this only under the following conditions:

- (a) The organization must not exist solely for the benefit of a single retailer;
- (b) The manufacturer's or wholesaler's donation must go to the participants in the events;
- (c) The retailer must make all alcoholic beverages usually sold on the premises readily available and at the comparable prices charged on no-event days;
- (d) The retailer must not solicit donations; and
- (e) An individual manufacturer or wholesaler may donate to only one event per retailer's premises each calendar year. The donation does not exceed \$2,000. The event last no longer than seven consecutive calendar days. The Commission may extend the limitations in this subsection if the manufacturer or wholesaler shows that the retailer will not receive a direct or indirect substantial benefit as a result of the donation or if the facility is the only one available that can reasonably accommodate the event.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.398(1)
 Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-10-122, 10-124 & 10-126; OLCC 7-1996, f. 5-6-96, cert. ef. 7-1-96

845-013-0020

Money, Credit, Discounts; ORS 471.465(1)(b) and (2)(a)

(1) "Money, Credit": ORS 471.398(2) prohibits a manufacturer or wholesaler from providing money or credit to a retailer. A manufacturer or wholesaler may, however:

- (a) Give credit or cash, with the Commission's prior written approval, for malt beverage or wine that a retailer returns:
 - (A) When the retailer terminates the business or seasonal license;
 - (B) When the retailer temporarily stops operating due to unforeseen circumstances like fire, flood or other natural disasters;
 - (C) When the retailer temporarily stops operating for more than 29 days; or
 - (D) After holding a special retail license event except for special dispenser licenses.
- (b) Give credit for wine or malt beverages that the retailer cannot exchange as allowed in OAR 845-013-0070(d) and (3)(e) because the manufacturer or wholesaler has no saleable product available. However, the manufacturer or wholesaler must:
 - (A) Apply the credit to the retailer's next purchase;
 - (B) Get the Commission's prior written approval if the credit is for more than one case; and
 - (C) Limit the amount of the credit to the retailer's original purchase price for the product.

(2) "Non-Alcoholic Product Credit Sales": ORS 471.400 (3)(a) allows a manufacturer or wholesaler licensee to sell non-alcoholic products in the manner in which non-licensee manufacturers and wholesalers sell them. With regard to credit, the Commission has determined that the usual industry practice allows credit sales with full payment within 45 days of delivery. Therefore, a manufacturer or wholesaler may sell non-alcoholic products on credit. The retailer must, however, pay for these credit purchases in full within 45 days of the delivery date. If the retailer does not, both the manufacturer or wholesaler and the retailer have violated ORS 471.465(2). The manufacturer or wholesaler has not given financial assistance under this subsection if he/she gives the Commission written notification by no later than the 37th day that the retailer has not paid for the product. He/she will also send the retailer a copy of the notice.

(3) "Discounts": ORS 471.398(2) and 474.115(4)(a) prohibit a manufacturer or wholesaler from giving discounts to a retailer. Both the manufacturer or wholesaler and the retailer have violated these prohibitions if the manufacturer or wholesaler contracts with the retailer for delivery of alcoholic beverages more than ten days in the future.

(4) Despite section (3) of this rule: A manufacturer or wholesaler may sell existing vintage-dated wines for future delivery by

written contract prior to winery release if the manufacturer or wholesaler:

- (a) Offers this opportunity to all their retail license customers at the same general time subject to availability;
- (b) Keeps a copy of the contract;
- (c) Keeps a record of the offering that includes the names of the retail licensees who were given the opportunity to participate in the offering and an explanation of the method used to make the offering.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.398(2)
 Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 20-1990, f. 9-28-90, cert. ef. 10-1-90; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0123

845-013-0030

Fixtures, Furniture, Furnishings, ORS 471.465(1)(c)

(1) ORS 471.398(3) prohibits a manufacturer or wholesaler from providing any fixtures, furniture or furnishings to a retailer. A manufacturer or wholesaler does not violate this prohibition if he/she provides a display bin or rack under the following conditions:

- (a) The manufacturer or wholesaler provides no more than one bin or rack per trade name per retailer at any given time;
- (b) The manufacturer or wholesaler has permanently marked the bin or rack with a brand name or trade name of the manufacturer or wholesaler's alcoholic beverage product; and
- (c) The retailer uses the bin or rack to display only products from the brand name or trade name permanently marked on the bin or rack;
- (d) For purposes of this rule, "trade name" means the operating trade name and associated business names filed by a manufacturer or wholesaler as part of the Federal Bureau of Alcohol, Tobacco and Firearms basic permit; "brand names" means the various wines, distilled spirits and malt beverages sold under a particular trade name.

(2) In addition to the requirements in section (1) of this rule, if the cost of the display bin or rack exceeds \$30 (cost is the cost to the manufacturer or wholesaler who initially purchased or produced the bin or rack), the manufacturer or wholesaler must:

- (a) Invoice the retailer for the bin or rack upon delivery and issue a credit upon manufacturer or wholesaler removal;
- (b) Loan the bin or rack to the retailer for a period not to exceed 45 days. At least 45 days must elapse before the manufacturer or wholesaler loans the same or another display bin or rack to the retailer for products from the same trade name.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.398(3)
 Hist.: OLCC 8-1992, f. 8-25-92, cert. ef. 10-1-92

845-013-0040

Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer. The only advertising a manufacturer or wholesaler may provide under this statute is generic, off-premises references to the manufacturer or wholesaler's alcoholic beverage products that mention no specific retailer. Some examples include radio and television commercials and billboards.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
 Stats. Implemented: ORS 471.398(4) & ORS 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

845-013-0050

Point of Sale Material, ORS 471.398(4)

(1) Wine Manufacturers and Wholesalers.

NOTE: Bureau of Alcohol, Tobacco and Firearms (BATF) rules differ from Commission rules, particularly with regard to subsection (2)(b) of this rule. Be sure to check with BATF before applying this rule.

(2) ORS 471.398(4) allows a manufacturer or wholesaler to provide point of sale material to a retailer. Manufacturers and wholesalers may provide point of sale material only for display at the retailer's premises. The only point of sale material a manufacturer or wholesaler may provide is:

(a) Material that functions only to advertise the manufacturer or wholesaler's alcoholic beverage products. Some examples of this material include table tents, case cards, danglers, static-cling stickers, display mirrors, inflated plastic beer or wine bottles and neon beer or wine signs;

(b) Material that has another function in addition to advertising the manufacturer or wholesaler's alcoholic beverage products that meets the following conditions:

(A) The cost of the material in any one display does not exceed \$30 (cost is the cost to the manufacturer or wholesaler who initially purchased or produced the item);

(B) The manufacturer or wholesaler loans but does not give the material to the retailer for a period not to exceed 45 days;

(C) The manufacturer loans this type of material for no more than four displays per year per retail premises;

(D) The manufacturer or wholesaler invoices the material upon delivery, describes on the invoice how the retailer will use the material and issues the retailer a credit upon manufacturer or wholesaler removal;

(E) The retailer uses the material only as a part of a promotional display for the manufacturer or wholesaler's products on the retailer's licensed premises; and

(F) The retailer makes no minimum purchase in order to have the material at his/her premises.

(c) Material that predominantly advertises the manufacturer or wholesaler's alcoholic beverage products but also advertises a generic food product. This section does not prohibit cross-promotions of the manufacturer or wholesaler's alcoholic beverage product with a specific food product or brand when food product producer is not a retail licensee; the food product producer pays at least half the cost of the cross-promotion; and any retailer who receives the material pays none of the costs. For example, a cheese manufacturer and a wine manufacturer jointly produce a poster to promote their products. As long as the cheese manufacturer is not a retail licensee, the cheese manufacturer pays at least half the costs and the retail licensee pays none of the costs, the Commission treats the poster as alcoholic beverage/generic food product material;

(d) Material that predominantly advertises the manufacturer or wholesaler's alcoholic beverage products but also has generic words or symbols for activities the manufacturer or wholesaler wants to associate with his/her alcoholic beverage products. Exterior material may, however, have only generic symbols relating to activities, not words.

(3) Exterior point of sale material given or loaned under this rule must not exceed 630 square inches. This means that inflatables or any point of sale material cannot be displayed in a retailer's parking lots or other outside areas if the material exceeds 630 square inches.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.398(4)

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

845-013-0060

Items of Nominal Value, ORS 471.398(4)

(1) In addition to advertising and point of sale material, ORS 471.398(4) allows a manufacturer or wholesaler to provide items of nominal value to a retailer. This rule describes the two categories of items of nominal value a manufacturer or wholesaler may give to a retailer.

(2) A manufacturer or wholesaler may give basic items that support the manufacturer or wholesaler's products at the retailer's premises such as:

(a) Tavern Heads:

(A) One tavern head per calendar year per retail licensee;

(B) A trade-in of a tavern head at the fair market value as partial payment for a new one when the retailer replaces an existing draft system.

(b) Washers or Thomas valves necessary for proper operation of draft equipment;

(c) New and used empty shells or bags in sufficient quantity for returning the manufacturer or wholesaler's empty containers;

(d) Samples and Tastings:

(A) Tastings or samples of distilled spirits that the retailer does not carry but only in an amount not to exceed 50 ml.;

(B) Tastings or samples of wine and malt beverages that the retailer does not carry. the sample must not exceed a one gallon container of malt beverage or a five liter container of wine. It must be clearly and permanently marked "sample-not for resale";

(C) Distilled spirits, wine and malt beverage tastings for retailer educational seminars that are not open to the public.

(3) A manufacturer or wholesaler may give items that are made of paper or other similar inexpensive material that provide information to a retailer's customers but do not promote the retailer's business. The following are some examples of these items:

(a) Items that have the manufacturer or wholesaler's alcoholic beverage brand name prominently displayed, are intended for use by the retailer's customer off the premises and are made available to the retailer's customers. Some examples include sports schedules, schedules for concerts, theatre, operas and other entertainment series, calendars, recipes and informational pamphlets. Examples do not include napkins, coasters and other paper products a licensee uses in the normal course of business;

(b) Schedules of entertainment events (sports, music, theatre, etc.) for the retailer to display at the licensed premises;

(c) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limit items of nominal value to the manufacturer or wholesaler's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite OAR 845-013-0001(3)(d) that prohibits customization, the manufacturer or wholesaler may add generic food references to the list. For example, the list may indicate that a particular alcoholic beverage goes well with chicken but may not refer to a chicken dish on the retailer's menu.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126

845-013-0070

Services of Nominal Value; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except those described in ORS 471.398(5) and the two categories of services of nominal value and described in this rule.

(2) A manufacturer or wholesaler may give basic services that support products on draft such as:

(a) Inspecting draft equipment, coolers and cooling equipment for sanitation and quality control;

(b) Performing emergency repairs on draft equipment;

(c) Instructing retail licensees in the proper use, maintenance and care of draft and cooling equipment;

(d) Tapping kegs during regular delivery calls.

(3) A manufacturer or wholesaler may give basic marketing support services for the manufacturer or wholesaler's alcoholic beverage products such as:

(a) Delivering to the designated place on the retailer's premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;

(b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;

(c) Pricing packages and containers of the manufacturer or wholesaler's brands but not repricing packages and containers. Repricing includes entering the Uniform Price Code (UPC) or

pricing information in the retailer's system but does not include changing shelf tags;

(d) Promptly exchanging alcohol beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;

(e) Exchanging produces that are leaking, deteriorating, near or past their shelf date, have damaged or missing labels, or have damaged containers for an equal quantity of identical product (See also OAR 845-013-0030(1)(b)). A manufacturer or wholesaler may not exchange product that the retailer or retailer's customer damaged;

(f) Installing, cleaning and repairing point of sale materials allowed in OAR 845-013-0050;

(g) Providing an employee to assist in educational seminars and wine or malt beverage tastings that a retailer conducts for the public as long as each licensee complies with OAR 845-006-0052.

NOTE: ORS 471.2609(3) prohibits a manufacturer or wholesaler from providing or paying for a person to serve samples at package stores except as provided in ORS 471.402.

(h) Providing celebrities or performers to promote the manufacturer or wholesaler's product on a retailer's premises as long as:

(A) Neither the manufacturer/wholesaler or retailer advertise or promote the celebrity or performer's visit;

(B) The celebrity or performer does only a brief performance, if any;

(C) The manufacturer or wholesaler provides no alcoholic beverages to the retailer's customers;

(D) The manufacturer or wholesaler provides the celebrities no more than once per year per retail premises.

Stat. Auth.: ORS 471.730(5)

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 8-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 8-1997, f. 2-28-97, cert. ef. 3-15-97

845-013-0075

Schematics; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except services of nominal value.

(2) OAR 845-013-0070 limits services of nominal value to those which fall into one of two categories.

(3) The category described in OAR 845-013-0070(3) allows a manufacturer or wholesaler to give basic marketing support services for the manufacturer or wholesaler's alcoholic beverage products. When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the Commission considers that to be a basic marketing support service.

(4) When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the retailer remains responsible for deciding what products are actually sold.

(5) The Commission holds licensees accountable for the acts of their agents and employees. (See OAR 845-006-0025). Accordingly, any licensee who provides schematics through another person or business is responsible for the actions of the party. If a person or business that provides schematics on behalf of a licensee violates any liquor law or rule, the Commission takes the appropriate compliance action against the licensee.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 3-1994, f. 8-3-94, cert. ef. 10-1-94

845-013-0090

Wholesale-Retail Relations: Non-Profit Special Licenses.

(1) ORS 471.400 (1) permits the Commission to allow manufacturers and wholesalers to provide products and services to non-profit special licensees without violating financial assistance laws. These products and services are allowed in addition to the gratuities, point of sale material items of nominal value and services of nominal value that OAR 845-013-0001 through 845-013-0060

allow.

(2) Federal Law May Differ. Although Oregon law allows manufacturers and wholesalers to provide the products and services described in this rule, federal laws regarding wine may not. When dealing with wine, a federal law that is more strict than an Oregon law takes precedence over the Oregon law. Therefore, manufacturers and wholesalers should check with the Bureau of Alcohol, Tobacco, and Firearms before applying this rule to their wine business.

(3) Products and Services. A manufacturer or wholesaler may provide the following to a non-profit special licensee:

(a) Any product the manufacturer or wholesaler normally sells. The manufacturer or wholesaler may give the product free, sell the product at a discount or sell the product at the regular price. The manufacturer or wholesaler may pick up excess malt beverage product at the end of a special event held by a non-profit special event licensee, and if the product was sold to the special licensee, may give a credit or cash refund for the returned product;

(b) Any services to support the alcoholic beverage product. This includes providing employees to sell or serve alcoholic beverages at the special license event as long as the employee has a salesperson license and has successfully completed an approved alcohol server education program within the last five years or has a valid service permit or winery salesperson license; and

(c) Banners for interior or exterior display at the licensed premises that advertise a special event and prominently display the manufacturer or wholesaler's alcoholic beverage brand name. These banners may be displayed before and during the special license event and may exceed 630 square inches.

(4) Limitations. A manufacturer or wholesaler may provide the products and services that this rule allows only if:

(a) The special licensee is a designated representative of a non-profit corporation, association or political group that specifically designates the proceeds of the special license event for a charitable cause, political campaign or community non-profit entity; and

(b) The special license is not for more than 72 hours.

(5) Equipment. ORS 471.400 (1) also allows a manufacturer or wholesaler to provide the following equipment to any retail licensee: picnic pumps, cold plates, tubs, refrigerated trailers, refrigerated vans and refrigerated draft systems. The manufacturer or wholesaler may provide this equipment only for a period not to exceed ten days and for a reasonable rental or service fee. The statute allows a manufacturer or wholesaler to provide this equipment to any retail licensee for a reasonable fee. A manufacturer or wholesaler does not have to require a reasonable fee when providing this equipment to a non-profit special licensee.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.400(2)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0129; OLCC 11-1997, f. 5-12-97, cert. ef. 6-1-97; Administrative correction 5-23-97

845-013-0100

Wholesale-Retail Relations; Sale at Both Wholesale and Retail

(1) ORS 471.394(1) prohibits licensees, except winery licensees, from selling or engaging in the business of selling alcoholic beverages both at wholesale and retail. For purposes of this statute, the direct consumer sales that ORS 471.235 allows a wholesale malt beverage and wine licensee to make are wholesale sales.

(2) As used in ORS 471.394(1):

(a) "Licensee" includes retailers wholesaler and manufacturers of any alcoholic beverages and their managers, officers and directors;

(b) "Licensee" also includes retailers' whole-salers', and manufacturers' agents and employees who sell or engage in the business of selling alcoholic beverages. This means that a retailer and manufacturer or wholesaler may employ the same person to provide janitorial service. A manufacturer or wholesaler may not, however, hire a retailer's checker as a trucker since the

checker/trucker would be engaged in the business of selling alcoholic beverages at both retail and wholesale

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.394(1)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0128

845-013-0110

Wholesale-Retail Relations; Prohibited Conduct

(1) No manufacturer or wholesaler may buy food, beverages or anything of value on a retailer licensee's premises for customers who are not his/her personal acquaintances.

(2) No manufacturer or wholesaler may provide or offer assistance through a group of trade association of breweries, wineries, distilleries or wholesalers to a person to obtain a retail license.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471, including ORS 471.398

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0131

DIVISION 15

RETAIL SALES AGENTS

845-015-0007

Definitions

As used in OAR Chapter 845, Division 015:

(1) "Agency Agreement" is a written contract between the Commission and a retail sales agent that specifies the terms, conditions, and obligations between both parties.

(2) "Disabled Retail Sales Agent" is one who has a physical or mental impairment that has continued more than one year or is permanent that prevents a retail sales agent from properly performing contractual duties. The Commission determines retail sales agent disability after reviewing medical reports from the retail sales agent's physician. The Commission may require additional medical information from a Commission selected physician.

(3) "Retail Liquor Store" is a premises or a specific area in a premises the Commission approves for the sale of packaged distilled spirits for off premises consumption.

(4) "Retail Sales Agent" is an individual person appointed by the Commission who enters into an agency agreement to sell packaged distilled spirits on behalf of the Commission in a retail liquor store.

(5) "Temporary Agent" is an individual person selected by the Commission to temporarily operate a retail liquor store.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750 & ORS 471.752

Hist.: LCC 25-1980, f. 9-30-85, ef. 1-1-81; LCC 9-1985, f. 11-6-85, ef. 1-1-86; Renumbered from 845-015-0040; LCC 23-1986, f. 10-16-86, ef. 1-1-87

845-015-0010

Terminating an Agency Agreement

(1) A retail sales agent may terminate an Agency Agreement with at least 120 days written notice to the Commission. The termination date must be the last day of a calendar month unless otherwise agreed to by the retail sales agent and the Commission. The termination notice must state whether the retail liquor store can continue at the existing location and if so, the minimum terms for the arrangement. The notice must also specify a fair purchase price for fixtures and equipment used in the retail liquor store that are required for its continued operation.

(2) The Commission terminates the Agency Agreement of a retail sales agent who dies or becomes indefinitely unable to operate the retail liquor store, on the last day of the fifth month after the death or disability occurs, unless otherwise agreed to by the Commission. The Commission may appoint a temporary agent to

operate the retail liquor store until the Commissioners appoint a new retail sales agent.

(3) The Commission may terminate an Agency Agreement for good cause as defined in the Agency Agreement. The Commission may appoint a temporary agent to operate the retail liquor store until it completes the termination procedure. The Commission provides the termination date to the retail sales agent in writing.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 14-1978, f. & ef. 10-26-78; LCC 24-1979, f. 10-26-79, ef. 10-29-79; Renumbered from 845-010-0341; LCC 5-1981, f. 9-25-81, ef. 1-1-82; LCC 16-1983, f. 12-27-83, ef. 1-1-84; LCC 22-1986, f. 10-16-86, ef. 1-1-87

845-015-0012

Types of Retail Liquor Stores

(1) A retail liquor store is either exclusive or non-exclusive. In an exclusive retail liquor store, a retail sales agent sells only distilled spirits and related items authorized by OAR 845-015-0045. In a non-exclusive retail liquor store, a retail sales agent operates a retail liquor store as an adjunct to another business. A retail sales agent must secure Commission approval for a retail liquor store's association with another business.

(2) The Commission may change the type of a retail liquor store from exclusive to non-exclusive or non-exclusive to exclusive. In making a type change, the Commission evaluates various factors, including retail liquor store sales and customer service. The procedures in OAR 845-015-0020 apply to such changes. If an exclusive retail liquor store has annual distilled spirits sales of \$500,000 or more, the Commission does not change its type.

(3) When the Commission changes a retail liquor store from one type to another, the retail sales agent has the right to continue as retail sales agent after the change.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 21-1986, f. 10-16-86, ef. 1-1-87

845-015-0020

Establishment of a Retail Liquor Store

(1) When the Commission decides to establish a new retail liquor store, the Commission:

(a) Determines the criteria for location and premises;

(b) Determines a geographic location in which to locate a retail liquor store or a precise location;

(c) Sets a target date for a retail liquor store to begin operation; and

(d) Follows the procedure described in OAR 845-015-0022 and 845-015-0025 for selecting and appointing a retail sales agent.

(2) The Commission may discontinue a retail liquor store that has a retail sales agent vacancy. If the Commission continues a retail liquor store, it evaluates whether the existing premises satisfactorily meets the standards for location and premises set forth in the Site Evaluation Form. If it does not meet the minimum standards, the Commission follows the procedure described in section (1) of this rule.

(3) The Commission may arrange for a particular location for a retail liquor store, before appointing a retail sales agent. The Commission may sign an option to lease or enter into a lease that is assignable to a retail sales agent without recourse by the lessor against the Commission. A retail sales agent must reimburse the Commission, on its terms, for appropriate expenses associated with establishing a retail liquor store.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 14-1978, f. & ef. 10-26-78; Renumbered from 845-010-0343; LCC 15-1986, f. 10-16-86, ef. 1-1-87

845-015-0022

Retail Sales Agent Selection Procedure

(1) When the Commission fills a retail sales agent vacancy other than as OAR 845-015-0025(2) describes, the Commission seeks applications from the public.

(2) The Commission advertises a position in the daily newspaper in the county where a retail liquor store is located and in all daily newspapers circulated statewide. It may also publish a position in other ways. The advertisement includes:

- (a) Starting date of a retail sales agent contract;
- (b) General selection criteria and procedures for selecting and appointing a retail sales agent;
- (c) Present location information or selection criteria for a new location;
- (d) Information on fixture and equipment purchase or lease;
- (e) Deadline for receiving applications; and
- (f) How to obtain additional information.

(3) After an application deadline, a screening committee of Commission staff evaluates all applications according to selection criteria in OAR 845-015-0025 and recommends applicants for interview. After reviewing applications and screening results, an interview committee of Commission staff conducts personal interviews. The interview committee gives the Commissioners the finalists' applications and interview scores, ranked by qualifications. The interview committee recommends finalists who are most qualified based on the selection criteria in OAR 845-015-0025 to the Commissioners. The Commission gives finalists advance notice of the public meeting date when the Commissioners will appoint a retail sales agent using the OAR 845-015-0025 selection criteria. The Commission notifies applicants of the finalists and its selection for a retail sales agent position, upon request.

(4) An appointed retail sales agent must submit retail liquor store arrangements for approval, enter into an Agency Agreement, purchase fixtures and equipment at the Commission established price, and begin operation of a retail liquor store on the date the Commission specifies. If an appointed retail sales agent cannot purchase, rent or lease, and equip an approved location and begin operation by the required date, the Commissioners may select another applicant from the list of finalists recommended by the interview committee.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 471.750(1)
Hist.: LCC 20-1986, f. 10-16-86, ef. 1-1-87

845-015-0025

Retail Sales Agent Selection Criteria

(1) When the Commission selects a retail sales agent using the procedure in OAR 845-015-0022, the Commission evaluates the knowledge, skills and abilities of all applicants in the following areas:

- (a) Retail business experience including, but not limited to, responsibility for inventory control, cash accountability, supervision of personnel and customer service;
- (b) Knowledge of retail operations or business management, including study or training in those or related fields;
- (c) Customer service skills and ability to communicate and work effectively with the public;
- (d) Whether the applicant's health permits full-time supervision of a retail liquor store;
- (e) The applicant's record of felony conviction, conviction of crime relating to money management fraud, or a history of conviction of crimes relating to the abuse of alcohol or controlled substances;
- (f) The applicant's financial ability to purchase or lease and equip the retail liquor store at a Commission approved location. The applicant's ability to provide the necessary funds to meet the operating expenses of the retail liquor store and be bonded under the Commission's blanket position fidelity bond.

(2) In appointing a successor to a deceased or disabled retail sales agent, the Commission gives the preference in ORS 471.752. The Commission evaluates the qualifications of the applicant. After review of the application documents and personal inter-

views, the Commissioners decide if the applicant is qualified.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 471.750(1)
Hist.: LCC 14-1978, f. & ef. 10-26-78; Renumbered from 845-010-0344; LCC 6-1981, f. 11-2-81, ef. 1-1-82; LCC 16-1983, f. 12-27-83, ef. 1-1-84; OLCC 18-1987, f. 6-10-87, ef. 7-1-87

845-015-0027

Retail Sales Agent Eligibility

(1) A retail sales agent must be at least 21 years old. An exclusive retail sales agent must devote full time to operating a retail liquor store. A non-exclusive retail sales agent must devote enough time to a retail liquor store to ensure its efficient operation and reasonable service to the public. A corporation or partnership cannot be a retail sales agent.

(2) A retail sales agent may not have a financial interest or business connection that ORS 471.710(3) or OAR 845-015-0028 prohibits.

(3) A retail sales agent cannot be a Commission licensee or an officer, director or substantial stockholder of a corporate licensee, except that:

(a) A non-exclusive retail sales agent may be a package store licensee;

(b) The Commission may appoint a licensee if the licensee is the only suitable applicant for appointment as retail sales agent in a very small town in a remote area. This retail liquor store must be non-exclusive and must be located in a part of the premises completely separated from the service or consumption of alcoholic beverages.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 471.750(1)
Hist.: OLCC 19-1987, f. 6-10-87, ef. 7-1-87; OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89

845-015-0028

Retail Sales Agent Prohibited Interests, ORS 471.710(3)

(1) Definitions: As used in ORS 471.710(3) and this rule:

(a) "Liquor Store Agent" has the same meaning a retail sales agent defined in OAR 845-015-0007(4);

(b) "Financial Interest" means knowingly having an ownership interest, as a sole proprietor, partner, limited partner or stockholder or any direct or indirect ownership interest through a device such as a holding company, in a business licensed as a distillery or dispenser or any distillery whose products are sold in Oregon;

(c) "Business Connections" include, but are not limited to:

(A) Knowingly providing anything of value to a person or business licensed as a distillery or dispenser, to an agent licensed by the Commission, or to any distillery whose products are sold in Oregon, in return for something of value. This rule does not, however, prohibit persons and licensees from providing commodities and services to each other that they routinely provide to the general public under the same terms;

(B) Partnerships with a person or business licensed as a distillery or dispenser, to an agent licensed by the Commission, or to any distillery whose products are sold in Oregon, and similar ventures formed for the purpose of making profit.

(d) "Knowingly" means a person actually knew or reasonably should have known;

(e) "Household" means all persons living as a family unit in the same dwelling;

(f) "Immediate Family" means spouse and juvenile dependent children.

(2) Additional Prohibitions:

(a) No retail sales agent or member of the agent's household or immediate family may be employed by a business that is licensed as a distillery or dispenser or by an agent licensed by the Commission unless:

(A) The persons' job duties do not include involvement with that portion of the business that requires an alcoholic beverage

license to operate; or

(B) The person exercises no management control over that portion of the business that requires an alcoholic beverage license to operate.

(b) No retail sales agent or member of the agent's household or immediate family may be employed by any distillery whose products are sold in Oregon.

(3) Reporting Requirements:

(a) All retail sales agent applicants must complete and sign a form describing any financial interest or business connection the applicant or any person in the applicant's household or immediate family has, that the applicant would reasonably know of, with a distillery, dispenser or agent licensed by the Commission or a distillery whose products are sold in Oregon. The Commission will determine whether any prohibited interest or connection exists. An applicant or person in the applicant's household or immediate family who has a prohibited interest or connection must divest the interest or connection before the Commission appoints the applicant;

(b) A retail sales agent must report, to the agent's district manager, any prohibited interest or connection with a distillery, dispenser or agent licensed by the Commission or a distillery whose products are sold in Oregon as soon as the agent would reasonably know of the interest or connection. If ORS 471.710(3) or this rule prohibits the interest or connection, the Commission will set a reasonable time period for divestiture. If the retail sales agent, household member or immediate family member fails to divest, the Commission will terminate the agent's contract.

(4) Gifts and Gratuities: No retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee, except that a retail sales agent may accept:

(a) Items totalling \$25 or less per year per alcoholic beverage licensee offered to retail sales agents as customers of the licensee as long as the items are offered on an equal basis to all customers irrespective of any connection to the Commission;

(b) Food and beverages provided for immediate consumption at a convention or a business conference or meeting that are offered to all participants irrespective of any connection to the Commission;

(c) A non-alcoholic beverage for immediate consumption that a licensee offers at a business meeting;

(d) Items offered to all participants at a convention irrespective of any connection to the Commission.

(5) Disciplinary Actions: The Commission will appropriately discipline a retail sales agent who:

(a) Fails to report a prohibited interest or connection as section (2) of this rule requires;

(b) Knowingly acquires an interest or establishes a connection that ORS 471.710 or this rule prohibits; and

(c) Accepts a gift or gratuity that section (4) of this rule prohibits.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.710(3)

Hist.: OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89

845-015-0030

Appointment of a Temporary Agent

(1) When the Commission decides that a retail sales agent is unable to operate a retail liquor store, the Commission appoints a temporary agent or operates a store temporarily with Commission staff. The Commission considers any candidate for temporary agent nominated by a retail sales agent but may choose someone else. The Commission sets a temporary agent's compensation and deducts it from the pay due a retail sales agent unless the Commission and retail sales agent agree to some other compensation plan. A retail sales agent's contract continues until the termination date.

(2) A temporary agent or Commission staff operates a retail liquor store until the Commission decides a retail sales agent can resume store duties or until a new retail sales agent, appointed by the Commissioners, can assume retail liquor store operations.

(3) All of the rules that apply to a retail sales agent apply to a temporary agent except OAR 845-015-0005, 845-015-0015, 845-015-0020, 845-015-0022 and 845-015-0025.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1), & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 15-1978, f. 11-30-78, ef. 12-1-78; Renumbered from 845-010-0347; LCC 16-1986, f. 10-16-86, ef. 1-1-87

845-015-0032

Resignation Buy-Out Program for Retail Liquor Agents

(1) Purpose. The purpose of the Resignation Buy-Out Program is to provide a monetary benefit to all retail liquor agents when they resign as a contracted liquor store agent. Retail liquor agents receive the buy-out, in part, to recognize their contribution in building a successful business.

(2) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail liquor agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out) at the time of store takeover. The Commission calculates the buy-out by taking two percent of the store's average annual gross alcohol sales for the last five years. The Commission manages this transaction by including the buy-out amount in the information sheet that all applicants receive.

(3) Recruiting Qualified Applicants. The outgoing liquor agent may supplement the Commission's recruiting process to assure finding qualified applicants. If the Commission's recruiting process does not generate a qualified applicant, or the Commissioners do not appoint a new agent, the outgoing agent may continue to seek qualified applicants. If these efforts fail to result in a qualified applicant after 30 days, the outgoing agent will choose to postpone the resignation or to accept a lower buy-out amount. If the agent chooses to accept a lower buy-out, then the outgoing agent and the Commission will agree on a reasonable buy-out amount reduction. The Commission will then re-advertise the store vacancy with the reduced buy-out amount.

(4) Paying the Buy-Out. An incoming agent must pay a buy-out if the effective date of the incoming agent's appointment occurs when the program is in effect. The incoming agent provides full payment to the outgoing agent at the time of the store takeover. As a condition of eligibility for the buy-out, the outgoing agent must allow the incoming agent to spend a minimum of 12 working days in the store working productively together before the store takeover, unless the incoming agent gives the Commission a written statement declining the opportunity. During the 12 day period, the outgoing agent will introduce the incoming agent to dispenser and commercial accounts, and orient the incoming agent to all aspects of the store operation except the required training and information provided by Commission staff.

(5) Family Transfer of Agency When Agent Dies or is Disabled. If an agent dies or becomes unable to operate an agency due to the agent's disability, ORS 471.752 (2) allows the Commission to give preference to a qualified surviving spouse or child, or a qualified spouse or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse or child in this situation, the Commission will waive the buy-out requirement at the request of the outgoing agent or the agent's estate.

(6) Probationary Agents. Except as provided in section (8), an agent who resigns during their probationary period is eligible for a buy-out.

(7) Relocating, Adding, or Closing Stores. The Commission reserves the right to relocate any store, and to add or close stores. Neither the State of Oregon nor the Commission is liable for any changes in the volume of alcohol sales that may occur following the relocation of one or more stores, or from the addition or closure of one or more stores.

(8) Exceptions. Despite sections (1) and (2), a retail liquor agent is not eligible for a buy-out if:

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility. In this situation, the Commission receives the buy-out amount, deducts any dollars owed the State

of Oregon, and gives the outgoing agent whatever dollars, if any, remain from the buy-out amount.

(b) The agent is under suspension.

(c) The agent is a temporary agent.

(d) The Commission takes over a store for reasons other than suspension or termination. In this situation, the outgoing agent is not eligible for a buy-out until the agent resigns and an incoming agent is appointed and takes over the store.

(e) The store does not turn over during the time the program is in effect; turnover occurs on the date of the final audit.

(9)(a) Despite subsection (8)(d) of this rule, an outgoing agent who resigns in a timely manner may be eligible for a buy-out even though an incoming agent has not been appointed when the following conditions exist:

(A) The Commission determines that it must significantly delay the appointment of an incoming agent for reasons unrelated to the outgoing agent;

(B) The delay in appointment of an incoming agent results from the Commission's need to make a choice involving complex factual, legal or policy issues in addition to the normal agent selection process;

(C) The Commission has determined that the payment of the buy-out is required for the continued efficient operation of its stores; and

(D) The subsequent appointment of an incoming agent will require the incoming agent to pay the Commission for any buy-out monies the Commission paid to the outgoing agent.

(b) The Commission may pay the outgoing agent a buy-out amount as calculated in subsection (2), at the time and upon the conditions specified in this rule. The Commission will ensure that the incoming agent has adequate opportunity for training prior to take over in lieu of the 12 working days specified in subsection (4) of this rule.

(10) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any dispenser or commercial account ("customers") of the retail liquor store the outgoing agent is leaving ("store") for the purpose of selling or attempting to sell distilled spirits to such customers. The outgoing agent is also prohibited from using a customer list or any other information about the store's customers to assist any agent (other than the incoming agent) in soliciting the store's customers for the purpose of selling distilled spirits. The outgoing agent recognizes that she/he receives consideration for compliance with this section. The prohibitions in this section:

(a) Are limited to a two-year period. The Commission calculates the two-year prohibition beginning on the date the store is turned over to the incoming agent.

(b) Relate only to dispensers and commercial accounts that have made a purchase from the store within the twelve months immediately preceding turnover of the store to the incoming agent.

(c) Apply only within:

(A) A geographic radius of ten miles from the location of the store if the store is located in a metropolitan or suburban area.

(B) A geographic radius of twenty-five miles from the location of the store for all other areas of the state.

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0090.

(11) Definitions.

(a) "Solicit," "solicitation" and "soliciting" have the meaning given them under OAR 845-015-0050. These terms also include any act or contact directed at a specific business, dispenser or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, dispenser or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Dispenser" means any person or entity holding a dispenser license under ORS Chapter 472.

(c) "Commercial Accounts" means any business or association that purchases more than fifty 750 ml bottles of distilled spirits from the store in the twelve months immediately preceding turnover of the store to the incoming agent.

(12) Violation of Section (10). If during the two year period:

(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent.

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent.

(c) The Commission terminates the Resignation Buy-Out Program, the non-compete provisions in Section (10) remain in effect.

(13) No Contract Rights in Buy-Out. No agent shall have any entitlement to, or expectation of receiving, any buy-out. The institution and continuation or termination of the buy-out program constitutes unilateral regulatory action by the Commission, and gives no agent any contractual right or expectation in any buy-out payment. The Commission reserves the right to repeal or modify this rule, or otherwise terminate the buy-out program at any time.

Stat. Auth.: ORS 471

Stats. Implemented: ORS 471.725(2) & ORS 471.750

Hist.: OLCC 14-1996, f. 10-1-96, cert. ef. 1-1-97; OLCC 8-1998(Temp), f. & cert. ef. 9-18-98 thru 3-16-99

845-015-0035

Hours and Days of Operation

To ensure adequate service to the public, the Commission requires retail liquor stores to maintain convenient hours of operation:

(1) All retail liquor stores must be open between the hours of 12 noon and 6 p.m. Retail liquor stores may not open earlier than 7 a.m. or close later than 10 p.m.

(2) Retail liquor stores will be open a minimum of eight hours each day, except for the following:

(a) Each Sunday;

(b) New Year's Day on January 1;

(c) Washington's Birthday on the third Monday in February;

(d) Memorial Day on the last Monday in May;

(e) Independence Day on July 4;

(f) Labor Day on the first Monday in September;

(g) Veterans Day on November 11;

(h) Thanksgiving Day on the fourth Thursday in November;

(i) Christmas Day on December 25;

(j) Any other legal holiday proclaimed by the Commission;

(k) The following Monday when one of the above listed holidays falls on a Sunday.

(3) Notice of closure for any holiday will be posted for one week prior to the date of closure, excluding holidays under subsection (2)(j) of this rule.

(4) To assure that public convenience and necessity are being served, the Commission requires prior approval for:

(a) Retail liquor store hours of operation and any changes in hours of operation requested by the agent. The public will be notified of any changes two weeks in advance of the effective date;

(b) Signs indicating hours of operation posted on windows or doors;

(c) Any emergency closure of a retail liquor store during posted business hours.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 1-1978(Temp), f. & ef. 1-25-78; LCC 5-1978, f. 5-24-78, ef. 5-25-78; Renumbered from 845-010-0350; LCC 12-1983, f. 11-14-83, ef. 1-1-84; LCC 3-1985, f. 2-28-85, ef. 4-1-85

845-015-0045

Sale of Related Items

(1) In a exclusive retail liquor store, the retail sales agent may sell only distilled spirits distributed by the Commission and related items.

(2) Related items are:

(a) Ice and mixers;

(b) Foods used in drinks, such as olives, onions and cherries;

(c) Bartender's guides, shakers, strainers, mixing spoons, swizzle sticks and similar tools used in preparing drinks;

(d) Glassware, coasters, straws, napkins and other such items associated with drinking alcoholic liquor; and

(e) Items such as chewing gum, breath mints and tobacco products.

(3) Only the retail sales agent may conduct business out of an exclusive retail liquor store. This business must be authorized by statute or Commission rule.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 25-1980, f. 9-30-80, ef. 1-1-81; LCC 19-1986, f. 10-16-86, ef. 1-1-87; OLCC 24-1987, f. 12-9-87, cert. ef. 1-1-88

845-015-0050

Solicitation; Incentives

(1) A retail sales agent may seek business from any business or dispenser licensee, including any employee or representative by:

(a) Describing a retail liquor store and its services orally, by personal letter or business card; and

(b) Inviting a potential business or dispenser customer to visit a retail liquor store.

(2) A retail sales agent must not:

(a) Solicit, ask, suggest or urge anyone except a dispenser licensee or other business to make a purchase at a particular retail liquor store;

(b) Give or offer any gift, gratuity, special individualized discount or other incentive to any person if such can be reasonably construed to be an enticement to obtain, maintain, or increase the recipient's business with the retail sales agent; or

(c) Deliver alcoholic liquor or any related item to a customer. A retail sales agent may, however, deliver the merchandise necessary to correct a retail sales agent error in filling a customer's order. Only the merchandise necessary to correct a retail sales agent's mistake may be delivered. Deliver, as used in this rule, does not mean taking customer purchases to parking facilities directly associated with a retail liquor store.

(3) An exclusive retail sales agent must charge the same price for related items of identical brand, type, size and number. An exclusive retail sales agent must keep accurate records of purchases and sales of related items and must make those records available for Commission audit as provided in the Agency Agreement. The Commission may inspect the books and records of the associated business of a non-exclusive retail sales agent.

(4) A retail sales agent must sell Commission merchandise at the Commission's established price.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 25-1980, f. 9-30-80, ef. 1-1-81; LCC 6-1983, f. 6-27-83, ef. 7-1-83; LCC 18-1986, f. 10-16-86, ef. 1-1-87; OLCC 9-1996, 5-16-96, cert. ef. 6-1-96

845-015-0055

Supplier Rebates on Distilled Spirits

(1) The Commission allows suppliers to give consumer rebates on distilled spirits only that identify price reductions which offer consumers the opportunity to switch brands or try new products. The Commission does not allow rebates that encourage consumers to buy distilled spirits in quantity. An example of this would be a rebate that offers \$5 for the purchase of one bottle but \$12 for two.

(2) Suppliers will distribute distilled spirits rebate coupons only through retail liquor stores or by publishing them in newspapers or magazines. Any newspaper or magazine advertising associated with rebate coupons must comply with OAR 845-015-0091, 845-015-0092, 845-015-0093 and any other applicable state and federal regulations.

(3) All rebate coupons offered in the State of Oregon must meet the following requirements:

(a) Rebate coupons must be redeemable for cash only;

(b) Rebate coupon offers must bear an expiration date;

(c) The supplier must require proof of purchase;

(d) Rebate coupons must be valid only for adults of legal drinking age. The Commission may require withdrawal of the

rebate coupon if the supplier does not comply with the conditions of the rebate coupon or Commission rules.

(4) The supplier must furnish rebate coupons to all retail liquor stores carrying the product. Any advertising materials such as posters, signs, banners, or display racks the supplier provides to promote rebate coupons in a retail liquor store must comply with OAR 845-015-0091, 845-015-0092, 845-015-0093 and any other applicable state and federal regulations.

(5) The supplier is responsible for the redemption of rebate coupons. The supplier and the retail customer are responsible for settling any disagreement about the supplier's coupon.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 2-1983, f. 3-8-83, ef. 7-1-83; LCC 2-1985, f. 2-28-85, ef. 4-1-85; OLCC 19-1991, f. 10-31-91, cert. ef. 11-1-91

845-015-0060

Minors in Liquor Stores

Only people 21 years of age or older may enter a retail liquor store, unless accompanied by a parent, or a spouse over the age of 21. Nevertheless, people 18 years or older may be employed in liquor stores to sell distilled spirits and people under the age of 18 may be employed but may not participate in the sale of distilled spirits.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 4-1985, f. 2-28-85, ef. 4-1-85

845-015-0065

Sale of Lottery Tickets

Despite OAR 845-015-0045(1) (sale of related items), retail sales agents may contract with the Oregon State Lottery Commission to sell Oregon State Lottery Tickets in retail liquor stores.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 5-1985, f. 3-28-85, ef. 4-1-85

845-015-0070

Refunds, Exchanges

(1) The Oregon Liquor Control Commission wants to help customers solve problems with distilled liquor products. This rule sets standards and procedures for refunds and exchanges.

(2) Customers may return unwanted or defective merchandise to retail liquor stores for a refund or exchange. As used in this rule, defective means faulty when purchased.

(3) The retail sales agent will give a refund or exchange for unwanted merchandise only if it is resaleable. Merchandise is resaleable when it is properly sealed, in the current product line, and free of label damage and chips. The retail sales agent will give a refund or exchange for defective merchandise.

(4) The retail sales agent will provide an exchange or refund for the amount of the purchase price for merchandise returned with its sales receipt. Without a sales receipt, the retail sales agent will provide an exchange or refund at the lowest price charged for the product in the previous 60 days.

(5) A licensee who is going out of business may make a written request to return resaleable merchandise to the Commission for a refund. If the Commission approves the request, the Commission will issue a refund check after it determines that the merchandise is resaleable.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.740 & ORS 471.750

Hist.: LCC 8-1985, f. 10-9-85, ef. 3-1-86

845-015-0075

Payment for Distilled Spirits

(1) A customer must pay for distilled spirits at the time of purchase.

(2) A retail sales agent accepts these forms of payment:

(a) United States currency or a United States traveler's check;

(b) A cashier's check or money order;

(c) Canadian currency or a Canadian traveler's check at the current exchange rate;

(d) A licensee business check for the amount of the purchase only, properly dated, personalized and free of alterations;

(e) A Commission gift certificate;

(f) A personal check from a customer with a valid check guarantee card and valid picture driver's license. The check must be under \$200, payable to the OLCC, for the amount of purchase only, properly dated, personalized and free of alterations. The retail sales agent must write the number and expiration date of the customer's check guarantee card on the check; and

(g) At the retail sales agent's option, an approved credit or debit card transaction may be accepted from non-licensees for the amount of purchase of distilled spirits and related items. The Commission will begin accepting credit and debit card transactions from customers who are not licensees no later than June 1, 1996.

(3) A retail sales agent must not accept a check for purchases by a licensee who has given the Commission two checks or other instruments that could not be paid upon presentation.

(4) Despite section (2) of this rule, a retail sales agent is not required to accept payment if a sale is contrary to law, if a customer lacks necessary age identification or if there is reasonable basis to believe a customer is not lawfully presenting payment.

(5) A retail sales agent must pay the Commission for an uncollected check if the retail sales agent does not comply with this rule.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.740 & ORS 471.750(1)

Hist.: LCC 32-1986, f. 12-4-86, ef. 4-1-87; OLCC 10-1989, f. 10-2-89, cert. ef. 10-1-89; OLCC 2-1993(Temp), f. 6-25-93, cert. ef. 7-1-93; OLCC 4-1995, f. 5-2-95, cert. ef. 6-1-95

845-015-0078

Discount for Dispenser Class A, B and C Licensees' Distilled Spirits Purchases

(1) Effective November 4, 1993, Dispenser Class A, B and C licensees may purchase distilled spirits from a retail sales agent at a discount of five percent off the listed price fixed by the Commission. Licensees may receive the discount only on distilled spirits purchased for use in their Dispenser Class A, B and C businesses. The discount will be given at the time of purchase.

(2) A retail sales agent must calculate and record the total retail cost and the amount of the discount, and record the name of the licensee and the trade name of the business. A retail sales agent must maintain these records in accordance with the terms of the Agency Agreement.

(3) For purposes of compensation by the Commission, ORS 472.100(5) requires that a retail sales agent be credited at full retail cost on distilled spirits sales to Dispenser Class A, B and C licensees.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.740, ORS 471.745 & ORS 471.750(1)

Hist.: OLCC 4-1993, f. 11-1-93, cert. ef. 11-4-93

845-015-0080

Service Refusal in a Retail Liquor Store

(1) A customer who meets the age and identification requirements in ORS 471.130 has the right to purchase alcoholic liquor in a retail liquor store.

(2) Despite section (1) of this rule, a retail sales agent may refuse to sell alcoholic liquor to anyone who is disruptive or abusive in a retail liquor store.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 25-1986, f. 11-20-86, ef. 1-1-87

845-015-0085

Changes to a Retail Liquor Store

(1) When a retail sales agent asks to move a retail liquor store, the Commission evaluates whether the proposed location meets its minimum guidelines for location and premises. The Commission considers factors like trade area, traffic patterns, accessibility, visibility and impact on the nearest liquor store. The commission approves a proposed location that is equal or superior to the present location.

(2) A retail sales agent must receive prior Commission approval for any significant alteration or area reduction of a premises or for any significant alteration of fixtures or equipment in a retail liquor store.

(3) The Commission requires that a solid wall separate an exclusive retail liquor store from adjoining premises. An exclusive retail sales agent who does not presently comply with this provision must do so before the renewal of an Agency Agreement.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 17-1986, f. 10-16-86, ef. 1-1-87

845-015-0086

Public Opinion on Retail Liquor Store Location

(1) The Commission considers public opinion when it evaluates establishing or relocating a retail liquor store. The Commission seeks public opinion by:

(a) Posting a public notice at the proposed location and at the existing location, if any; and

(b) Sending a written notice to any residence, business, pre-elementary, elementary or secondary school, church or alcoholic treatment facility within a minimum of 500 feet of the proposed location and to the appropriate local governing body.

(2) These notices will ask for opinions on the proposed location and identify when, where and how the public can comment.

(3) The Commission will consider liquor-related public opinions. It considers these liquor-related comments together with its criteria for liquor store establishment and relocation. OAR 845-015-0020 and 845-015-0085(1) set out these criteria.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: OLCC 20-1987, f. 9-2-87, ef. 10-1-87

845-015-0090

Advertising a Retail Liquor Store

Advertising a Liquor Store:

(1) The Commission allows a retail sales agent to place:

(a) A public notice about a retail liquor store in a general readership local publication, with prior approval;

(b) An exterior sign on a retail liquor store, with prior approval for sign and contents;

(c) A "mixer shop" sign on an exclusive retail liquor store if it is in smaller size and different color; and

(d) A retail liquor store listing on a shopping center directory, map and roadside tenant reader board.

(2) The Commission prohibits:

(a) Advertising a retail liquor store together with words or symbols referring to alcoholic beverages;

(b) Advertising a retail liquor store other than as section (1) of this rule permits;

(c) A retail sales agent from sponsoring or participating in an activity that promotes a retail liquor store or liquor sale. A retail sales agent may, however, support a local, non-profit community event and receive recognition for that support if the recognition given is the same as the minimum allowed for other supporters.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1) & ORS 471.750(2)

Hist.: LCC 26-1986, f. 11-20-86, ef. 1-1-87; OLCC 16-1990, f. 6-29-90, cert.

ef. 7-1-90; OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91

845-015-0091

General Requirements for Advertising in a Retail Liquor Store

(1) Advertising Liquor in a Retail Liquor Store. ORS 471.750(2) allows signs and displays advertising distilled spirits products in retail liquor stores and gives the Commission the authority to regulate this advertising. The Commission prohibits advertising liquor in a retail liquor store other than this rule, OAR 845-015-0092 and 845-012-0093 permit.

(2) General Requirements. The Commission allows signs and displays that:

(a) Comply with ORS 471.750(2), and Bureau of Alcohol, Tobacco and Firearms (ATF) regulations;

(b) Are temporary in nature and not permanent fixtures in the retail liquor store;

(c) Are truthful, in good taste and not lewd, sexist or racist;

(d) Do not obstruct another distillery's products;

(e) Advertise a rebate (as OAR 845-015-0055 allows), sweepstakes or offer a premium or an on-pack for the consumer. However,

(A) The sign or display must not include a sample of the premium or on-pack but may include a picture.

(B) The sweepstakes or premium offer must not require the purchase of liquor in order to receive a prize or merchandise, unless the manufacturer or distillery representative donates the prize or merchandise to a charitable cause or community non-profit entity.

(C) When the on-pack is liquor, it must:

(i) Not exceed one 50 ml per bottle;

(ii) Not be a 50 ml that has a current, regular listing;

(iii) Be attached to a non-like product; and

(iv) Be attached only to bottles 750 ml in size or larger.

(3) Signs and displays must not contain:

(a) False or misleading information;

(b) Claims that the alcoholic beverage has curative or therapeutic effects;

(c) Claims that any government agency endorses or supports the alcoholic beverage;

(d) Materials so appealing to minors that it encourages them to purchase, possess or drink alcoholic beverages;

(e) A person displayed drinking an alcoholic beverage;

(f) Material that encourages the use of an alcoholic beverage because of its intoxicating effect;

(g) Statements or illustrations that an alcoholic beverage causes athletic or sexual or artistic success or sexual prowess;

(h) Material that encourages excessive or rapid consumption.

(4) In addition to the requirements and restrictions in sections (2) and (3) of this rule, the Commission may prohibit any sign it deems inappropriate for use in a retail liquor store.

(5) Sign and Display Approval Process. A Commission Merchandising Committee must approve all signs and display materials. The distillery representatives must submit materials (pictures or facsimiles are acceptable) for approval at least 30 days before the first day of placement requested by the representative. The Committee will make a decision and notify the representative within 15 working days of the receipt of the request. The Commissioners may review the decision.

(6) The Commission allows and must approve the sale and distribution of on-packs.

(7) For this rule,

(a) "Sweepstakes" means a contest for prizes not prohibited by law and offered by a distillery or its representative. A participant may pick up an entry blank at a retail liquor store, but any prize must be delivered to the winner at a location other than a retail liquor store.

(b) "Premium" means an item, offered to promote a product, which a person may order from the distillery or its representative. A person may pick up an order form at a retail liquor store, but the item must be delivered at a location other than a retail liquor store. Examples of a premium include t-shirts, watches, and cameras.

(c) "On-pack" means any item, including distilled spirits, attached to a distilled spirits product for sale in retail liquor stores.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stat. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 13-1996, f. 9-30-96, cert. ef. 10-7-96

845-015-0092

Specific Requirements for Signs and Displays in a Retail Liquor Store

(1) The Commission allows signs that:

(a) Are made of paper or similar inexpensive material that function only to advertise or display the distillery's alcoholic beverage products in the retail liquor store. Some examples of signs include case cards, shelf talkers both price and informational, posters, pole toppers and low voltage lighted signs. Ceiling dangles and inflatables are prohibited;

(b) Are placed in front of or in close proximity to the product the sign advertises;

(c) Are not larger than 15 square feet in size.

(2) The Commission allows displays that:

(a) Contain a distillery's products and material that functions only to advertise or display the distillery's alcoholic beverage products in the retail liquor store. A cardboard product bin is an example of this material;

(b) Contain a distillery's products and material that has another function besides advertising or displaying a distillery's product. The Commission allows this material only under the following conditions:

(A) The distillery representative loans but does not give the material to the retail sales agent and clearly indicates on the display that it is the property of the distillery; and

(B) The retail sales agent uses the material only as a part of a promotional display for the distillery's products and not for the retail sales agent's personal use.

(c) Display the related items described in OAR 845-015-0045 that bear a distilled spirits brand name or trademark that are for sale in the retail liquor store.

(3) Nothing in this rule requires a retail sales agent to order distilled spirits for use in a display. Empty case boxes may be used, if necessary.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 5-1994, f. 10-31-94, cert. ef. 11-1-94

845-015-0093

Reasonable Opportunity for Signs and Displays in a Retail Liquor Store

If a retail sales agent chooses to allow signs and displays in the retail liquor store, the agent must allow each distillery representative who wants to advertise his/her products in the store a reasonable opportunity to do so. To facilitate this, the Commission requires that:

(1) The retail sales agent gives each distillery representative who wants to place a sign or display in an agent's store the opportunity to do so at least once per calendar year for each brand he/she represents.

(2) Each brand may have no more than three displays per store per quarter.

(3) Any sign or display must be in place for at least 14 days but for no more than 45 days.

(4) The retail sales agent will, without discrimination, allow all brands an opportunity to be displayed in a fair and equal manner.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91

845-015-0095**Consumption in a Retail Liquor Store**

The Commission prohibits alcoholic beverage consumption on the premises of a retail liquor store.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 27-1986, f. 11-20-86, ef. 1-1-87

845-015-0100**Special Orders for Distilled Spirits**

(1) Customers may order distilled spirits products or container sizes that the Commission does not carry in the regular product line. The minimum order is a case. For special orders, the customer pays the wholesale cost, the average handling and freight costs per case and the regular markup. The Commission sets the average handling and freight costs from an annual review of these costs for special orders. Instead of the average handling and freight cost, the Commission may charge a fee that more closely reflects the Commission's actual freight and handling costs on large quantity orders, special decanter orders and Commission purchases of products it wants to test-market.

(2) The Commission may create a list of frequently ordered special order items. The one case minimum order may not apply to the items the Commission puts on this list.

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 21-1991, f. 12-19-91, cert. ef. 1-1-92; OLCC 5-1992, f. 4-30-92, cert. ef. 5-1-92

DIVISION 16**SERVER EDUCATION PROGRAM PROVIDER CERTIFICATION****845-016-0001****Purpose**

ORS 471.542 and ORS 471.547 require the Commission to establish standards for an alcohol server education program, certify providers and instructors, and establish fees to cover the administrative cost of the program. These rules set standards and certification procedures to ensure that the Commission certifies qualified providers and instructors who will provide quality education within acceptable business practice.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0005**Definitions**

As used in OAR Chapter 845, Division 16:

(1) "Advertising" means any form of notice used in recruiting and promotion, however disseminated, such as publications, signs, mailings, radio, television and audiovisual materials.

(2) "Authorized Representative" means a person who meets the minimum qualifications in OAR 845-016-0020(1) and makes decisions on behalf of the provider that include hiring instructors, evaluating instructor qualifications and supervising instructor performance.

(3) "Case Study" means a teaching method in which the instructor describes, orally or in writing, a situation directly related to the training. The students or instructor demonstrate a possible solution and then the students and instructor discuss the strengths, weaknesses and alternatives to the solution.

(4) "Provider" means a person certified by the Commission to provide a Commission-approved alcohol server education course and includes: an individual, limited partnership, general partner, limited partner whose investment commitment is ten per-

cent or more of the total investment commitment, corporation, director or principal officer as defined in OAR 845-006-0020(1)(b), stockholder who owns or controls ten percent or more of any class of stock, limited liability company, limited liability company's member or manager, or other bonafide legal entity. The legal entity may not be set up to avoid the fee structure for providers that these rules establish.

(5) "Role Play" means a teaching method in which the students assume the roles of characters in a situation directly related to the training and then act out responses to the situation the scene presents.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0010**Provider Certification Process**

(1) A person who wants to become a provider in the Alcohol Server Education Program must submit:

(a) A completed application package provided by the Commission that shows how the applicant meets the standards in OAR 845-016-0015; and

(b) A \$500 non-refundable application evaluation fee. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

(2) If an application is incomplete, the Commission will tell the applicant what is needed. The applicant will have 90 days from the date the Commission received the application to give the required information. If the applicant does not provide the information within the 90 days, the Commission will refuse to process the application. If the applicant provides the information after the 90-day limit, the Commission will require a new application and fee.

(3) The Commission evaluates the application to determine if the applicant and proposed program meet the standards in OAR 845-016-0015.

(4) The Commission sends the applicant written notification of certification approval or denial. If the Commission approves the application, it will issue a Letter of Certification.

(5) Initial provider certification is for six calendar months from the certification date. The Commission evaluates the provider's performance before the end of the sixth month. If the provider complies with all program procedures, the Commission extends certification for the next six calendar months, with no additional fee. If the provider does not comply, the Commission may suspend or cancel certification. The Commission gives the provider written notification of its determination to extend, suspend or cancel certification at least 15 days before the end of the sixth month.

(6) Despite subsection (1)(b) of this rule, the Commission may require only one provider certification fee to certify a group of providers if each provider provides the same program workbook and class curriculum. The Commission will certify each as a provider who will have the same requirements and responsibilities as any other provider.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0015**Alcohol Server Education Provider Standards**

To be certified, a provider must:

(1) Have a program course that meets the Commission's Alcohol Server Education Minimum Curriculum Standards (published August 22, 1995 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR) and that includes:

(a) Role-playing, case study exercises or other methods that actively involve students in acquiring behavioral skills in identifying minors and stopping service to visibly intoxicated persons;

(b) At least 4.5 hours of instruction time and one five-minute break during the program course;

(c) Teaching techniques and methods the provider proposes and the Commission approves. The Commission will approve teaching techniques and methods based on the guidelines in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Teaching Techniques and Methods Standards, (published August 22, 1995 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR); and

(d) A student workbook that meets the Commission's Minimum Workbook Standards (published September 28, 1995 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR).

(2) Meet the minimum qualifications in OAR 845-016-0020(1) or have an authorized representative who meets these minimum qualifications, if the provider is not responsible for hiring, training or evaluating instructor qualifications or performance. The provider applicant must submit a completed Provider Staff Certification form describing the provider applicant or authorized representative's qualifications, as appropriate.

(3) Identify all program instructors and persons who train instructors and verify that they meet the qualifications in OAR 845-016-0020.

(4) Submit a completed Provider Staff Certification form and instructor fee for all program instructors, as OAR 845-016-0020 requires. The instructor fee is refundable only if the Commission denies provider certification.

(5) Comply with corporation registration or assumed business name requirements in ORS Chapter 57 and ORS 648.005, if applicable.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 5-1989, f. 5-24-89, cert. ef. 5-29-89; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0020

Instructor and Trainer Qualification and Performance Standards; Provider Responsibility for Fee and Performance

(1) Qualifications: Each instructor and person who trains instructors must have:

(a) A minimum of two years of verified full-time employment (4,000 hours) in the fields of training, education, law, law enforcement, substance abuse rehabilitation, the hospitality industry or any of the subjects listed in ORS 471.542(4); or

(b) A minimum of two years of post-secondary education in the fields of training, education, law, law enforcement, substance abuse rehabilitation, the hospitality industry or any of the subjects listed in ORS 471.542(4).

(2) Performance Standards: Each instructor and person who trains instructors must:

(a) Teach the Alcohol Server Education Program that the Commission approved;

(b) Understand the objectives of the program and be able to communicate to the students with knowledge, clarity and judgment about the program;

(c) Demonstrate skill in student supervision;

(d) Respect the rights of all students and treat them without discrimination based on their age, disability, national origin, race, marital status, religion, sex or sexual orientation;

(e) Demonstrate willingness to work cooperatively with other, including the Commission staff.

(3) Provider Responsibility for Fee:

(a) The provider must mail or deliver, no later than 36 hours after the instructor's first class, to the Commission a completed Provider Staff Certification form and a \$100 fee for each instructor. Holidays and weekends are not included in counting the 36

hours. The Commission does not require a \$100 instructor fee for a qualified provider instructor or authorized representative instructor. If, however, both the provider and the authorized representative will teach courses, the provider must pay the instructor fee for the authorized representative. The instructor fee is refundable only if the Commission denies certification;

(b) Despite subsection (3)(a) of this rule, if an instructor wants to teach in another provider's Oregon Alcohol Server Education Program, the Commission will not require another instructor fee if the fee has been paid for the certification period;

(c) Violation of this section is a Category III violation (see OAR 845-016-0080, Sanctions).

(4) Provider Responsibility for Performance Standards:

(a) The provider must ensure that each instructor meets the performance standards in section (2) of this rule. This includes at least:

(A) Personally observing each instructor's entire class and evaluating the instructor on the Commission's evaluation form during the instructor's first or second class. (If the provider is the instructor, the Commission will evaluate the provider-instructor.);

(B) Sending the form to the Commission within 15 days after the class;

(C) Correcting any performance that the provider identifies or that the Commission identifies through its Quality Assurance Plan.

(b) Violation of this section is a Category II violation (see OAR 845-016-0080, Sanctions).

(5) Provider Responsibility to give notice of class times and locations:

(a) The provider must submit a schedule of planned classes, with times and locations, at least seven days before the classes are held;

(b) The provider must notify the Commission of any changes to the schedule required in section (5)(a) as soon as possible;

(c) Despite Sections (5)(a) and (b), a provider or instructor may:

(A) Schedule or reschedule a class shortly before the class to accommodate a request from students. If the Commission has been unable to observe and evaluate an instructor because most classes are scheduled under seven days, the Commission will notify the provider and require the provider to call the Commission to give all class times and locations until the Commission is able to complete the required observations and evaluation;

(B) Cancel a class in an emergency without prior notice to the Commission. A provider or instructor may also cancel shortly before a class without notifying the Commission if the provider:

(i) Notifies persons inquiring about classes that the provider may cancel if there are not a stated minimum numbers of students; and

(ii) Has notified the Commission in advance of this practice.

(d) Violation of this section is a Category III Violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0030

Student Enrollment and Classroom Setting

(1) The provider or instructor will give each student:

(a) At the time of enrollment, an enrollment agreement that clearly states the obligations of the provider and student, refund policies, and procedures to terminate enrollment;

(b) During the class, a statement that says, "**If you have questions, or comments or complaints about the program, please call the Commission,**" and includes the appropriate Commission telephone numbers and a notice that a student must complete the course in order to take the exam.

(2) The provider or instructor will give each student a student workbook no later than at the beginning of the course presenta-

tion. If an enrolled student asks for the workbook before then, the provider will make one available to the student.

(3) Upon request, the provider or instructor will give the student:

(a) The course outline in sufficient detail so students can understand course content, objectives and length;

(b) A statement of the total cost of the course and workbook;

(c) A schedule of course presentations.

(4) The provider will have adequate facilities (seating, lighting, heating and restrooms appropriate to an instructional setting), instructional equipment and materials, and personnel to provide a program that meets the Alcohol Server Education Program standards.

(5) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0035

Course Examination

(1) The provider or instructor will:

(a) Administer the Commission provided exam:

(A) As a required portion of each course presentation; and

(B) As a closed book exam; and

(C) As an oral exam, if a student asks.

(b) Use Commission examination answer sheets;

(c) Mail or deliver exam answer sheets, student sign in sheets and transmittal forms to the Commission for scoring within 36 hours of the completion of the course presentation. Holidays and weekends are not included in counting the 36 hours;

(d) Store exams in a secure place;

(e) Not reproduce exams;

(f) Collect the exam material from any personnel when that person is no longer associated with the provider's program;

(g) Promptly return any unused exam material and all exam booklets to the Commission during a suspension or upon termination of provider certification.

(2) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0040

Recertification

(1) A provider who wants to be recertified must submit a completed recertification application provided by the Commission, a non-refundable \$250 recertification evaluation fee and the \$100 fee for each instructor who will be teaching in the provider's program. The instructor fee is refundable only if the Commission denies provider recertification. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

(2) Despite section (1) of this rule, the Commission may require only one provider recertification fee to recertify a group of providers if each provides the same program workbook and class curriculum. The Commission will certify each as a provider who will have the same requirements and responsibilities as any other provider.

(3) The Commission must receive the application and fee not more than 90 days or less than 30 days before the date the current certification expires. If the provider submits the application or fee less than 30 days before certification expires, the provider must pay a \$5 per day late fee or submit the application and fee that OAR 845-016-0010(1) requires for initial certification. The Com-

mission may waive the late fee if the provider does not receive the renewal notice at least 90 days before the current certification expires due to Commission or United States Post Office error.

(4) The Commission gives the provider written notification of its decision to approve or deny recertification:

(a) If the Commission approves recertification, the recertification is valid for one year from the expiration date of the current certification unless the provider requests a later effective date. If the provider requests a later date, the recertification is valid for one year from the date the provider requested. The Commission will approve any requested date that does not exceed 30 days from the current expiration date. The provider may not provide any alcohol server education courses between the time the current certification expires and the recertification date;

(b) If the Commission denies recertification, the Commission will give the reason(s) for the denial, will include information about the applicant's right to a hearing under the procedure in OAR Chapter 845, Division 3, and will refund any instructor fee(s) the provider included as a part of the recertification application.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 4-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0045

Certification and Recertification Denial

(1) The Commission may deny certification or re-certification to a provider or provider applicant if the applicant, provider, provider's instructor or instructor applicant, or the provider's authorized representative does not comply with section (3)(a) through (f) of this rule.

(2) The Commission may deny certification or re-certification to an instructor or instructor applicant who does not comply with section (3)(a) through (f) of this rule.

(3) Applicants, instructors, providers, and authorized representatives must:

(a) Not make any material false or misleading statement to induce or prevent Commission action;

(b) Meet the requirements in OAR 845-016-0015 or OAR 845-016-0020, as appropriate;

(c) Follow the procedures described in these rules;

(d) Not violate any laws or Commission rules related to the Alcohol Server Education program;

(e) Not exploit the professional relationship with a student for personal gain;

(f) Not have a recent history of liquor or controlled substance law violations, a recent history of using a controlled substance or alcoholic beverage to excess or recent disregard for laws related to being a responsible provider or authorized representative.

(4) When the Commission proposes to deny certification or re-certification, a provider, instructor, or applicant may make a written request for a hearing under the provisions of OAR Chapter 845, Division 3 (Contested Case Procedures).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0048

Restrictions

(1) The Commission may restrict a provider's or instructor's certificate when:

(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the certification; or

(b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the

violation(s).

(2) Violation of a restriction is a Category I violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0055

Record Keeping

(1) Each provider will keep course presentation information including the location, date and number of students attending each class. The provider will give the Commission this information upon request.

(2) Each provider will keep enrollment records for two years and three months. Enrollment records include the name of each student enrolled in the provider's program and the date and location of the class the student took. The provider will give the Commission copies of these enrollment records if the provider is no longer certified. The Commission may inspect records at any time during normal business hours.

(3) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92

845-016-0060

Changes in Program, Instructor or Provider

(1) A provider or instructor will not change program content or method of presentation without the provider receiving the Commission's prior approval.

(2) Selling the Business: If the provider sells the business, the purchaser must apply for and receive certification before the purchaser gives any course.

(3) Adding an Instructor:

(a) When the provider adds an instructor, the provider must mail or deliver to the Commission, no later than 36 hours after the instructor's first class, a completed Provider Staff Certification form for each instructor and the non-refundable instructor fee. Holidays and weekends are not included in counting the 36 hours. If the provider adds an instructor during the first six months of the certification period, the instructor fee is \$100. If the provider adds an instructor during the last six months of the certification period, the fee is \$50;

(b) Despite subsection (3)(a) of this rule, if a provider adds an instructor who teaches in another Oregon Alcohol Server Education Program, the Commission will not require another instructor fee if the fee has been paid for the certification period. However, the provider must send the Commission a completed Provider Staff Certification form before the instructor teachers in the provider's program.

(4) Changing a Corporate Officer or Authorized Representative:

(a) A provider must notify the Commission within 20 days whenever a corporate officer changes;

(b) Whenever the provider changes the authorized representative or adds a person to train instructors, the provider must mail or deliver to the Commission a Provider Staff Certification form for the new authorized representative or trainer. The provider must do this no later than 36 hours after the provider makes the change or addition. Holidays and weekends are not included in counting the 36 hours.

(5) The Commission will evaluate any requested change and notify the provider in writing of its approval or denial.

(6) Violation of section (1) or (2) of this rule is a Category II violation. Violation of section (3) or (4) of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0065

Provider Advertising and Promotion Standards

(1) Provider advertising related to the program must include:

(a) The provider's telephone number and cancellation policy;

(b) The total amount of class time which includes instruction, exam and break time;

(c) A statement that students must attend the entire class before taking the exam.

(2) Advertising will not suggest that the State of Oregon, the Commission or any state agency endorses or recommends the provider's program.

(3) The provider will give the Commission copies of program publications, brochures, pamphlets, tear sheets, scripts or any other representation of advertising materials related to the program upon use.

(4) A provider must have records available to support any claims or representations the provider makes in advertising.

(5) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0070

Provider Responsibility for Acts of Employees

The Commission may hold a provider responsible for any act or omission of the provider's program instructor, personnel or representative that violates any law or administrative rule affecting provider privileges.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0075

Prohibited Conduct

No provider or instructor will:

(1) Administer the exam to a person who has not completed the class. Violation of this section is a Category I violation.

(2) Drink alcoholic beverages, be visibly intoxicated, or be under the influence of intoxicants during the course presentation and exam, including breaks and meals. Violation of this section is a Category I violation.

(3) Make any material false or misleading statement to induce or prevent Commission action. Violation of this section is a Category I violation.

(4) Falsify, alter or otherwise tamper with examination materials. Violation of this section is a Category I violation.

(5) Have a recent history of liquor or controlled substance law violations, a recent history of using a controlled substance or alcoholic beverage to excess or recent disregard for laws related to being a responsible provider, instructor or authorized representative. Violation of this section is a Category I violation.

(6) Exploit the professional relationship with a student for personal gain. Violation of this section is a Category II violation.

(7) Permit a student to refer to any written material or have a discussion with another person (except the instructor or instructor's designee) during the exam unless the instructor authorizes the student to use an interpreter. Violation of this section is a Category II violation.

(8) Prohibit or interfere with on-site observations by the

Commission or fail to assist the Commission in scheduling these observations. Violation of this section is a Category III violation.

(9) Permit any student to drink alcoholic beverages or to be under the influence of intoxicants during the course presentation or exam, including breaks and meals. Violation of this section is a Category III violation.

(10) Permit distractions and interruptions that diminish the quality of the instructional setting. Violation of this section is a Category III violation.

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0080

Sanctions for Violations

(1) The Commission may cancel or suspend a provider or instructor's certification under its authority in ORS 471.542 and 471.547. ORS 471.322(3) allows the Commission to impose a fine of not more than \$1,000 in addition to or instead of a suspension or cancellation.

(2) Violation Categories:

(a) I — Violations that make a provider ineligible for certification;

(b) II — Violations that seriously impair the quality/effectiveness of the provider's program;

(c) III — Violations, although not serious, that would reduce the quality or effectiveness of the provider's program if not corrected.

(3) Sanctions:

(a) **Exhibit 1** lists the proposed sanctions for the first and subsequent violations within each category described in subsection (2) (a) of this rule. **Exhibit 1** also gives the categories for the most common violations;

(b) The sanctions listed in **Exhibit 1** are guidelines. If the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction. The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.

(4) The Commission increases sanctions based on successive violations in the same category within a two-year period. For example, if a provider who has committed one Category II violation and one Category III violation within the past two years, commits another Category II violation, the Commission assesses the sanction at the second level for the pending Class II violation. Numerous violations within the two-year period, regardless of the type, may indicate such a disregard for the law or failure to provide an acceptable Alcohol Server Education Program or acceptable class instruction so as to warrant cancellation of the certification.

(5) A provider may not avoid the sanction for a violation or the application of the provision for successive violations by merely adding or converting to another form of legal entity when the individuals who own, operate or control the business are substantially similar.

(6) When the Commission proposes to sanction a provider or instructor, the provider or instructor may make a written request for a hearing under the provisions of OAR Chapter 845, Division 3 (Procedures Applicable to Contested Case Hearings).

[ED. NOTE: The exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.322(3), ORS 471.542, ORS 471.547 & ORS 471.549

Hist.: OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

DIVISION 20

BEVERAGE CONTAINERS AND REDEMPTION CENTERS

845-020-0005

Definitions

(1) The terms defined in ORS 459A.700 have the same meaning in OAR 845-020-0005 through 845-020-0030, unless the context requires otherwise.

(2) The definition of beverage in ORS 459A.700(1) includes "similar carbonated soft drinks." "Soft drinks" means any non-alcoholic drink except 100 percent coffee, tea, milk, cocoa and fruit or vegetable juices. "100 percent coffee, tea, milk, cocoa and fruit or vegetable juices" means the natural product with no water added, or concentrate that has been reconstituted to full strength, to which no flavorings have been added.

(3) As used in OAR 845-020-0005 through 845-020-0030, unless the context requires otherwise: "Person" includes individuals, corporations, associations, firms, partnerships, and joint stock companies.

Stat. Auth.: ORS 459A, ORS 459.992(4), ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 459A.725

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0600; OLCC 8-1989, f. 7-28-89, cert. ef. 8-1-89

845-020-0010

Certification of Containers

(1) A beverage container may be certified by the Commission if:

(a) It is reusable as a beverage container by more than one manufacturer in the ordinary course of business; and

(b) More than one manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(2) The Commission shall withdraw certification of a beverage container which it determines is no longer qualified for certification under section (1) of this rule.

(3) The Commission shall refuse to certify or shall withdraw certification of:

(a) A beverage container which by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting, or other permanent method, is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name;

(b) Each beverage container, in excess of one, for beer and other malt beverages, having a liquid capacity of 16 fluid ounces or less;

(c) Each beverage container, in excess of one, for beer and other malt beverages, having a liquid capacity of more than 16 fluid ounces; or

(d) Any beverage container which would tend to disrupt the orderly return and reuse of beverage containers.

Stat. Auth.: ORS 459A.725(1), ORS 459A.725(3), ORS 459A.730(1) & ORS 459A.730(2)

Stats. Implemented: ORS 459A.725

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; LCC 44, f. 11-20-73, ef. 12-11-73; Renumbered from 845-010-0605

845-020-0015

Application for Certification of Containers

Any manufacturer desiring certification of a beverage container shall make application to the Commission upon forms to be furnished by the Commission. The application shall state the name and address of the manufacturer requesting the container certification and the name and addresses of each other manufacturer, known to the applicant, who will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container. The application shall include such additional information as the Commission may require. Each application for certification will be accompanied by

the following:

- (1) Sample of the container to be considered for certification.
- (2) Container manufacturer's print of the container design and specifications.
- (3) Two color photographs (5" x 7") of container.
- (4) Statement of applicant and of one other manufacturer that each will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

Stat. Auth.: ORS 459A.725(1), ORS 459A.725(3), ORS 459A.730(1) & ORS 459A.730(2)

Stats. Implemented: ORS 459A.730

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0610

845-020-0020

Redemption Centers

The Commission shall approve a redemption center if it finds the redemption center will provide a convenient service to consumers for the return of empty beverage containers.

Stat. Auth.: ORS 459A.735(1), ORS 459A.735(3) & ORS 459A.735(4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0615

845-020-0025

Application for Approval of Redemption Center

(1) Any person desiring approval of a redemption center shall make application to the Commission upon forms to be furnished by the Commission. The application shall include the following and such additional information as the Commission may require:

- (a) Name and address of each person to be responsible for the establishment and operation of the redemption center;
- (b) Exact location and mailing address of redemption center;
- (c) Kinds and brand names of the beverage containers which will be accepted at the redemption center;
- (d) Names and addresses of the dealers to be served by the redemption center;
- (e) Distances from the redemption center to the dealers to be served;
- (f) Days and hours of operation of the redemption center;
- (g) Description of parking facilities to serve the redemption center;
- (h) Information as to the approval or non-approval of the redemption center by the city council if the redemption center is located within an incorporated city or by the county court or board of county commissioners if the redemption center is located outside an incorporated city.

(2) A copy of the agreement between the person or persons to be responsible for the establishment and operation of the redemption center and each dealer to be served by the redemption center must be submitted with the application.

Stat. Auth.: ORS 459A.735(1), ORS 459A.735(3) & ORS 459A.735(4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0620

845-020-0030

Standards of Sanitation and Cleanliness for Redemption Centers

All persons responsible for the establishment and operation of the redemption center shall at all times keep the redemption center premises, including the parking facilities serving the redemption center, in full compliance with law and with the orders and regulations of the Oregon State Board of Health, the State Health Division, the State Department of Agriculture, and other regulatory agencies. Such persons shall keep such redemption center premises in good repair, painted, clean, well lighted, free of litter and trash, and free of rodents, vermin, insects, and their harborage or breeding places.

Stat. Auth.: ORS 459A.735(1), ORS 459A.735(3) & ORS 459A.735(4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0625

845-020-0035

When Dealer Not Required to Accept Containers

(1) The Commission does not interpret ORS 459A.710 to require a dealer to accept an empty beverage container, if the dealer:

er:

(a) Has not offered the product in the specific container size

for sale within the past six months;

(b) Has reasonable grounds to believe the container was sold

at retail outside Oregon;

(c) Has reasonable grounds to believe that container was

obtained from or through a distributor without paying the refund

value. The primary goal of this subsection is to prevent distribu-

tors, recyclers or others from putting containers through the

refund/return system more than once without paying the refund

value.

(2) Dealers must not use this rule to frustrate the intent of the

Beverage Container Act that dealers accept return of any quantity

of beverage containers sold in Oregon from any person.

Stat. Auth.: ORS 459A & ORS 459.992(4); & ORS 471 & ORS 472, including

ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS

472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 459A.715

Hist.: LCC 1-1982(Temp), f. & ef. 1-22-82; LCC 5-1982, f. 3-26-82, ef. 4-1-

82; OLCC 10-1987, f. 3-13-87, ef. 4-1-87
