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DIVISION 1

PROCEDURAL RULES

845-001-0005

Notice of Rulemaking

Prior to adoption, amendment or repeal of any permanent 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.

(5) By mailing or furnishing a copy of the notice to the Capitol Press Room.

Stat. Auth.: ORS 471 including 471.030, 471.730(1) & (5)
 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; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-001-0007

Attorney General's Model Rules of Procedure

The Commission adopts, by reference, the Attorney General's Model Rules of Procedure, effective January 15, 2004. The Commission's supplemental 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 the agency.]

Stat. Auth.: ORS 471.030, ORS 471.730(1) & (5)
 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; OLCC 3-1999, f. 2-16-99, cert. ef. 3-1-99; OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-001-0008

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690.

Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the “mediator” in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency’s employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential, or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties’ agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an “agreement to mediate.” Agreement to Participate in a Confidential Mediation The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 845-001-0008(7) and this agreement. This agreement relates to the following mediation: [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for

use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation;

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation;

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege;

(B) Attorney work product prepared in anticipation of litigation or for trial;

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency;

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 36.224

Stat. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01

845-001-0009

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator: A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation, and;

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents, and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be

introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stat. Implemented: ORS 36.230(4)

Hist.: OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01

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 Commission on or after the effective date.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6), ORS 472.060(1) & (2)(d).

Stats. Implemented: ORS 183.341(2), 471.730(5) & (6), 472.060(1) & (2)(d).

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0210

Model Rules of Procedure

The Attorney General's Hearing Officer Panel Rules, effective January 1, 2000, and subsequent amendments, are hereby adopted by reference as permanent rules of procedure for contested case hearings conducted on behalf of the Liquor Control Commission, except to the extent supplemented in this division or any other division of chapter 845 of the Oregon Administrative Rules. The Attorney General's Hearing Officer Panel Rules are set forth at OAR 137-003-0501 to 137-003-0700.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d).

Stats. Implemented: ORS 183.341(1) & (2), OL 1999, Ch. 849.

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0220

Definitions

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

(1) "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.

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

(2) "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.

(3) "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.

(5) "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.

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

(7) "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.

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

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.310 & ORS 183.341(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

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 Administrative Process 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 mailing of the charging document, for licensing or certification application denials, 60 days, 20 days for neighborhood livability cases, 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) 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. Except in service permit denial cases, where the answer does not include the information required by this rule, or where no answer is filed, the presiding officer shall convene a prehearing conference to obtain the required information.

(3) 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 hearing officer, or pursuant to amendment of the charging document.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.090, 183.341(2), 183.430(2), 183.435, 471.312(1) & 471.380(2)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 8-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-003-0331**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, ORS 183.341(2), ORS 183.415(4), 183.450(3) & 471.030
 Stats. Implemented: ORS 183.450(7) & (8)
 Hist.: OLCC 6-2002(Temp), f. 5-6-02, cert. ef. 5-7-02 thru 11-2-02; OLCC 13-2002, f. 10-25-02 cert. ef. 11-3-02

845-003-0340**Interpreters**

(1) Notwithstanding OAR 137-003-0590(3)(a)(A) and (B), when a party or a witness in a contested case proceeding, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings, timely requests an interpreter, the agency shall appoint and pay the fees and expenses of a qualified interpreter whenever it is necessary to interpret the proceedings.

(2) The hearing 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 hearing 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 471.730(5) & (6); ORS 472.060(1) & (2)(d)
 Stats. Implemented: ORS 183.341(2) & ORS 183.418.
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0460**Summary of the Case**

(1) Prior to any contested case hearing, the hearing 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 hearing officer and provide a copy to the other participant(s) by the date established by the hearing 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 hearing officer any newly discovered matter, such as a document, that is within the scope of the discovery order.

Stat. Auth.: ORS 183.341(2), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)
 Stats. Implemented: ORS 183.341(2), ORS 183.425(2), OL 1999, Ch. 849.
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0590**Exceptions**

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

(2) Exceptions and comments must be in writing and received by the Administrator of the Commission within 15 days of the mailing date of the proposed order to be considered by the Commissioners. If an interpreter is required to translate a proposed order for one participant, all participants shall have an additional 10 days to file exceptions or comments to the proposed order.

(3) The Administrator may grant a participant's written request to extend the period to file exceptions or comments for good cause shown. The request must be received within 15 days of the mailing date of the proposed order.

(4) Oral argument to the Commissioners on written exceptions or comments will be taken at a regularly scheduled meeting of the Commissioners. The participants shall be notified by the Commission of the date, time, and place of the meeting where such argument will be heard.

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6)
 Stats. Implemented: ORS 183.341(2), 183.460
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 11-2003(Temp), f. & cert. ef. 8-15-03 thru 2-10-04; OLCC 21-2003, f. 11-24-03, cert. ef. 2-10-04

845-003-0670**Retained Authority of Commissioners**

(1) The Commissioners retain all authority not specifically delegated.

(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, or fails to appear at the hearing.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by settlement.

(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.

(5) The Commissioners delegate to the Administrator the authority to summarily deny requests for reconsideration or rehearing and any stay request based on these 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.

(6) The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6), 472.060(1) & (2)(d)
 Stats. Implemented: ORS 183.341(2), 471.730(5) & (6), 472.060(1) & (2)(d)
 Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2003, f. 11-24-03, cert. ef. 12-1-03

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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)& 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. It is not the intent of this rule to prohibit Commissioners, retail sales agents or Commission employees from interacting with licensees and distillery representatives on the same basis as a customer or the general public.

(2) No Commissioner, employee or retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee, or any person representing a distillery which the licensee/representative does not also offer on an equal basis to his/her customers or the general public.

(3) No alcoholic beverage licensee or person representing a distillery will offer or give any gift, gratuity or thing of value to a Commissioner, employee or retail sales agent which the licensee/representative does not also offer on an equal basis to his/her customers or the general public.

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

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

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

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

(5) Despite sections (2) and (3) of this rule, a Commissioner may accept:

(a) Food, beverages, lodging and travel when the Commissioner is participating in an event related to his/her official duties and when appearing in an official capacity, subject to the reporting requirements of ORS 244.060(6);

(b) Food or beverage that the Commissioner consumes in the presence of the purchaser or provider.

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

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; OLCC 1-2003, f. 1-27-03, cert. ef. 2-1-03; OLCC 17-2003, f. 10-27-03, cert. ef. 12-1-03

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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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 lists of license or compliance actions:

(a) Weekly applications received list — \$5 for individual week, \$100 for annual subscription.

(b) Monthly Compliance Action Ratification list — \$10 for individual month, \$100 for annual subscription.

(c) Monthly staff and commission action list (licensing and permit actions) — \$10 for individual month, \$100 for annual subscription.

(d) Combination of lists (a), (b), and (c) above — \$200 for annual subscription.

(e) Combination of any two lists in (a), (b), or (c) above — \$150 for annual subscription.

(f) Any other monthly or weekly lists produced by the Commission Regulatory Program but not included in (a)–(c) above — \$5 plus 25 cents per page copying.

(3) The Commission charges the following per record fees for individualized lists of licensed premises by type and location. The Commission may, at its discretion, waive a fee in special instances. Records can be requested as either paper, labels, or diskettes:

(a) 0–999 Records — \$25;

(b) 1,000–2,999 — \$40;

(c) 3,000–4,999 — \$55;

(d) 5,000–6,999 — \$70;

(e) 7,000–8,999 — \$85;

(f) 9,000 and up Records — \$100.

(g) The following lists are available:

(A) Complete list of all licensees;

(B) List of licensees by license type;

(C) List of licensees by county or city; and

(D) List of licensees by license type and county or city.

(h) The Commission may make other lists available if the Commission, in its discretion, determines that the list fills a public need, can be produced using current computer programs, and warrants the dedication of staff time necessary to produce the list. The Commission

may provide electronic copies of its records. The fee is the cost of the time and material needed to produce the copy.

(4) The Commission may provide electronic or paper copies of its license and compliance records for licensed businesses. The Commission will only provide copies of documents that are not exempt from public disclosure, and may redact social security numbers and other protected information from copies of documents in the file record before making them available for review. The Commission may make microfiche copies of records available to a licensee or a licensee's legal representative, if the licensee or their representative is requesting a copy of the records for a business that the licensee owns or operates. Requests for Commission license and compliance records must be received in writing, on forms prescribed by the Commission. The Commission charges the following fees for locating, researching, assembling, organizing, reviewing, redacting confidential information, copying, collating, and making records available for public viewing:

(a) File review of paper copies or microfiche files, up to 100 pages: \$5.00, plus 25 cents per page. The Commission may require payment of the full amount of fees at the time the request is received.

(b) File review of paper copies of individual files larger than 100 pages: \$13.00 for each hour of staff time to locate, research, assemble, organize, review, redact confidential or protected information, copy, and collate the file records, plus 25 cents per page. The Commission may require payment of the full amount of the photocopying fees at the time the request is received.

(c) File review of records available in an electronic format: \$5.00, plus the cost of the storage media.

(5) 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.

(6) Representatives of distilled spirits' suppliers may purchase monthly reports of sales and inventory by code number (brand) by retail outlet. The fee is \$20 for preparation on the report, plus \$2 for each code included in the report. The Commission will bill representatives monthly, with payment due within 30 days.

(7) 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.

(8) The Commission's charge on special accounts that do not pay normal markup on liquor purchases is the landed cost plus a 5% handling fee per case. The handling fee for split cases will be 15% of the landed cost of each bottle ordered.

(9) The Commission charges the following fees for photocopying records not specified elsewhere in this rule: \$13 for each hour of staff time to locate, research, assemble, organize, copy and/or collate the records, plus 25 cents per page. The Commission may require payment of the amount of the photocopying fees at the time the request is received.

(10) The Commission may furnish copies without charge or at a substantially reduced fee if the Commission determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

Stat. Auth.: ORS 471 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1) & 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2001, f. 8-15-01, cert. ef. 9-1-01

845-004-0022

Annual License Fee Definition and Refund

(1) Annual license fee is the amount ORS 471.311(5) requires for the use of an annual license.

(2) The Commission considers an annual license used when a licensee allows any sale, service, or consumption of alcoholic beverages on the premises after the effective date of the license.

(3) The Commission refunds the annual license fee, when the licensee verifies that he/she has not used the license as described in section (2) of this rule.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471-040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.311
 Hist.: LCC 6-1986, f. & ef. 4-1-86; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(2)(d)
 Stats. Implemented: ORS 471.610, 471.657, 471.665 & 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 Course 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 183.341(2), 183.415(4)&183.450(3); 471 & 472, including 471.030, 471.730(1)&(5)
 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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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 person 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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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 471.403 prohibits the distilling of alcoholic liquor without a license. Producers of alcohol for fuel will not violate ORS 471.403 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 471 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

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 allows these users to secure importation permit/s (see section (4) 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.

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

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

Hist.: OLCC 25-1990, f. 12-19-90, cert. ef. 2-1-91; OLCC 16-1999, f. 11-2-99, cert. ef. 12-31-99

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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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

845-005-0301**Purpose and Interpretation**

(1) ORS 471.313 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, including 471.030, ORS 471.040, ORS 471.730(1) & (5)
Stats. Implements: ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0302**Regular License**

As used in OAR chapter 845, regular license means any license that may be issued for an annual period.

Stat. Auth.: ORS 471, including 471.030, ORS 471.040, ORS 471.730(1) & (5)
Stats. Implemented: ORS 471.292 & ORS 471.730(5)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0303**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, including ORS 471.040, ORS 471.157, 471.730(5) & (6)
 Stats. Implemented: ORS 471.155, ORS 471.168, ORS 471.311 & ORS 471.313
 Hist.: OLCC 8-1994, f. 12-23-94, cert. ef. 1-1-95; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-005-0057

845-005-0304

Local Government Recommendations: Requirements for Local Governments and License Applicants

(1) ORS 471.166 provides that the Commission may take into consideration a local government's timely written recommendation on initial and renewing licenses, and allows the Commission to extend by rule the time allowed a local government to render its written recommendation.

(2) If the local government has not provided a written recommendation to the Commission within the time frames allowed by Sections (5) and (6) of this rule, the Commission shall proceed as if the local government has made a favorable recommendation.

(3) The Commission requires each applicant for an initial license to provide to the local government written notice of the filing of the application. The form of the written notification shall consist of a legible copy of the Commission's Liquor License Application form for license applications, and legible copies of each Individual History form and Business Information form submitted with the license application.

(4) The applicant shall submit to the Commission a dated copy of a receipt or other appropriate dated documentation of compliance with subsection (3) of this rule, within ten days of applicant's provision of notification to the local government.

(5) Following notification by the applicant as stated in section (4) of this rule, the Commission shall allow a local government 45 days in which to provide a written recommendation to the Commission on the initial license application. However, if within 45 days of the date the applicant for an initial license gives notice to the local government, the local government files with the Commission a written request that meets the requirements of section (7) of this rule, the Commission shall allow the local government an additional 45 days within which to render its written recommendation on the license application.

(6) The Commission provides written notice to each local government of the annual licenses in the locality that are both due to expire within three months and are subject to local government renewal recommendations. If, within 60 days of the date the Commission has given notice to the local government, the local government files a written request with the Commission that meets the requirements of section (7) of this rule, the Commission shall allow the local government an additional 45 days within which to render its written recommendation on the application to renew a license.

(7) The local government's written request must set forth the reason additional time is needed, state that the local government is considering making an unfavorable recommendation, and state the specific grounds being considered toward an unfavorable recommendation. Valid grounds for an unfavorable recommendation are stated in OAR 845-005-0308(3).

(8) For the purposes of this rule an unfavorable recommendation is a recommendation to deny a license or to issue a restricted license.

[ED. NOTE: Forms referenced are available from the agency.]
 Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
 Stats. Implements: ORS 471.166
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 22-2003, f. 12-16-03, cert. ef. 1-1-04

845-005-0306

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 alcoholic 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 845-006-0480 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, places of worship, 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 applicants eligibility for a license; and

(C) Participating in the Commissions licensing process.

(4) The applicant will, by providing a copy of the Commissions 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implements: ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0308

Valid Bases for Adverse Local Government Recommendations and for Commission Use of Information Received from the Public

(1) ORS 471.166(1) authorizes the Commission to take into consideration the recommendation of the local governing body before granting or denying a license. ORS 471.166(5) requires the Commission to state by rule the valid grounds for a local governing bodys unfavorable recommendation on any license application, and requires the Commission to limit valid grounds to those considered by the Commission in making an unfavorable determination on a license application.

(2) For purposes of this rule an unfavorable determination is license refusal or license restriction.

(3) For the unfavorable recommendation of a local governing body to be valid, the grounds must be found in the license refusal bases of ORS 471.313(4), 471.313(5), OAR 845-005-0320, 845-005-0325 or 845-005-0326, or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.

(4) Organizations, facilities, government agencies, 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 the laws specified in section (3) of this rule. Reliable factual information includes personal observations of activities in or around the proposed licensed location, as opposed to opinion, hearsay, feelings, beliefs or speculation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.166 & ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0311

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 compensations;

(c) Any person or firm who contracts to provide food service or to manage or operate any part of 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 845-006-0475). For purposes of this subsection, a bona fide loan that entitles the lender to a return of only the principal 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, financial interest exists if a person may financially benefit or suffer based on the performance of the licensed business. Examples of persons having a financial interest in the business include:

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

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

(c) Any person who gives money or property for the licensed business and who

(A) Exercises control over or participates in the management of the licensed business; or

(B) Is employed by the licensed business; or

(d) The spouse or domestic partner of the licensee or license applicant. For purposes of this rule, domestic partners are individuals who share the same regular and permanent address and who share joint financial assets, resources, accounts or obligations, such as home ownership, checking or banking accounts, brokerage accounts or health care coverage.

(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, including ORS 471.030, ORS 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.757
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2002, f. 6-12-02 cert. ef. 7-1-02

[ED. NOTE: Forms referenced are available from the agency.]
 Stat. Auth.: ORS 471, including 471.030, ORS 471.040, ORS 471.730(1) & (5)
 Stats. Implemented: ORS 471.757
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0312**Forms Required for License Applications**

(1) As a part of the application:

(a) The applicant or applicants for a license shall submit a completed *Liquor License Application* form.

(b) The licensee submitting a request for approval of a change as required by Commission rules must submit a signed and dated request in writing.

(c) All individual applicants, all general partners in a limited partnership, limited partners whose investment commitment is ten percent or more of the total investment commitment, all members in a limited liability company or partnership whose investment commitment or membership interest is ten percent or greater, all directors who own or control three percent or more of the voting stock, principal officers (as defined in OAR 845-006-0475) 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 completed Individual History form.

(d) All applicants will submit a statement of funding, and verification of the funding source(s). As part of investigation under OAR 845-005-0311, commission staff may require any applicant to submit additional financial information, including, but not limited to, a financial statement and documentation of the origination of funds.

(e) Any applicant that is a registered entity, and any registered entity that has a ten percent or greater ownership interest in an applicant-registered entity, must complete a questionnaire that lists, as appropriate, the officers, directors, shareholders, general and limited partners, or members of the entity. If a corporation has more than twenty shareholders or a limited partnership has more than twenty limited partners, only those with a ten percent or greater investment interest need be listed.

(f) Each principal manager will submit a completed *Individual History* form. For purposes of this rule a principal manager is an individual responsible for hiring, firing or evaluating the managers of licensed premises or who personally manages a licensed premises that is not personally managed on-premises by the licensee.

(2) For the purposes of this rule a registered entity is a legal form of organization required to register as such with the Oregon Secretary of State and includes such forms as a corporation, limited liability company, limited liability partnership and limited partnership. Trusts, family trusts, and general partnerships are not registered entities for the purposes of this rule.

(3) If a legal entity applying for a license is wholly owned by another legal entity and was created in whole or in part to apply for the license, the Commission may require the parent legal entity to complete the forms and disclosures this rule requires of an applicant, and may treat the parent legal entity as an applicant for the purposes of determining eligibility for a license.

(4) The Commissions Director or the License Process Director may waive the requirements of this rule to take account of unusual or extraordinary circumstances. These circumstances 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.

845-005-0314**Refusal to Accept an Application**

(1) ORS 471.311(2) authorizes the Commission to reject any application that is not in the form required by rule. This rule defines the required form of a complete application. The Commission shall reject any application that is not in the form required by this rule. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(2) Any Commission forms, statements or requests required as part of an application shall be completed legibly to qualify for acceptance. To be legible as required by this rule, a form, statement or request must be signed and dated by the applicant and made or completed:

(a) In the English language;

(b) By typing or by printing that is clearly legible to Commission staff.

(3) Any floor or plot plan sketches required by this rule shall be completed legibly in ink on the Commission's *Floor Plan* form, be reasonably to scale and set forth in a manner that allows a person unfamiliar with the property to understand the general layout of the premises, and the boundaries and uses of areas proposed to be licensed.

(4) A complete application shall include any forms, statements or requests required by OAR 845-005-0312, all fully completed and signed and dated.

(5) A complete application shall include disclosures and documentation regarding parties with ownership or financial interest as defined by OAR 845-005-0311 as follows:

(a) Documentation of funding sources described on the Statement of Funding form. For instance, if funding is from a bank loan, documentation may be a copy of the loan agreement or the bank's written verification of loan commitment. Commission staff may require further documentation in the course of license investigation;

(b) Lease summary form(s) if the applicant is leasing the real property, equipment, furnishings or business at the location proposed to be licensed;

(c) Purchase agreement summary form(s) if the applicant is buying the real property, equipment, furnishings or business at the location proposed to be licensed and, if the purchase transaction has not been closed, a copy of the applicant's accepted earnest money agreement;

(d) Franchise agreement summary form if the applicant is or will be a franchisee at the location proposed to be licensed;

(e) If the applicant is not an individual, but is a registered entity as defined in OAR 845-005-0312(2) (for instance a corporation, a limited partnership, a LLC) and registered as such with the Oregon Secretary of State, a copy of such registration and a completed form showing the individuals and persons who are the owners, principals, directors, officers, trustees, investors, members and/or partners in the applicant registered entity.

(f) If any owner, member or partner with a 10% or greater ownership interest in the applicant registered entity is itself a registered entity, the applicant shall provide a completed form showing the individuals and persons who are the owners, principals, directors, officers, trustees, investors, members and/or partners in that registered entity.

(6) A complete application shall include documentation and disclosures that record how the applicant proposes to operate the licensed business, and demonstrate the applicant's qualification for a liquor license, as follows:

(a) Floor or plot plan sketch showing the areas proposed to be licensed for any Full or Limited On-Premises Sales license or Brewery Public House license, including identification of table seating that meets the dining seating requirement of OAR 845-006-0460 or 845-006-0461 if the application is for a Full On-Premises license;

(b) Floor or plot plan sketch showing the proposed on-premises alcohol service or consumption areas of any manufacturer's licensed premises;

(c) Operating data questionnaire form if the applicant will sell alcoholic beverages at retail;

(d) Food service proposal form if the application is for a license or privilege that requires food service to patrons at the licensed premises;

(e) All supporting documents required as attachments to the Commission's food service proposal form;

(f) If the application is by a private club for a Full On-Premises Sales license, a copy of the club's charter and copies of documentation of current dues-paid club membership of 200 or more members with voting rights in the affairs of the club.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stat. Implemented: ORS 471.311(2)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2002, f. 2-15-02 cert. ef. 3-1-02

845-005-0315

Applications: Refusal to Process

(1) ORS 471.155 requires certain licensees to post a bond or the equivalent to guarantee payment of privilege taxes, and allows the Commission to require a license applicant to get a recommendation from the local governing body. ORS 471.168 and OAR 845-005-0400 require certain licensees to maintain liquor liability insurance or a liquor liability bond. ORS 471.311(1) requires an applicant to provide pertinent information.

(2) After accepting an application, Commission staff must obtain additional information and documentation from the applicant in order to investigate and process the application. The Commission may refuse to process an application if:

(a) The applicant for an initial license has not submitted to the Commission proof of having provided notice of license application to the local government as required by OAR 845-005-0304(3) and (4).

(b) The applicant for license renewal when subject to a local government recommendation as provided by ORS 471.166(3) and OAR 845-005-0360, has not paid to the local government the fee set by the local government as authorized by ORS 471.166(7) and (8).

(c) The applicant who is subject to the bonding requirements of ORS 471.155(1) has failed to post a tax bond or the equivalent as required.

(d) The applicant who is subject to the liquor liability insurance requirements of OAR 845-005-0400 has failed to obtain or maintain liquor liability insurance or bond as required.

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

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stat. Implemented: ORS 471.311(1), ORS 471.155; 471.313 & ORS 471.168.

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2002, f. 2-15-02 cert. ef. 3-1-02

845-005-0320

License Refusal Reasons that Can Not be Overcome

The following criteria will preclude issuing a license:

(1) The applicant has or would have an interest in another liquor business that ORS 471.313(3), 471.394, or 471.396 prohibits.

(2) The applicant seeks a license or sales authority that requires food service and is unable to show the applicant will comply with the food service requirements set by the rules of the Commission.

(3) The applicant seeks a Full On-Premises Sales license as a commercial establishment as defined in ORS 471.001(2) and will not be open to the public to the extent Commission rules require.

(4) The applicant seeks a Full On-Premises Sales license as an "other public location" as allowed by ORS 471.175(2)(d) and will not allow public access to its premises.

(5) The applicant seeks a Full On-Premises Sales license as a private club as allowed by ORS 471.175(2)(a) and the applicant has fewer than 200 members or has been chartered for 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.

(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 Course as ORS 471.542 and the Commission rules require.

(8) The applicant has not paid an outstanding fine to the Commission. ORS 471.313(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 who is subject to the bonding requirements of ORS 471.155(1) has failed to post a tax bond or the equivalent as required.

(10) The applicant who is subject to the liquor liability insurance requirements of OAR 845-005-0400 has failed to obtain or maintain liquor liability insurance or bond as required.

(11) The applicant for an initial license has not completed Commission-given law orientation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.313 & ORS 471.168

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-005-0325

License Refusal Reasons: Applicant Qualifications

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 inadequate financial resources to build or operate the licensed premises as proposed, or has inadequate financial resources to meet the financial obligations of the licensed business. This section does not apply to license renewal applications.

(2) The applicant has not built the licensed premises, or has not operated the licensed business, substantially as proposed by the applicant and previously approved by the Commission.

(3) The applicant can not or will not provide an employee 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.

(4) Alcohol or Controlled Substance History or Record:

(a) The applicant has a recent history or record of using alcohol 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 applicants 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 since the commission of the crime in determining whether the applicant is an acceptable future compliance risk.

(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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313, ORS 183
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0326**License Not Demanded by Public Interest or Convenience**

ORS 471.313(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 areas 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 refusal basis includes, but is not limited to, a showing by the applicant that:

(A) Alcoholic beverage sale or service at the premises will not contribute to the problems, and

(B) The applicant has a willingness and ability to control the proposed premises and patrons' behavior near the licensed premises. When assessing the applicant's willingness and ability, the Commission will consider factors including but not limited to the applicant's relevant experience, and the applicant's reasonable and credible operating and security plans.

(c) This criterion does not apply to renewal applications or to changes of ownership with no change in license privileges or operation.

(4) Off-Premises Sales License: The applicant seeks an Off-Premises Sales license at an outlet that sells petroleum products and does not or will not maintain a wide variety of grocery items available for 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) 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 471.313(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.

(6) 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 471.313(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, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2001, f. 12-18-01, cert. ef. 1-1-02; OLCC 12-2004, f. 10-15-04 cert. ef. 11-1-04

845-005-0327**Applicant not an Acceptable Future Compliance Risk**

(1) ORS 471.313(1) allows the Commission to deny a license that public interest or convenience does not demand. ORS 471.313(4) and OAR 845-005-0325 specify license refusal bases related to the applicant's personal qualification for a license. The matrix at section (6) of this rule is the decision-making tool the Commission uses in lieu of using any of the following license refusal bases individually: ORS 471.313(4)(b) — false statements to the Commission. ORS 471.313(4)(d) — convicted of felony or violating a liquor law in Oregon. OAR 845-005-0325(4) — record or history of using alcohol or controlled substances to excess. OAR 845-005-0325(5) — felony conviction. OAR 845-005-0325(6) — false or misleading information to the Commission. An incident or conviction that is relevant under the matrix may also be relevant under a license refusal law or rule that is outside the matrix. In such a case, the Commission may choose to evaluate such an incident or conviction directly under the applicable provision that is outside the matrix.

(2) An individual who receives a total of ten or more points under the matrix in section (6) of this rule is not an acceptable liquor law compliance risk. If an individual receives ten or more points under the section (6) matrix, the Commission shall deny the license application as to that individual, except as provided in this rule.

(3) Points stated in the section (6) matrix of this rule are assigned for each separate conviction or incident. Where more than one such row would be applicable based on a single incident, such as hit-and-run when intoxicated, only the highest points of a single row shall be counted.

(4) The Commission shall not count points assigned to an individual through the section (6) matrix if:

(a) At the time of the incident or conviction giving rise to the points, the individual had a medically diagnosed disability, which diagnosis was made prior to or as the result of the incident or conviction; and

(b) The individual has released to the Commission the diagnosis, and a certificate or statement from the physician or treatment provider that the individual has completed or is actively involved in a state-certified treatment program for controlled substance or alcohol abuse, and is following treatment recommendations; or, for other medically diagnosed disabilities, the individual has released to the Commission the diagnosis, and a certificate or statement from the physician or treatment provider that the individual is receiving treatment, as appropriate, and is following any treatment recommendations; and

(c) Where addiction to a substance is the basis of the disability, the individual has not used or consumed the substance within 24 months of the date of the license application, and the individual has met all other licensing requirements of the Commission, the Commission may issue the individual a license expressly conditioned on the individual's continued abstinence from using or consuming the substance. Use or consumption of said substance shall be grounds for immediate cancellation of the license.

(5) As used in this rule,

(a) "Conviction" includes a plea of no contest. Time passage after a conviction is counted from the date of conviction or the date the individual is released from custodial supervision, whichever date is later, to the date of the current liquor license application filing.

(b) Time passage after an incident not resulting in a conviction is counted from the incident date to the date of the current liquor license application filing.

(c) "Material fact" means any fact which would affect application of this rule.

(6) Matrix:

(a) Felony Conviction: Driving while suspended or any crime involving violence or the threat of violence, alcohol, or controlled substances. Points: Under 4 years — 10 points; From 4 to 6 years — 7 points; From 6 to 12 years — 4 points.

(b) Misdemeanor Conviction for any crime involving, or resulting from use of, alcohol or controlled substances, or incident of violence or unlawful behavior involving, or resulting from the use of, alcoholic beverages or controlled substances. Points: Under 4 years — 5 points; From 4 to 6 years — 3 points; From 6 to 10 years — 1 point.

(c) Driving under the influence of intoxicants or while intoxicated or impaired unless found not guilty. Time passage is from date of incident. Points: Under 2 years — 6 points; From 2 to 4 years — 5 points; From 4 to 6 years — 4 points; From 6 to 8 years — 3 points; From 8 to 12 years — 2 points; From 12 to 20 years — 1 point.

(d) Intentional Misrepresentation or Omission of Material Fact to OLCC. Points: Current application — 10 points; Under 1 year — 6 points; From 1 to 5 years — 4 points.

Stat. Auth.: ORS 471, including 471.030; 471.040 & 471.730(1), (2) & (5)

Stats. Implemented: ORS 471.311, 471.313 & 471.315

Hist.: OLCC 3-2003, f. 3-31-03 cert. ef. 4-1-03

845-005-0331

Licensing Exterior Areas

(1) The Commission shall refuse to license an exterior area unless the applicant shows good cause that outweighs the refusal basis. The following sections of this rule state the refusal reasons that apply to exterior areas.

(2) The applicant or licensee requests licensing of an area controlled by the local governing body, and the local governing body has not approved the use proposed by the applicant or licensee.

(3) The exterior area proposed to be licensed is not adjacent to the licensees existing or the applicants proposed licensed premises.

(4) The applicant or licensee fails to demonstrate there will be adequate supervision of the area so as to prevent violations of the liquor laws.

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

Stats. Implemented: ORS 471.313 & ORS 471.175(1)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0332

Tour Boat License

(1) ORS 471.182 allows the Commission to issue a Full On-Premises Sales 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 Full On-Premises Sales 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 471.182(2)(c);

(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 90 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 845-009-0075, must successfully complete an approved Alcohol Server Education Course.

(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 90 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 845-009-0075, must successfully complete an approved Alcohol Server Education Course.

(c) Service Permits. The licensee, applicant, or Server Education 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 845-006-0340.

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

Stats. Implemented: ORS 471.182

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02

cert. ef. 11-1-02

845-005-0336

Certificate of Authority Holder's Sales Employees

For the purposes of ORS 471.162(3), a Certificate of Authority holder is a licensee of the Commission authorized to sell and ship malt beverages and wine to licensed Oregon wholesalers. Employees of a Certificate of Authority holder may sell alcoholic beverages on the employers behalf to licensed Oregon wholesalers.

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

Stats. Implemented: ORS 471.162(3)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0340

Additional Criteria for Full On-Premises Licenses

(1) ORS 471.175 allows the Commission to grant the Full On-Premises Sales license to the following types of businesses:

(a) Private clubs;

(b) Certain public passenger carriers;

(c) Commercial establishments;

(d) Public locations, other than those described in (a) to (c) of this section; and

(e) Caterers.

(2) To qualify for a Full On-Premises Sales license, the applicant must show in writing specifically how the applicant will comply with the food service rules of the Commission for the business type as stated in section (1) of this rule or, if the applicant will oper-

ate more than one such type of business at a business location, for the types of business the applicant will operate, and receive Commission approval of the proposal. Those food service rules are found at OAR 845-006-0460 through 006-0468.

(3) The applicant for a Full On-Premises Sales license at a lodging facility that does not meet the food service standards of OAR 845-006-0460 for a commercial establishment must operate at least 100 guest rooms and have banquet facilities for at least 100 patrons at the location proposed to be licensed, and meet the food service requirements of OAR 845-006-0464(3).

(4) This rule does not apply to renewal applications.

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

Stats. Implemented: ORS 471.175

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0355

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 off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;

(b) 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;

(c) 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; OAR chapter 137, division 003; 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), and operating other than the permit or license permits. Operating other than the permit or license 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 proce-

dures in ORS Chapter 183; OAR chapter 137, division 003; 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.405(1) & ORS 183

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01

845-005-0360

License Renewal: Requirements for Applicants

(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 471.311(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 471.311(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 bond or equivalent that ORS 471.155 requires and the liquor liability insurance or bond that ORS 471.168 and OAR 845-005-0400 require.

(3) Local government body recommendation. The Commission requires all applicants seeking renewal of Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, and Brewery-Public House licenses to acquire the recommendation of their local governing body, and pay to the local governing body all fees as established by ORS 471.166(7) and (8).

(4) Late Renewal Fee:

(a) ORS 471.311(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 processing of the application through no fault of the licensee.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.155, 471.311(3),(4) & (5), 471.313, & 471.168
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 1-2001, f. 2-14-01, cert. ef. 2-19-01 thru 8-17-01; OLCC 7-2001, f. 8-15-01, cert. ef. 8-18-01

845-005-0365

Change of Licensee; Change of Location

(1) The Commission may allow a change of licensee at a licensed business. The proposed new owner must apply for a new license.

(2) The Commission may allow a change of location of a licensed operation. The licensee must apply for a new license for the new location.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.313, ORS 471.292(1)(e) & ORS 471.292(2)(d)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0366

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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.030 & ORS 471.292
Hist.: OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-005-0066

845-005-0400

Liquor Liability Insurance or Bond Requirement

(1) ORS 471.313(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 471.313(2) requires applicants listed in ORS 471.168 to maintain liquor liability insurance or bond. In addition to other requirements, the Commission has determined that licensees listed in ORS 471.168 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 471.168 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 471.168 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.313(4)(i) & ORS 471.168

845-005-0405

Full or Limited Licensee Small-Scale Private Catering

(1) ORS 471.184(1) allows the holder of a Full On-Premises Sales or Limited On-Premises Sales license to serve the alcoholic beverages permitted by the license for on-premises consumption when catering temporary events at locations other than the licensed premises where the licensee will furnish food and beverage services for no more than 100 guests of the catering client. This rule refers to this type of catering as small-scale private catering.

(2) For purposes of this rule, small-scale private catered events are events where:

(a) There is a contract between a client and the licensee to provide food service for a specific number of guests or participants;

(b) The licensee is not the client;

(c) Beverage service is in conjunction with food service; and

(d) The catered event must not be of more than one days duration unless it is a closed conference or seminar.

(3) ORS 471.184(1) authorizes the Commission to grant to qualified licensees general pre-approval of all future small-scale private catering.

(4) The licensee's application for general pre-approval for future small-scale private catering shall be made in writing and include:

(a) A plan for managing patronage by minors;

(b) Identification of the counties and incorporated cities where the licensee will usually cater events authorized under this section;

(c) Identification of any proposed catering location that is owned or controlled by the licensee; and

(d) Menu or sample menu showing type of food service proposed to comply with OAR 845-006-0462;

(e) Identification of premises proposed to be licensed if the request is for specific future events.

(5) The Commission may deny, cancel or restrict temporary off-premises license use for small-scale private catering for any reason for which the Commission may deny, cancel or restrict a regular license.

(6) General pre-approval shall not include approval of any event of more than one days duration except as allowed by section (2)(d) of this rule, or approval of small-scale private catering at a particular location more than one day per week. For the purposes of this rule a day is from 7:00 am until 2:30 am on the succeeding calendar day.

(7) Full On-Premises Sales or Limited On-Premises Sales licensees may engage in small scale private catering without having received general pre-approval if the licensee first has given the Commission specific written notice of each event, which notice is received by the Commission within five calendar days of the event and includes the event date, duration, expected attendance, exact location, and a description of the type of event.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.184

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0410

Full or Limited On-Premises Sales Licensee Temporary License Use at Other Locations

(1) A person must obtain from the Commission a license or authority to sell alcoholic beverages on premises that the Commission has not licensed. ORS 471.405 establishes a prohibition on the sale of alcoholic beverages without a license or authority. ORS 471.406 defines sale of alcoholic beverages.

(2) ORS 471.184(2) allows the holder of a Full On-Premises Sales or Limited On-Premises Sales license to serve the alcoholic beverages permitted by the license for on-premises consumption at temporary events at locations other than the licensed premises after having obtained prior written Commission approval.

(3) Except for private, large-scale catered events, licensees must apply in writing, using the Commission form provided for this purpose. The Commission may reject any application which is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsec-

tion is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(4) For purposes of this rule, private large-scale catered events are events that are not open to the general public, are catered for more than 100 guests or participants, have a contract between the client and the licensee to provide food service for a specific number of guests or participants, beverage service is secondary to and in conjunction with food service at the event, the licensee is not the client, and the catered event is not of more than one days duration unless it is a closed conference or seminar.

(5) Despite section (4) of this rule, a large-scale catered event that otherwise qualifies under section (4) standards may be open to the general public if the purpose of the event is fund raising for a charitable or non-profit organization that is registered as such with the Secretary of State.

(6) A licensee who does not have general pre-approval for private large-scale events must apply for approval for each event as required by section (11) of this rule.

(7) The Commission may grant general pre-approval for private, large-scale catered events such as weddings, receptions, conferences, company picnics and parties, and company sponsored events. The application for Commission approval shall be in writing and consist of:

- (a) A brief description of the types of events to be catered;
- (b) A control plan for managing patronage by minors and alcohol consumption by adults;
- (c) Identification of the counties and incorporated cities where the licensee will usually cater events authorized under this section;
- (d) Menu or sample menu showing type of food service proposed to comply with OAR 845-006-0462.

(8) For large-scale catered events at which more than 500 guests are expected, the licensee shall give the Commission at least five days advance written notice of the event. The notice must include the event date, duration, expected attendance, exact location, and a description of the type of event.

(9) The Commission may deny or revoke general pre-approval according to the criteria of sections (12) and (13) of this rule.

(10) Applications that are not for general pre-approval shall be submitted as required by section (11) of this rule. Licensees shall submit separate written applications for events at different locations, and for events at the same location that are not substantially similar with regard to entertainment, alcohol sales emphasis, minor patronage, extent of licensed premises, and hours of proposed alcohol sales and consumption.

(11) The licensee's application shall include:

- (a) A control plan for managing patronage by minors and alcohol consumption by adults;
- (b) Identification of all individuals to be employed by the licensee to manage the premises proposed for license authority;
- (c) Identification of the premises proposed to be licensed;
- (d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;

(e) If the applicant holds a Limited On-Premises Sales license, a statement of the type of food service to be offered and the proposed hours of food service;

(f) If the applicant is a Full On-Premises Sales licensee, a written proposal showing compliance with the food service standards of OAR 845-006-0462;

(g) The recommendation of the local governing body or police department where the licensee proposes to use license authority; and

(h) Processing fee established by Commission rule.

(12) The Commission may deny approval for any of the following reasons:

(a) The Commission concludes the licensee's off-premises license use constitutes an on-going business operation;

(b) The local governing body where the licensee proposes to use license authority recommends denying the request and the reason for the deny recommendation is supported by facts and consistent with the licensing standards of the Liquor Control Act and the Commission's rules, practice and policy;

(c) There is a basis under ORS 471.313, 471.315, or the rules of the Commission to deny renewal of, suspend, fine or cancel any liquor license held by the applicant in this state;

(d) The Commission concludes, based on the licensee's compliance record, recent record of problems at licensed premises, or the licensee's proposal, that the licensee is unwilling or unable to control temporary off-premises events adequately;

(e) The application is for a premises that currently holds a liquor license and that premises has been the location of temporary events, authorized under this section, for five or more days within the prior 12 months;

(f) The application is for license authority at a licensed premises that currently holds the same type of liquor license as is held by the applicant;

(g) The application is made by a Full On-Premises Sales licensee for use at a location licensed for Limited On-Premises Sales or is for use at a premises that currently holds a Full On-Premises Sales license and the applicant will not comply with the food service standards of OAR 845-006-0460;

(h) The application is for use at a licensed location where the license is currently suspended.

(13) The Commission may revoke approval for any of the grounds under which the Commission may deny renewal of a license.

(14) The Commission may authorize off-premises license use for no more than five days at a particular location. The Commission may grant additional authority for five or fewer days if the licensee's management of the event shows the licensee continues to be an acceptable compliance risk at the location.

(15) Commission staff investigates non-routine applications for off-premises license use. Non-routine applications include those that propose electronically amplified entertainment, a drinking environment as defined in OAR 845-006-0340(8), an operation that staff concludes requires employment of security personnel, or that has not received an unqualified grant recommendation from the local governing body or its delegated department. Commission staff assesses each application to determine if it is routine or non-routine. Applications must be submitted enough in advance of the event date to allow staff to assess and investigate.

(a) The Commission may refuse to process any routine application not submitted at least five business days in advance of the proposed event date.

(b) The Commission may refuse to process any non-routine application not submitted at least fifteen business days prior to the proposed event date if the applicant will operate a drinking environment as defined by OAR 845-006-0340(8).

(c) The Commission may refuse to process any non-routine application not submitted at least twenty-five business days prior to the proposed event date, if prior to the submission of the application, Commission staff provide notice to the applicant or the applicants representative that staff's investigation will include assessment of public safety or neighborhood impact matters, or the risk of disturbances or liquor law violations at the location proposed to be licensed.

(16) Submission of an application within the time lines stated in section (15) of this rule does not guarantee the Commission will have the resources to complete investigation of the application prior to the applications requested date(s).

(17) Alcohol servers at locations licensed under this rule must hold valid service permits.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.184(2)
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

**845-005-0415
 Special Event Winery and Special Event Grower Sales Licenses**

(1) ORS 471.223 authorizes the Commission to issue a Special Events Winery license to a Winery licensee. The special license may allow the licensee to sell wine and cider at retail for consumption on or off the licensed premises at a location other than that designated as the winery's licensed premises for a period not to exceed five consecutive days.

(2) ORS 471.227 authorizes the Commission to issue a Special Events Grower Sales license to a Grower Sales Privilege licensee. The special license may allow the licensee to sell wine and cider at retail for consumption on or off the licensed premises at a location other than that designated as the grower's licensed premises for a period not to exceed five consecutive days.

(3) Any special license application shall be made in writing and include:

- (a) A control plan for managing patronage by minors and alcohol consumption by adults;
- (b) Identification of the individuals to be employed by the licensee to manage events applied for under this section;
- (c) Identification of the premises proposed to be licensed;
- (d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;
- (e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, extent of expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;
- (f) License fees as established by ORS 471.311.

(4) Applicants must apply in writing using the Commission form provided for this purpose. The Commission may reject any application not completed fully and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(5) The Commission may deny, cancel or restrict a special license for any reason for which the Commission may deny, cancel or restrict a regular license.

(6) Commission staff investigates non-routine applications for special licenses. Non-routine applications include those that propose electronically amplified entertainment, a drinking environment as defined in OAR 845-006-0340(8), an operation that staff concludes requires employment of security personnel, or that has not received an unqualified grant recommendation from the local governing body or its delegated department. Commission staff assesses each application to determine if it is routine or non-routine. Applications must be submitted enough in advance of the event date to allow staff assessment and investigation.

(a) The Commission may refuse to process any routine application not submitted at least five business days in advance of the proposed event date.

(b) The Commission may refuse to process any non-routine application not submitted at least fifteen business days prior to the proposed event date if the applicant will operate a drinking environment as defined by OAR 845-006-0340(8).

(c) The Commission may refuse to process any non-routine application not submitted at least twenty-five business days prior to the proposed event date if prior to the submission of the application Commission staff provide notice to the applicant or the applicant's representative that investigation of the application will require assessment of public safety or neighborhood impact matters, or the risk of disturbances or liquor law violations at the location proposed to be licensed.

(7) Submission of an application within the time lines stated in subsection (6) of this rule does not guarantee the Commission will have the resources to complete investigation of the application prior to the applications requested date(s).

(8) The Commission may refund the special license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensees control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040, & 471.730(1) & (5)
 Stats. Implemented: ORS 471.223, ORS 471.730(5)
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-005-0420

Same-Day Retail Delivery of Package Alcohol with Meal Service

(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 Course. 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) Same-day delivery is limited to manufacturer-sealed containers of alcoholic beverages that may be sold for off-premises consumption under the license privilege, but not including kegs of malt beverages.

(4) To qualify for the same-day delivery privilege allowed by this rule, a licensee must:

(a) Have an Off-Premises Sales license and either a Full On-Premises Sales or a Limited On-Premises Sales license, or a Brewery-Public House license, and;

(b) Be in the business of preparing and serving regular meals on the licensed premises, and;

(c) Submit a complete written request for the privilege as specified in section (4) of this rule, and;

(d) Be approved by the Commission in writing.

(5) The licensee's request shall consist of the following:

(a) If the licensee does not hold a Full On-Premises Sales license, documentation that the licensee is in the business of preparing and serving regular meals on the licensed premises.

(b) A detailed proposal to deliver alcoholic beverages in compliance with the criteria of section (6) of this rule.

(6) To be approved for same-day delivery, the licensee must propose to comply with the following requirements:

(a) Food, excluding beverages, must account for at least 75% of the cost of the delivery.

(b) The licensee must use delivery vehicles that prominently display the licensee's trade name;

(c) The licensee must make all deliveries before 9:00 p.m.;

(d) 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;"

(e) The licensee must deliver only to a person who is at least 21 years old and must not deliver to a visibly intoxicated person;

(f) The licensee must deliver only to a home or business;

(g) The licensee must not deliver kegs;

(h) 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.

(7) A licensee may request exemption from sub-section (6)(a) of this rule. The Commission will determine the merit of the request based on the following criteria:

(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.

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

Stats. Implemented: ORS 471.305
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02
 cert. ef. 11-1-02

845-005-0422

Next-Day Delivery of Package Alcohol; Wine and Cider Delivery by Winery Licensee

(1) ORS 471.305 restricts retail wine, cider, 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) The licensee’s license must include off-premises sales privileges for malt beverages to deliver malt beverages, off-premises sales privileges for wine to deliver wine or cider.

(3) A Winery licensee is authorized to ship not more than two cases of wine or cider 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.

(4) 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.

(5) The licensee may not deliver kegs without prior written approval for each delivery.

(6) As used in this rule, “made by the licensee” includes deliveries by the licensee’s employee who holds a current Service Permit and by a common carrier who has a Commission-approved delivery plan. Common carrier delivery plans are assessed under the guidelines of OAR 845-005-0424.

(7) The licensee may make deliveries only in compliance with the requirements of OAR 845-006-0398.

Stat. Auth.: ORS Ch. 471, including 471.030, 471.305, and 471.730(1),(5), & (6)
 Stats. Implemented: ORS 471.223 & ORS 471.305
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-005-0423

Wine Shipment by Out-of-State Licensee

(1) A retailer or winery licensed in another state that wants to ship wine or cider 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) Is authorized to ship not more than two cases of wine or cider 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;

(b) May accept written or telephone orders for wine or cider. The licensee must wait until the next day to ship a telephone order;

(c) May use only a common carrier that has a Commission-approved delivery plan. Requests for approval of common carrier delivery plans are evaluated under the guidelines of OAR 845-005-0424;

(d) Must prominently label each shipping container of any wine or cider shipped under this subsection: “Alcoholic Beverages — Do not deliver to a person who is under 21 years of age or visibly intoxicated.”

(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)(c) 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 or cider in Oregon.

Stat. Auth.: ORS 471, including 471.030, ORS 471.229, 471.730(1), (5) & (6)
 Stat. Implemented: ORS 471.229
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-005-0424

Guidelines for Approval of Common Carrier for Licensee Deliveries

The Commission will evaluate and may approve a common carriers plan to deliver alcohol for licensees as allowed under OAR 845-005-0422 and 845-005-0423 based on:

(1) Specifics of the plan, including:

(a) Hours of delivery;

(b) Minimum age of delivery persons;

(c) Means of ensuring delivery containers are labeled, Alcoholic beverages — Do not deliver to a person who is under 21 years of age or visibly intoxicated;

(d) Assurance the delivery person will make personal delivery in compliance with the requirement of Section (1)(c) of this rule.

(2) The length of time the carrier has been in business and its record of compliance with the law.

(3) The carriers training program for delivery personnel and delivery practices.

(4) The carriers willingness and ability to comply with its plan.

Stat. Auth.: ORS 471, including 471.229, 471.030, 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.405 and ORS 471.229
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0427

Retail On-Premises Malt Beverage or Wine Sampling Involving Manufacturer or Certificate of Approval Holder

(1) Certificate of Approval holders and Oregon Winery, Grower Sales Privilege, Brewery-Public House, Brewery, and Warehouse licensees may conduct or assist at tasting events at Full On-Premises Sales and Limited On-Premises Sales licensed premises, and at Off-Premises Sales licensed premises which sell petroleum products in compliance with OAR 845-006-0450, for the purpose of promoting their wine, cider, and malt beverage products to the public.

(2) Sample tasting events permitted under this rule:

(a) Do not require a special or temporary license;

(b) Must be conducted in compliance with OAR 845-006-0450.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.402

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

845-005-0428

Retail On-Premises Distilled Spirits Sampling Involving Distillery Representative

(1) Full On-Premises Sales licensees may allow distillery representatives to attend and provide product information at distilled spirits educational seminars and sample tasting events that the licensee conducts, provided the licensee pays for any advertising and buys the distilled spirits from a retail sales agent of the Commission.

(2) At any event allowed by section (1) of this rule, the licensee shall limit the activities of distillery representatives in the following ways:

(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 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

(3) Despite section (1) and (2)(a) of this rule, distillery representatives may offer samples not exceeding .25 ounce by measured pour to those attending an industry trade show.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)
 Stats. Implemented: ORS 471.398 & ORS 471.750
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 3-2001(Temp), f. & cert. ef. 8-10-01 thru 2-6-02; OLCC 3-2002, f. & cert. ef. 2-15-02

845-005-0440

Temporary Sales Licenses

(1) A person must obtain from the Commission a license or authority to sell alcoholic beverages on premises that the Commission has not licensed. ORS 471.405 establishes a prohibition on sale of alcoholic beverages without a license or authority. ORS 471.406 defines sale of alcoholic beverages.

(2) ORS 471.190 authorizes the Commission to issue a Temporary Sales license to a person who is not a licensee of the Commission. The Commission may issue a Temporary Sales license only to:

- (a) A nonprofit or charitable organization that is registered with the state;
- (b) A political committee that has a current statement of organization filed under ORS 260.039 or 260.042;
- (c) An agency of the State;
- (d) A local government or an agency or department of a local government;
- (e) Any person otherwise qualified under the Commission's licensing standards, if the Commission concludes minor patrons should be allowed anywhere on the licensed premises throughout the time the event occurs. The Commission's standard for making this decision is OAR 845-006-0340.

(3) The Commission may authorize a Temporary Sales licensee to sell at retail by the drink wine, malt beverages, cider and distilled liquor. The Commission may authorize retail package sales of wine, malt beverages or cider under a Temporary Sales license.

(4) The Commission may authorize package sales of wine, malt beverages or cider under a Temporary Sales license for the purpose of a raffle. The Commission shall issue a Temporary Sales license for the purpose of a raffle only to a nonprofit or charitable organization that is registered with the state.

(5) Applicants must apply in writing, using the Commission form provided for this purpose. The Commission may reject any application not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(6) The application for a temporary license under this rule shall include:

- (a) A control plan for managing patronage by minors and alcohol consumption by adults;
- (b) Identification of the individuals to be employed by the licensee to manage events on the licensed premises;
- (c) Identification of the premises proposed to be licensed;
- (d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;
- (e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;
- (f) The recommendation in writing of the local governing body or the department it has authorized to make such recommendation;
- (g) License fees as established by ORS 471.311.

(7) Alcohol servers at locations licensed under subsections (2)(b)–(e) of this rule must hold valid service permits unless specifically exempted under authority of subsection (8) of this rule.

(8) The Commission may waive the service permit requirement for the holder of a Temporary Sales license issued under subsections (2)(b)–(e) of this rule, and the licensee's alcohol servers, if:

- (a) The license is used only for package sales; or if
- (b) The Commission concludes alcohol service by individuals who do not hold a service permit does not pose a significant risk for public safety problems or non-compliance with liquor laws; and
- (c) Each alcoholic beverage point-of-sale at the licensed location is staffed, at all times alcoholic beverages are being sold or served, by an individual who has completed a Server Education course successfully within 5 years prior to the date of the event.

(9) At events licensed under subsection (2)(a) of this rule, before allowing alcohol servers to sell or serve alcoholic beverages, the licensee must ensure that all alcohol servers have met one of the following standards:

- (a) The alcohol server has a valid service permit or has successfully completed a Server Education course within 5 years prior to the date of the event, or
- (b) The alcohol server has attended training provided by the licensee, and has read, signed and dated the Commission-provided brochure, What Every Volunteer Alcohol Server Needs to Know.

The licensee-provided training must address the topics included in the brochure, including but not limited to: minors and proper checking of identification, and how to recognize and respond appropriately to visibly intoxicated persons. At any time while on duty, the alcohol server shall make the signed brochure available for immediate inspection by any inspector or investigator employed by the Commission or by any other peace officer.

(10) If there are compliance problems with an operator or an event, the Commission may add other requirements for the education of servers at events licensed under this rule.

(11) The Commission may deny, cancel or restrict a temporary license for any reason for which the Commission may deny, cancel or restrict a regular license.

(12) The Commission may deny a temporary license if the applicant's license use is or will constitute an on-going business operation.

(13) The Commission may limit a single temporary license under this rule to no more than five consecutive event days at a single location. The Commission may grant additional temporary licenses for an event if the licensee's management of the event shows the licensee continues to be an acceptable compliance risk.

(14) Commission staff investigates non-routine applications for temporary licenses. Non-routine applications include those that propose electronically amplified entertainment, a drinking environment as defined in OAR 845-006-0340(8), an operation that staff concludes requires employment of security personnel, or that has not received an unqualified grant recommendation from the local governing body or its delegated department. Commission staff assesses each application to determine if it is routine or non-routine. Applications must be submitted enough in advance of the event date to allow staff assessment and investigation.

(a) The Commission may refuse to process any routine application not submitted at least five business days in advance of the proposed event date.

(b) The Commission may refuse to process any non-routine application not submitted at least fifteen business days prior to the proposed event date if the applicant will operate a drinking environment as defined by OAR 845-006-0340(8).

(c) The Commission may refuse to process any non-routine application that is not submitted at least twenty-five business days prior to the proposed event date if prior to the submission of the application, Commission staff provide notice to the applicant or the applicant's representative that investigation of the application will require assessment of public safety or neighborhood impact matters, or the risk of liquor law violations or public disturbances at the location proposed to be licensed.

(15) Submission of an application within the time lines stated in subsection (13) of this rule does not guarantee the Commission will have the resources to complete investigation of the application prior to the application's requested date(s).

(16) The Commission may refund the temporary license fee if the application is withdrawn by the applicant or denied by the Commission, if the event does not take place because of circumstances beyond the applicant's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)
 Stats. Implemented: ORS 471.190
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 4-2001(Temp), f. & cert. ef. 8-15-01 thru 2-11-02; OLCC 13-2001, f. 12-18-01, cert. ef. 2-12-02; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

**845-005-0445
 Temporary Authority**

(1) ORS 471.302 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. Temporary authorities to operate are not to exceed 90 days, unless an extension of up to an additional 30 days is granted under section (2) of this rule. 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

Chapter 471 and the Commission's Administrative Rules, OAR chapter 845.

(2) ORS 471.297 and 471.302 allow the agency Administrator to extend a temporary authority to operate for a period not to exceed 30 days if the Commission has not granted or denied the application at the end of the 90-day period. An extension of not more than 30 days may be granted by the agency Administrator under the following circumstances:

(a) The agency has not received a written recommendation from the local governing body as required by ORS 471.166 and OAR 845-005-0304; or

(b) An extension of time is necessary for the agency to complete its investigation or processing of the application. An extension of the temporary authority will not be granted if the sole basis is the applicant's failure to provide timely documentation which was requested pursuant to OAR 845-005-0315.

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

Stats. Implemented: ORS 471.302 & 471.297

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2003(Temp), f. 12-16-03, cert. ef. 1-1-04 thru 6-28-04; OLCC 6-2004, f. 5-19-04, cert. ef. 6-29-04

845-005-0450

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 471.292(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.

(a) The secured party must provide the Commission with the following information: 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 471.292(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 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.292(2)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

DIVISION 6

APPLICATIONS; REQUIREMENTS; RESTRICTIONS; PROHIBITED CONDUCT

845-006-0301

"Applicant" and "Licensee" Defined

Unless the context requires otherwise, "applicant" as used in ORS 471.313, and "licensee" as used in ORS 471.315, includes any general partner in a limited partnership and any limited partner whose investment commitment is ten percent or more of the total investment commitment; any principal officer (as defined in OAR 845-006-0475(1)(d)) or director in a corporation; any shareholder in a corporation who owns or controls ten percent or more of any class of stock; and any member of a limited liability company or limited liability partnership whose membership interest is ten percent or more of the total membership interest.

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

Stats. Implemented: ORS 471.313 & ORS 471.315

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0302

"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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.396(3) & ORS 471.396(4)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0335

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 appears to be 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 845-006-0340, Minor Postings.)

(4) Minor Employee and Service Permittee:

(a) A minor employee may be in a Number II, III-A after 9 p.m., 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 allow.

(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 licensee may, with prior Commission approval, designate space for 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 except as prohibited in OAR 845-006-0340(3). The minor must not buy, possess 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 845-006-0460.

(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, including ORS 471.030 & ORS 471.730

Stats. Implemented: ORS 471.430

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03; OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 4-2004, f. & cert. ef. 4-9-04

845-006-0340

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* for the purpose of attending a performance or lecture 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 writ-

ten security plan that convinces the Commission minors will not get alcohol;

(c) Minors may be in dance halls* for the purpose of attending a dance if drinking at the time of the dance is physically confined to areas prohibited to minors, and if alcohol service is incidental, and if:

(A) The areas where minors are allowed is lighted to allow effective monitoring of patron activity;

(B) The area where minors are allowed has minimal alcohol advertising or references;

(C) The area where alcohol is sold, dispensed and/or consumed is physically confined and is not visible from the area where minors are allowed, or if visible, has substantial barriers to ensure minors will not obtain alcohol;

(D) The licensee has a Commission approved security plan that convinces the Commission minors will be in an environment that is consistent with section (1) of the rule, where they will not get alcohol, and that the licensee will employ sufficient staff to monitor patron activity.

(E) If a liquor law violation involving a minor occurs, the Administrator may require that additional control measures be added to the security plan before the next license renewal date.

(d) Minors may be in a foyer or similar area if the area does not have a drinking environment*;

(e) 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)(d)(B) of this rule, and where drinking is minimal;

(f) 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;

(g) Minors may accompany their parent or legal guardian in the tasting room or tasting area of an Off-Premises Sales, Winery, Brewery, brandy Distillery or business with a Grower Sales Privilege license;

(h) Minors may be in areas of an Off-Premises Sales, Winery, Brewery, brandy Distillery or business with a Grower Sales Privilege license where there is no drinking;

(i) 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;

(j) 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 Section (2)(i) 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 This Premises", (Number I Minor Posting). The Commission typically assigns this post-

ing 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 From: ___ To: ___ (Hours) On: ___ (days)", (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)(d)(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)(d)(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) "Minors Allowed During These Hours Only. On: (days) from: ___ to: ___ and only for the purpose of consuming food, (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 or spouse age 21 or over", (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 for developing and completing 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) "Concert hall" and "performing arts center" mean a premises offering live performances of the arts such as music, dance, theater, or lectures where fixed seating is provided in the performance room for each ticket holder and there is no location provided for patron dancing.

(c) "Dance hall" means a premises or a portion of the premises which is not ordinarily used as a dining area, and where music is provided and where minors patrons or patrons of all ages are provided a location where they may dance.

(d) "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.

(e) "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.

(f) "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.

(g) "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.

(h) "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) Private clubs;

(B) Catered and temporary events;

(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)(d)(B). Some examples are convention centers, sports arenas, operations with banquet rooms, and multi-use outdoor areas; or

(D) Designated tasting areas in Off-Premises Sales licensed premises 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 including ORS 471.030, 471.730(1) & (3)

Stats. Implemented: ORS 471.430(3)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2003, f. 9-23-03 cert. ef. 11-1-03

845-006-0345

Prohibited Conduct

(1) Drinking on Duty: 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.

(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 471.178, 471.200 and 471.175 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. This prohibition does not apply to licenses permitting distilled spirits by the drink which were in existence and operating with a food service drive-up window prior to November 1, 1998.

(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).

(10) No Limited On-Premises Sales licensee, or the licensee's agent or employee, shall sell or otherwise provide a keg of malt beverages to go off-premises from any area where the Commission allows minor patronage. Violation of this section is a Category III violation.

(11) Promotions. Prohibited practices include:

(a) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price.

(b) Temporary price reductions on alcoholic beverages after 12:00 midnight.

(c) Conducting, operating, organizing, or promoting any "drinking contest" or "drinking game" that is designed to increase consumption at an extraordinary speed, or in increased quantities, or in a more potent form.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5) Stats. Implemented: ORS 471.178, 471.200, 471.315(1)(g), 471.412(2), 471.408 & 471.675

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 4-2003, f. 3-31-03 cert. ef. 4-1-03

845-006-0347

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, including but not limited to sexual intercourse, masturbation, or the rubbing, stimulating or touching of genitals whether covered or uncovered;

(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 discernibly 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 covered or 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, including 471.030, 471.040 & 471.730(1) & (5)

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); OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0047; OLCC 10-2002, f. 6-12-02 cert. ef. 8-1-02; OLCC 7-2004, f. & cert. ef. 5-19-04

845-006-0348

Unlawful Drug Activity on Licensed Premises

(1) ORS 471.316 provides the Commission will suspend or may cancel a Full On-Premises Sales, Limited On-Premises Sales, or Brewery-Public House license if the licensee is aware of unlawful drug use or sales on the licensed premises and subsequently fails to take immediate and effective action to prevent unlawful drug use or sales on the licensed premises. The licensee is aware of the drug use or sales if:

(a) The licensee or an employee of the licensee personally witnessed drug use or sales on the licensed premises; or

(b) Arrests for drug sales or seizures of drugs occurred on the licensed premises; or

(c) Arrests for drug sales occurred involving a person who used or sold drugs on the licensed premises and the licensee or employee witnessed or was informed of the arrest.

(2) Where there is subsequent drug use or sales as defined in section (1) of this rule within six months, a rebuttable presumption exists that the licensee's actions to prevent drug use or sales were not effective. The licensee may overcome the prima facie case by providing evidence showing immediate and effective steps were taken to prevent drug sales or use.

(3) The guidelines for penalties for violation of this rule are:

(a) A 10-day license suspension for the first violation within two years;

(b) A 30-day license suspension for a second violation within two years;

(c) Cancellation of the license for a third violation within two years.

(4) The Commission may impose a greater or lesser penalty than the ones specified above, if it finds aggravating or mitigating circumstances. In no case will a penalty for a violation of this rule be less than a one day suspension. The Commission will determine the date a suspension will take effect.

(5) The Commission may impose a civil penalty in addition to a license suspension for a violation of this rule.

(6) Nothing in this rule prevents the Commission from immediately suspending a license or permit for a violation of this rule, when the Commission determines there is a serious danger to public health or safety as specified in ORS 183.430(2).

(7) The requirements of sections (1) through (6) of this rule apply to dispenser licenses issued under former ORS Chapter 472 and to Restaurant and Retail Malt Beverage licenses issued under ORS Chapter 471. This section expires October 1, 2001.

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

Stats. Implemented: ORS 471.316, ORS 471.425(2) & ORS 183.430(2)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0349

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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.730(7)

Hist.: OLCC 1-1987, f. 1-5-87, ef. 4-1-87; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0049

845-006-0353

Distilled Spirits Samples and Promotions from a Distiller's Representative

(1) Licensees of the Commission may not accept samples of distilled spirits from distillery representatives, and may not allow distillery representatives to offer or give samples, or promote their prod-

uct on the licensed premises other than as allowed by OAR 845-005-0428.

(2) Licensees of the Commission may not accept payment for alcoholic liquor from a distillery representative and may not allow a distillery representative to pay for alcoholic liquor for patrons.

(3) Despite section (1) of this rule, Full On-Premises Sales licensees of the Commission may accept samples of distilled spirits from a distillery's agent if:

(a) The sample is of a product the licensee does not carry;

(b) Each sample does not exceed .25 ounce by measured pour; or the sample is in a manufacturer-sealed container which is not larger than 50ml.;

(c) No sample is sold, served, given or offered to a patron.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)
Stats. Implemented: ORS 471.398

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

845-006-0360

Maintenance of License Certificate, Restriction Document, Minor Posting Sign

(1) No licensee shall alter any license certificate, restriction document or minor posting sign issued by the Commission.

(2) All license certificates and posting signs issued or posted by the Commission must be maintained upon the premises in full public view. Any restriction document referred to in the certificates shall be maintained at the premises and shall be readily available to Commission staff and law enforcement officers.

(3) Public passenger carriers that are allowed to operate more than one vehicle under a single license may maintain copies of license certificates and restriction documents as required by section (2).

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

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0361

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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Hist.: LCC 14-1980, f. 4-25-80, ef. 5-1-80; Renumbered from 845-010-0365;

OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0110

845-006-0362

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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.030 & ORS 471.730

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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0025

845-006-0365

Payment for Alcoholic Beverages; NSF Checks, Including Third Party Checks

(1) No retail licensee will pay for malt beverages, cider, or wines purchased from a wholesaler 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 the 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 an 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 Full On-Premises Sales 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 471.398.

(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, 471.730(1) & (5)

Stats. Implemented: ORS 471.398

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-006-0370

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 845-013-0001.

(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 prohibit, except as OAR 845-013-0001 through 845-013-0110 allow.

(4) A retailer does not violate ORS 471.398 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 Full On-Premises Sales licensee or officer, director, manager, agent, or employee of a Full On-Premises Sales 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 recipients business with the retail sales agent.

(7) The requirements of section (6) of this rule apply to dispenser licenses issued under former ORS Chapter 472. This section expires October 1, 2001.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.398

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0390

Transportation by Licensed Retailer from Licensed Wholesaler Premises

A licensed malt beverage or wine retailer may transport the malt beverages, cider, 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, cider, or wine shall be the price listed pursuant to OAR 845-010-0210.

Stat. Auth.: ORS 471, including ORS 471.030, 471.730(1) & (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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0090; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-006-0395

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 cider, 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. “Wine” does not include cider;

(f) “Cider” means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than ten percent of alcohol by volume.

(2) Wine or cider may be shipped to Oregon residents from out-of-state wine shipper licensees pursuant to ORS 471.229 and OAR 845-005-0423. Wine or cider may be shipped to Oregon residents from in-state licensees pursuant to ORS 471.223, 471.229, OAR 845-005-0422 and 845-006-0398.

(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 845-005-0422 and 845-006-0398.

(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, including ORS 471.030, 471.040, 471.730(1), (5) & (6)
 Stats. Implemented: ORS 471.229 & ORS 471.404
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

**845-006-0396
 Same-Day Retail Delivery of Alcoholic Beverages with Meal Service**

(1) Requirements for Same Day Delivery. A licensee must qualify for this privilege under the standards of OAR 845-005-0420. A qualified licensee may make deliveries the same day the licensee receives the order only under the following conditions:

(a) A licensee must have an Off-Premises Sales license and either a Full On-Premises Sales or a Limited On-Premises Sales license, or a Brewery-Public House license, and must be in the business of preparing and serving regular meals on the licensed premises, must submit a complete written request for the privilege as specified in section (4) of this rule, and be approved by the Commission in writing;

(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, cider, 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 unless the licensee has received written Commission approval of a different alcohol-to-food retail cost ratio;

(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.

(2) 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.305
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

**845-006-0398
 Next-Day Retail Shipment of Alcoholic Beverages by Oregon Licensees to Oregon Residents**

(1) A licensee may deliver wine, cider, 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 or cider;

(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 845-006-0335 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. The Commission evaluates common carrier delivery plans under the standards of OAR 845-005-0424.

(2) Sanction. Violation of this rule is a Category III violation. The sanction may include a restriction that prohibits further deliveries.

(3) Any person who knowingly or negligently delivers wine or cider 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 or cider 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.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.223, ORS 471.229 & ORS 471.305
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

**845-006-0425
 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.030
 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0030

845-006-0426

Public Interest and Convenience Reasons for Cancellation or Suspension

(1) ORS 471.315(1)(d) 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 licensees 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.315(1)(d)
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0427

Minimum Operation of Certain Full On-Premises Outlets

(1) Premises licensed with a Full On-Premises Sales 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.

(2) Passenger carriers licensed under ORS 471.182 are exempt from the requirement of subsection (1) of this rule.

(3) Other public locations licensed under ORS 471.175 are exempt from the requirement of subsection (1) of this rule if the location is subject to the food service requirements of OAR 845-006-0464.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0428

Exemptions for Certain Tour Boats

For boats that will be in Oregon waters 30 days or less in a calendar year:

(1) The Commission waives the service permit requirements 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 or service of alcohol read the OLCC brochure, *What Every Alcohol Server Needs to Know*. (This brochure is available from the Commission);

(2) The Commission generally does not assign minor postings; however, minor patrons are not permitted in areas with drinking environments during the hours that drinking predominates. Drinking environment is defined in OAR 845-006-0340.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.182
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0430

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 Monitors 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 off premises events held by a regular or temporary licensee with a daily attendance of 2000 or more. If such licensee holds an event at another regular licensed premises that has a Commission-approved operating plan, the event holder must comply with the operating plan that is approved for the subject premises;

(c) 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. 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 hold a service permit if they are uncompensated volunteers for a Temporary Sales licensee and are directly supervised on premises by an individual who has completed Server Education successfully within the last five years.

(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) By the glass, a standard pour of no more than 6 ounces of product in a container no larger than 24 ounces;

(ii) For tastings, no more than 1 1/2 ounces of product in a container no larger than 24 ounces;

(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 24 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.

(D) Cider:

- (i) In a container no larger than 16 ounces;
- (ii) For tastings, not more than 3 ounces of product;

(iii) A bottle of cider no larger than 750 ml sold for more than one person and for on-premises consumption only.

(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 or cider 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 Commissions sanction schedule (OAR 845-006-0500).

(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, including 471.030, 471.040 & 471.730(1) & (5)
 Stats. Implemented: ORS 471.030, 471.040, 471.115, 471.360, 471.410, 471.412, 471.430 & 471.730(1)
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 3-2004, f. 3-17-04, cert. ef. 4-1-04

845-006-0433

Minibars in Hotel Guest Rooms

ORS 471.180 allows a Limited On-Premises Sales or Full On-Premises Sales 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 conditions identified in this rule.

(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 a 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 milliliters for distilled spirits, 12 ounces for malt beverages and 375 milliliters for wine or cider;

(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 visibly 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.180
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-006-0434

Minibars in Arena Suites

(1) ORS 471.180 allows a Limited On-Premises or Full On-Premises Sales 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 or cider: 25.4 ounces or 750 milliliters;

(d) "Licensee": For purposes of this rule, licensee refers to an arena which has been issued a Limited On-Premises or Full On-Premises Sales license under the provisions of ORS Chapter 471;

(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 Suites: 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 845-006-0362 and 845-006-0345, 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 sub-

section 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 7:00 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.180
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-006-0435

Maintaining Records: Retail Licensees

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.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.351 & 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; OLCC 11-1998, f. 12-10-98, cert. ef. 5-1-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0435

845-006-0440

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, 471.730(1) & (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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0080

845-006-0441

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 for Sale of Malt Beverages in Kegs to Unlicensed Group or Individual (**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 additional 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 one year.

(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.

(5) The Receipt for Sale of Malt Beverages in Kegs to Unlicensed Group or Individual (receipt) will be completed by the licensee. The licensee is required to verify the following information on the receipt:

- (a) Name, address, date of birth and phone number of the purchaser, the driver's license number of the purchaser, license state of

issue, and, if necessary under section (2) of this rule, other identification verifying the name, address, physical description and date of birth of the purchaser;

(b) The license plate number of the vehicle in which the keg(s) will be transported. (For purposes of this rule, "automobile registration" as required by ORS 471.478 is the license plate number of the vehicle in which the keg(s) will be transported);

(c) The year, make, type, color, and state of registration (Oregon, California, Washington, for example) of the vehicle in which the keg(s) will be transported;

(d) The precise location (for example: street address, geographic location within a park) where the malt beverages will be consumed;

(e) A sworn, signed statement that the information given in the receipt is true and correct, and a warning about penalties for false swearing and failure to obey Oregon liquor laws;

(f) A signature block and certification by the seller stating that the seller checked the purchaser's identification and the identifying information regarding the vehicle in which the keg(s) will be transported.

[ED. NOTE: Forms referenced are available from the agency.]
 Stat. Auth.: ORS 471, including ORS 471.030, 471.730(1) & (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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; Renumbered from 845-006-0085; OLCC 19-2003, f. 11-24-03, cert. ef. 12-1-03

845-006-0445

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, including 471.030, 471.040, 471.730(1), (5) & (6)
 Stats. Implemented: ORS 471.038 & ORS 471.305
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0450

Retail On-Premises Malt Beverage or Wine Sampling: Operating Requirements and Limits

The Commission allows certain other Oregon licensees to conduct or participate in malt beverage, cider, or wine sample tasting on Full On-Premises Sales, Limited On-Premises Sales, and Off-

Premises Sales licensed premises as specified in OAR 845-005-0427, subject to the requirements and limits identified in this rule.

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

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

(3) 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 purpose of tastings.

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

(5) Server Requirements. Alcohol servers must have service permits.

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

(7) Manufacturer-Conducted Sample Tastings: Oregon law allows Oregon Winery, Grower Sales Privilege, Brewery, Brewery-Public House and Warehouse licensees and Oregon Certificate of Approval holders, for the product for which they hold the certificate, to conduct tastings 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, cider, or malt beverages. The server must be the manufacturer's employee or agent. The manufacturer may not compensate any employee or agent of the retail licensee to participate in the tasting; and

(c) Do not advertise the tasting. The retailer may advertise the tasting only inside the licensed premises.

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

(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 (5);

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

(C) The retailer is responsible for any advertising.

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

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

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.398 & ORS 471.402

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

845-006-0460

Food Service at Commercial Establishment with Full On-Premises Sales License

(1) Purpose: The Oregon 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, or else a private golf club or athletic club, 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 commercial establishments with a Full On-Premises Sales license. The applicant has the burden of proving it meets the standards and qualifications of this rule and OAR 845-006-0466.

(2) Food Service Required at Meal Periods.

(a) A business open after 5:00 pm 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 5:00 pm is food service.

(b) A business not open after 5:00 pm 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 one side dish. Examples of principal items are fish, steak, chicken, pasta, and sandwich. Examples of side dishes are potatoes, potato salad, rice, french fries, beans and vegetables. If the clearly dominant emphasis of the business after 5:00 pm is food service, regular meals may consist of a principal item alone with two or more side dishes available to order separately.

(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.

(e) "Clearly dominant emphasis is food service" means:

(A) The gross receipts from food sales exceed the gross receipts from beverage sales; or

(B) Seventy percent of seating qualifies for and is used as dining seating; or

(C) The Commission is persuaded the menu available is substantial.

(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, spectator seating in public auditoriums, seating at gaming machines, and spectator seating in arenas where sporting events occur. Bar stools, seating 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 60 or fewer patrons, at least 30 seats or 60 percent of all seats, whichever is greater, must be dining seating during regular meal periods. The requirement for at least 30 dining seats may be waived if the entire premises is suitable for minor patronage per OAR 845-006-0340.

(b) If the business has seating for more than 60 but fewer than 100 patrons, at least 36 seats or 40 percent 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 percent of all seats, whichever is greater, must be dining seating during regular meal periods.

(5) Employees. Businesses must have food service employees, including a cook during regular meal periods, adequate to take orders for, prepare, cook and serve food to meet the requirements of this rule. If more than 60 of the premises seats are open to the public, the business must have at least two employees on duty during regular meal periods, one of which is primarily a cook. "Primarily a cook" means that when food service is requested, other ordinary duties shall not interfere with food or meal preparation. Ordinary duties means any duties other than those expected or required in a safety-related emergency. Duties of bouncer, security or door person may not be a part of the ordinary duties of the person who is primarily a cook.

(6) Violation of any section of this rule is a Category III violation.

(7) The requirements of sections (1) through (5) of this rule apply to commercial establishments licensed under former ORS Chapter 472. This section expires October 1, 2001.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0461

Food Service Requirements for Private Clubs With a Full On-Premises Sales License

(1) Purpose: ORS 471.175 allows private clubs with food service to sell distilled spirits by the drink. ORS 471.175(7) defines a private club, in regard to food service, as having suitable and adequate space and equipment, implements and facilities, and employing a sufficient number of individuals for serving food and meals for its members and their guests. This rule sets the food service requirements for private clubs.

(2) A private club that serves the general public must comply with the food service requirements of OAR 845-006-0460 with regard to its patronage by the general public.

(3) Minimum Food Requirements.

(a) At all times alcohol service is available, the club must make available to its members and their guests an offering of at least three 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. The licensee must provide adequate dining space including seats at tables.

(5) Violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0462

Food Service Requirements for Off-Premises Events with a Full or Limited On-Premises Sales License

(1) Purpose: ORS 471.184 allows Full and Limited On-Premises Sales licensees to have off-premises events under the license privilege. Notice and approval standards for these events are in OAR 845-005-0405 and 845-005-0410. Use of a liquor license for off-premises events requires prior written approval from the Commission under the guidelines of OAR 845-005-0405 or 845-005-0410.

(2) "Catering" means provision of food and beverages pursuant to a contract with a client at a location other than the caterer's business location and which is chosen by the client. The caterer shall not be the client.

(3) If the catered event would qualify for general pre-approval under OAR 845-005-0405 or 845-005-0410, the licensee must provide, at a minimum, two different substantial snack food or appetizer items at least some of which the caterer prepares and cooks, in sufficient quantity to provide at least one serving of each item for each person at the event.

(4) If the event is not of a type that would qualify for general pre-approval granted by the Commission but has been approved under the standards of OAR 845-005-0410 and distilled spirits are provided at the event, the licensee or a contract food service provider must make available a selection of at least five different types of food such as bentos, sandwiches, salads, vegetables and dip, hamburgers, and beans and rice, some of which is prepared or cooked on the licensed premises, in sufficient quantity to allow each person at the event to purchase the equivalent of a meal if the patron chooses. "Meal" means the portion of food taken at one time to satisfy appetite.

(5) If the event is not of a type that would qualify for general pre-approval under the standards of OAR 845-005-0410 and distilled spirits are not provided at the event, there must be available, at a minimum, two different substantial snack food or appetizer items at least some of which is prepared and cooked in sufficient quantity to provide at least one serving for each person at the event.

(6) If the licensee does not directly provide the food service required under sections (4) and (5) of this rule, the food service must be provided by a contractor. The contract may be with the licensee or with the organizer of the event. The licensee may sell or serve alcohol only when food service that meets the requirements of this rule is available to patrons.

(7) "Substantial snack food or appetizer" means food like hot dogs, sausages, chicken strips, sandwiches, appetizers, pizza, and soup. Chips, crackers, nuts and popcorn are examples of snack food that is not substantial.

(8) Violation of any section of this rule is a Category III violation.

(9) The requirements of sections (3) through (5) of this rule apply to caterers licensed under former ORS 472.119. This section expires October 1, 2001.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0463

Food Service Requirements for Public Passenger Carriers With a Full On-Premises Sales License

(1) Purpose: ORS 471.175 allows the Commission to grant a Full On-Premises Sales license to certain types of public passenger carriers with food service. This rule sets the food service requirements for public passenger carriers with a Full On-Premises Sales license.

(2) The Commission may issue a Full On-Premises Sales license to an airline for use in operating its aircraft that are licensed to carry at least 40 passengers, and that arrive or depart from an airport in this state. At any time alcoholic beverage service is available, the licensee must make available to passengers a variety of food items.

(3) The Commission may issue a Full On-Premises Sales license to a railroad corporation for use in operating its passenger trains in this state. The licensee must make available to passengers

a selection of at least five different types of food such as sandwiches, pizza, bentos, dinner salads, and substantial appetizers at any time alcoholic beverage service is available.

(4) The Commission may issue a Full On-Premises Sales license to the owner or operator of one or more tour boats for use in operating its tour boats that are used primarily for non-fishing purposes, that are licensed to carry at least 40 passengers and that operate upon waters within the state. The licensee must make available a selection of at least five different types of food such as sandwiches, pizza, bentos, dinner salads and substantial appetizers at any time alcoholic beverage service is available.

(5) The Commission may waive the OAR 845-005-0311(3) requirement that a carrier licensee food service contractor or caterer be a co-licensee, if the contractor or caterer does not provide on-board services, and only delivers food to the airplane, train or boat.

(6) Violation of any section of this rule is a Category III violation.

(7) The requirements of sections (1) through (6) of this rule apply to Seasonal Dispenser, Dispenser Class "A" and Tour Boat licenses issued to passenger carriers under former ORS Chapter 472. This section expires October 1, 2001.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175 & ORS 471.182
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0464

Food Service Requirements for Other Public Locations With a Full On-Premises Sales License

ORS 471.175 allows the Commission to grant a Full On-Premises Sales license to public locations that are other than commercial establishments, private clubs, or public passenger carriers. This rule sets the food service requirements for other public locations.

(1) A public location operating as an auditorium, music, dance or performing arts facility or hall where alcoholic beverages are sold, served or consumed only in a lobby or foyer apart from the performance area for no more than one-half hour before and after performances, and during intermissions of no more than one-half hour, must make available to patrons during all times alcoholic beverage service is available an offering of at least three different types of food.

(2) A public location operating as a banquet or special event facility must either:

(a) Serve to each patron a meal consisting at least of one principal item and one side dish such as a salad or a vegetable. If alcoholic beverage service begins more than one hour before meal service starts or continues more than one hour after the time the last portion of the meal was served, the licensee must make available to patrons at all such times alcoholic beverage service is available, a selection of at least two different types of food such as vegetables or chips and dip, fresh fruit, or crackers; or

(b) Make available to patrons a selection of at least three different types of food such as sandwiches, salads, vegetables and dip, hamburgers, or pizza, some of which is prepared or cooked on the licensed premises, in sufficient quantity to allow each person at the event to purchase or be served the equivalent of a meal if the patron chooses. "Meal" means the portion of food taken at one time to satisfy appetite.

(3) A public location that operates as a lodging facility with at least 100 guest rooms and banquet accommodations for at least 100 patrons must make food available to guests as follows:

(a) If alcoholic beverage service is available between 7:00 am and 10:00 am the licensee must make available to guests during those hours an offering of at least five different substantial breakfast meals;

(b) If alcoholic beverage service is available between 11:30 am and 1:00 pm, the licensee must make available to guests during those hours an offering of at least five different substantial lunch meals. "Different" and "substantial" have the same meaning as in OAR 845-006-0460(3);

(c) If alcoholic beverage service is available between 5:00 pm and 8:00 pm, the licensee must make available to guests during those

hours an offering of at least five distinctly different regular meals as defined in OAR 845-006-0460(2);

(d) During all times alcoholic beverage service is available outside the hours stated in subsections (4)(a), (b) and (c) of this rule, the licensee must make available to guests at least five different substantial minimum food items as defined in OAR 845-006-0460(3);

(e) Seating requirements. If the licensee provides seating at a bar in a location intended primarily for guests, the licensee must provide at least an equal number of seats at tables with suitable space for dining.

(4) The licensee at a public location where the consumption of food or beverages is incidental to the main business of the enterprise and only an incidental part of patron activity (such as a fairground, sports stadium or similar venue where alcoholic beverages are not allowed in the spectator seating or observation areas; art gallery; convention center; exhibition center; or community center), must, whenever alcoholic beverage service is available, make available a selection of at least two different types of food such as sandwiches, vegetables and dip, hamburgers, pizza, or tacos, in sufficient quantity to allow each person at the event to purchase food if the patron chooses.

(5) The licensee at a sports stadium or similar venue where alcoholic beverages are allowed in spectator seating or observation areas must make available a selection of at least five different types of food such as bentos, sandwiches, salads, vegetables and dip, hamburgers, and beans and rice, some of which is prepared or cooked on the licensed premises, in sufficient quantity to allow each person at the event to purchase the equivalent of a meal if the patron chooses. "Meal" means the portion of food taken at one time to satisfy appetite.

(6) The licensee at any business licensed as an "other public location," other than as specified in subsections (1) through (5), of this rule must comply with the food service standards of OAR 845-006-0460.

(7) Violation of any section of this rule is a Category III violation

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0465

Food Service Requirements for Temporary Licenses Authorized Under ORS 471.190(4)

Temporary sales and special event licensees approved under OAR 845-005-0440 must comply with the following food service standards whenever alcoholic beverage service is available.

(1) If distilled spirits are provided at the event, the licensee or the licensee contract food service provider must make available a selection of at least three different types of substantial snack food items in sufficient quantity to provide the equivalent of a meal for each person at the event. ("Meal" means the portion of food taken at one time to satisfy appetite.)

(2) If distilled spirits are not provided, the licensee or a contract food service provider must make available, at a minimum, two different substantial snack food or appetizer items in sufficient quantity to provide at least one serving for each person at the event.

(3) Violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.190(4)
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0466

General Food Service Requirements for Full On-Premises Sales Licenses

(1) Food preparation facilities: Except for public passenger carriers licensed under ORS 471.182, a Full On-Premises Sales licensee must have a food preparation area and equipment adequate to prepare, cook and serve food to meet the food service requirements of the Commission, and must meet the health divisions food preparation standards. The applicant can also meet this requirement by providing clear and convincing evidence that it provides significant food service. The food preparation area and equipment must be on the

licensed premises except for locations catered by a licensee under authority of ORS 471.184. Required food preparation areas and equipment must be separate from any bar or dining area.

(2) Food service employees: A Full On-Premises Sales licensee must have food service employees adequate to prepare and serve food to meet the food service requirements of the Commission. Despite this section, a commercial establishment with a Full On-Premises Sales license must have a cook on duty as required by OAR 845-006-0460(5) if the business has more than 60 seats open to the public.

(3) Menus: Licensees must make food service menus available to patrons.

(4) Discouraging food service: A Full On-Premises Sales licensee may not discourage or attempt to discourage a person from ordering food. Examples of discouraging food service are: A failure to take or deliver an order in a timely manner, clearly over-pricing food for the clientele of the establishment, or serving unpalatable food.

(5) Drive-Up Windows: Businesses may not sell or serve food or beverages for off-premises consumption through a drive-up window. This prohibition does not apply to licenses permitting distilled spirits by the drink which were in existence and operating with a food service drive-up window prior to November 1, 1998.

(6) Violation of any section of this rule is a Category III violation.

(7) The requirements of sections (1) through (5) of this rule apply to commercial establishments licensed under former ORS Chapter 472. Sections (4) and (5) of this rule apply to any dispenser license issued under former ORS Chapter 472. This section expires October 1, 2001.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0467

Food Service Requirements for Specified Operation Types

(1) ORS 471.175 allows the Commission to grant a Full On-Premises Sales license to the following types of operations:

- (a) Private clubs;
- (b) Certain public passenger carriers;
- (c) Commercial establishments;
- (d) Public locations other than those described in paragraphs (a) to (c) of this subsection; and
- (e) Caterers.

(2) A Full On-Premises Sales licensee must comply with the food service standards that are set for the type of operation, as specified in subsection (1) of this rule, in which the licensee is engaging. For instance, a private club that engages in catering must comply with the OAR 845 division 6 standards for caterers, when catering, and with the standards for private clubs with regard to private club operation.

(3) A Full On-Premises Sales licensee must apply in writing and receive written approval from the Commission under the criteria of OAR 845-005-0340 before using the license in any type of operation, as specified in subsection (1) of this rule, not previously approved for that licensee at the licensee's establishment.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0468

Minimum Food Availability in All Areas

(1) At all times alcoholic beverage service is available, any location licensed with a Full On-Premises Sales license must make available to patrons at least the minimum variety and type of food required for the type of licensed operation, in any room or area where alcoholic beverages are served.

(2) Violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0469

Full On-Premises Sales License with Additional On-Premises Sales Privilege

(1) Any Full On-Premises Sales licensee holding at the same licensed premises another license allowing on-premises consumption of alcohol must comply with the food service requirements of the Full On-Premises Sales license regardless of which license is used to serve alcohol for on-premises consumption.

(2) Violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.175
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0475

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 845-005-0311 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313(4)(h)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0480

Changes in Premises or Operation: Prior Approval or Notice 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 or give the notice 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 Full On-Premises Sales licensee must notify the Commission in writing before the licensee:

(a) Removes or adds walls or partitions other than to accommodate a particular activity on a one-time basis;

(b) Eliminates a meal period, substantially reduces meal service hours, or substantially increases lounge or bar hours;

(c) Substantially reduces the food service last approved by the Commission. Examples include substantially reducing the number of 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.

(5) The requirements of section (3) of this rule apply to dispenser licenses issued under former ORS Chapter 472. This section expires October 1, 2001.

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

Stats. Implemented: ORS 471.313, ORS 471.315 & ORS 471.175

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0481

Notification When Premises Closed: Time Limit for Operation

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.

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

Stats. Implemented: ORS 471.313, ORS 471.315 & ORS 471.175

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; OLCC

11-1998, f. 12-10-98, cert. ef. 5-1-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0105

845-006-0482

Closure of Premises for Private Uses

(1) Limited On-Premises Sales licensees and Full On-Premises Sales licensees may close all or part of the licensed business for private use at any time without notification to the Commission except as specified in subsection (2) of this rule.

(2) A Full On-Premises Sales licensee licensed as a commercial establishment as authorized by ORS 471.175(2)(c) may close the business for private uses only if:

(a) The licensed premises are open to the general public at least five days a week during the regular hours of business operation unless exempted at the time of licensing;

(b) The licensee notifies the Commission at least 48 hours before closure for private use. However, a Full On-Premises Sales licensee operating as a commercial establishment may close a portion of the premises for a private use at any time without notification to the Commission.

(3) Notwithstanding subsection (1) of this rule, licensees must notify the Commission in writing if private uses not approved at the time of licensing restrict the general public more than once per week from areas that were approved for patronage by the general public.

(4) Closure for private use does not excuse a Full On-premises Sales licensee from compliance with the food service rules of the Commission.

(5) Whenever any licensee closes the licensed premises or a part of it to the public for private use, at least one entry normally used by the public must remain unlocked to allow Commission inspectors unrestricted access.

(6) Examples of private uses are: banquets, conferences, meetings and parties.

(7) The requirements of sections (2) and (4) of this rule apply to dispenser licenses issued under former ORS Chapter 472. This section expires October 1, 2001.

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

Stats. Implemented: ORS 471.175, 471.313 & 471.315

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0485

Public Passenger Carrier Notification of Additional Premises

(1) ORS 471.182(2)(a) allows the Commission to issue a Full On-Premises Sales license or Limited On-Premises Sales license to the owner or operator of an airline for use in operating passenger aircraft, to a railroad corporation for use in operating passenger trains, or to a tour boat owner or operator for use in operating tour boats.

(2) Tour boat licensees licensed under ORS 471.182(2)(c) may add additional tour boats to be operated under the license upon giving the Commission written notice at least ten days before adding any additional vessel, which must itself qualify for licensing under OAR 845-005-0340, and comply with the food service standards of OAR 845-006-0463 if the license is a Full On-Premises Sales license.

(3) Railroad corporation licensees licensed under ORS 471.182(2)(b) may add additional trains to be operated under the license, provided the additional trains comply with the food service standards of OAR 845-006-0463 if the license is a Full On-Premises Sales license. If the additional train is operated primarily as a tour train the operator must give at least ten days advance written notice to the Commission before adding the train for operation under the existing license.

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

Stats. Implemented: ORS 471.175 & ORS 471.182

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0500

Suspensions and Civil Penalties

(1) The Commission cancels or suspends a license under its authority in:

(a) ORS 471.315 for violations of any provision of ORS Chapter 471 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 459A.705, 459A.710 or 459A.720 or any administrative rule the Commission adopts pursuant to these statutes;

(c) ORS 471.315(1)(d) 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 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 civil penalty instead of suspension. In most cases, the Commission allows the licensee or permittee the option of serving the suspension or paying the civil penalty.

(5) ORS 471.315 allows the Commission to impose either a suspension or a civil penalty 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 civil penalty the Commission may impose. To stay within these limits, the Commission usually computes civil penalties by multiplying the number of days in the suspension by \$165 for retail, manufacturer, and wholesale licensees, and by \$25 for service permittees and Off-Premises Sales employees.

(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) II(a) — Violations for unlawful drug activity;

(D) III — Violations that create a potential threat to public health or safety;

(E) III(a) — Violations for the sale of alcohol to a minor or failure to check identification when the retail licensee qualifies under the Responsible Vendor Program;

(F) IV — Violations that create a climate conducive to abuses associated with the sale or service of alcoholic beverages;

(G) 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; [Exhibit not included. See ED. NOTE.]

(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: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 183.090, ORS 471.315, ORS 471.322 & ORS 471.327
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1) & 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, Coupons

(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 for malt beverages, wine and cider;

(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.

(3) The Commission prohibits coupons which require the purchase of alcohol in order to obtain the coupon's benefit.

(4) The Commission allows the use of instantly redeemable and mail-in coupons. The coupons may be redeemed for food, non-alcoholic beverages and non-food items. Use of coupons must conform with the principles of OAR 845-013-0001. Coupons are prohibited for items prepared or manufactured by the retailer, such as: deli trays,

in-house bakery products, “ready to eat” foods, and private label products. A licensee who violates this section commits a Category IV violation under the Commission’s sanction schedule (OAR 845-006-0500).

(5) The Commission allows customer loyalty programs such as “club cards” if the promotion (club card) is offered without discrimination to all customers of the retail licensee. The retail licensee must pay for all discounts on alcoholic beverages provided to holders of the club card.

Stat. Auth.: ORS 471 & 472, including 471.030, 471.730(1) & (5), 472.030 & 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; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 2-2004, f. 2-17-04, cert. ef. 6-1-04

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 845-015-0130 (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, 471.730(1) & (5)
 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; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

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 & 472, including ORS 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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 and retail sales agents 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, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

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, 471.730(1) & (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 Full On-Premises Sales Licensees

(1) Purpose. The Commission grants Full On-Premises Sales 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 Full On-Premises license may not sell or make alcoholic beverages available except to members and guests, as defined in this rule.

(3) Member Defined. A member is a person or entity who pays dues 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. An auxiliary member is the spouse of a member of the private club, or the spouse of a deceased member of the club. Auxiliary members do not have to sign in as guests at the club where their spouse is a member, or at a club where their deceased spouse was a member.

(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 invited by a member and the member pays for all costs 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);

(b) 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);

(c) 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;

(d) 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) Is participating in an activity that no Full On-Premises Sales 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;

(A) 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;

(B) 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)(d)(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)(c) (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)(d)(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) Despite the prohibition of subsection (2) of this rule, a private club as defined in ORS 471.175(8) which is operating with a Full On-Premises Sales license may serve the general public if:

(a) The licensee has proposed in writing to the Commission to comply with the food service standards for commercial establishments, OAR 845-006-0460, the Commission has approved the proposal, and the club complies with the proposal; or

(b) The licensee's service to the general public is limited to hosting or holding an event that is alcohol-free.

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

Stats. Implemented: ORS 471.175

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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 8-2004, f. 6-29-04 cert. ef. 7-1-04

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) Authorized Person's business name;

(h) Authorized Person's business address; or

(i) Authorized Person'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.

(6) The applicant has not provided valid identificationValid identification for the purpose of obtaining a service permit is limited to a state issued driver's license, state issued identification card or a passportFor purposes of this rule, "state issued" is defined as one of the fifty states in the United States of America.

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

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; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

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 mix, 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, cider, or malt beverages as OAR 845-005-0420, 845-005-0422, 845-006-0396, and 845-006-0398 allow.

(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 for Public Passenger Carriers whose primary business is transportation (for example airlines, and most trains), and does not waive the requirement for Public Passenger Carriers whose primary business is touring (for example tour boats in Oregon waters more than 30 days per calendar year, and small excursion-type railroads). The Commission waives the service permit requirement for some temporary licenses (see OAR 845-005-0440(9), Temporary Sales Licenses). Employees must, however, be at least 21 years old to sell or serve alcoholic beverages on these licensed premises.

(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 an authorized person as defined by ORS 471.375 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 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 471.030, ORS 471.040, 471.730(1) & (5)

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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-009-0015

Licensee and Authorized Person's Responsibility for Verifying Identification

(1) Before allowing anyone who is required to have a service permit to mix, sell or serve alcoholic beverages for on-premises 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 licensee 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.

(4) If the person does not have a service permit or has a pending application, the licensee has a continuing duty to verify that the person has taken and passed a Server Education course, and that the person's service permit has been issued.

(5) All other persons authorized to indorse applications under ORS 471.375 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 within 36 hours of indorsement. Holidays and weekends are not included in counting the 36 hours.

(6) If a company authorized by ORS 471.375(2)(b) fails to follow the standards of OAR 845-009-0015(5), OLCC will rescind the company's approval to indorse service permit applications.

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

Stats. Implemented: ORS 471.360(1), 471.365(2) and 471.375

Hist.: OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 20-2003, f. 11-24-03, cert. ef. 12-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-009-0020

Service Permit Denial Criteria

(1) ORS 471.380(1)(a) and (d) 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) To be qualified for good cause under this rule:

(a) An applicant must have had a drug addiction disability or alcohol addiction disability at the time of:

(A) Felony drug conviction(s) (OAR 845-009-0020(4));

(B) A felony conviction involving the commission of a violent crime where alcohol or controlled substances were involved (OAR 845-009-0020(5));

(C) Felony Driving While Suspended (DWS) conviction(s) resulting from Driving Under the Influence of Intoxicants (DUII) convictions or diversions (OAR 845-009-0020(6)); or

(D) DUII convictions or diversions which form the denial basis under OAR 845-009-0020(7) and (8); or

(b) The applicant was diagnosed as drug or alcohol addicted at the time of or as a result of the incidents described above.

(4) Felony Drug Conviction:

(a) The Commission will deny a service permit if the applicant has had:

(A) A felony conviction within 12 months for possession 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).

(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.

(b) The only good cause to overcome the criteria in this section is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed controlled substances within 24 months; and

(B) He/she has successfully completed a state certified drug treatment program or is actively involved in a state certified 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 completed all parole or probation requirements.

(5) Felony Involving the Commission of a Violent Crime:

(a) 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;

(b) If the felony conviction(s) involving the commission of a violent crime in (5)(a)(A), (B), or (C) involved alcohol or controlled substances, good cause may apply. The only good cause to overcome the criteria in this section is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed alcohol or controlled substances within 24 months; and

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified 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 completed all parole or probation requirements.

(c) "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.

(6) Felony Driving While Suspended (DWS) Convictions:

(a) 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.

(b) If the convictions for DWS were the result of DUII convictions or diversions, good cause may apply. Good cause to overcome the criteria in this section is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed alcohol or controlled substances within 24 months; and

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified 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 completed all parole or probation requirements.

(7) Driving Under the Influence of Intoxicants (DUII)/Furnishing Alcohol to Minors/Liquor Law Violations:

(a) The Commission will deny a service permit if:

(A) Within three years the applicant has had two DUII 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 three diversions and convictions for DUII or Furnishing Alcohol to Minors, any one of which was within 18 months;

(C) Within ten years the applicant has had a combination of four or more diversions and convictions for DUII or Furnishing Alcohol to Minors, any one of which was within three years.

(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.

(b) If applicant has DUII convictions or diversions, good cause may apply. Good cause to overcome the criteria in subsection (a)(A)

through (C) above is the applicant's sworn statement on a Commission-supplied form that:

(A) He/she has not used or consumed alcohol or controlled substances within 24 months; and

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified 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 completed all parole or probation requirements.

(8) 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 DUII 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 24 months; and

(b) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified alcohol or 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 completed all parole or probation requirements.

(9) 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 including ORS 471.030, ORS 471.730(1) & (5)

Stats. Implemented: ORS 471.380

Hist.: OLCC 1-1993, f. 1-27-93, cert. ef. 7-1-93; OLCC 6-1999(Temp), f. 4-23-99, cert. ef. 4-26-99 thru 10-22-99; OLCC 18-1999, f. 11-2-99, cert. ef. 11-3-99; OLCC 15-2003, f. 9-23-03 cert. ef. 11-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-009-0075

Licensee Requirements

(1) ORS 471.542 requires applicants to complete an approved alcohol server education course 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 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.

(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.

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

Stats. Implemented: ORS 471.542

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-009-0080

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 licensees family is seriously ill, injured or has died;
 - (c) There is no course available within 100 miles of an applicant or licensees 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) 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 Referee 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.542
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-009-0085

The Examination (Licensees and License Applicants)

- (1) A passing grade on the exam is 70 percent.
 - (2) After the license applicant or licensee takes the course and exam, the Commission will give him/her the examination results in writing.
 - (3) A license 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 license 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) The license 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.542
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-009-0090

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 & 472, including 471.030, 471.730(1)&(5), 472.030, 472.060(1)&(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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-005-0215

**Alcohol Server Education Program
 Service Permittee Requirements**

845-009-0100

Service Permittee Requirements

- (1) The Commission may not issue or renew a service permit unless the applicant or permittee has complied with the requirements of ORS 471.542 and Commission rules related to the completion of an approved alcohol server education course.
- (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 45 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 45 day limit unless the Commission has approved a hardship extension as described in Sections (3) and (4) of this rule.
- (3) ORS 471.542(3) allows the Commission to extend the time limit for completing the course and passing the exam for hardship reasons. The only hardship extensions the Commission will approve are ones for applicants:
 - (a) Living in counties with a population under 100,000; and
 - (b) Who demonstrate in writing unusual circumstances beyond the applicant's ability to control or prevent that keep the applicant from completing the course and exam within 45 days.
- (4) A hardship extension may not exceed 75 days from the date the Commission received the applicant's completed service permit application. An applicant must submit an extension request within 45 days from the date the Commission received the application. The request must include:
 - (a) The name of the county that the applicant lives in, and a statement that the population of the county is under 100,000; and
 - (b) A detailed description of the unusual circumstances that keep the applicant from completing the course and exam within 45 days; the description must demonstrate that the circumstances are beyond the applicant's ability to control or prevent. The applicant must also include the amount of time needed, and the time requested may not exceed 75 days from the date the Commission received the person's completed service permit application. The Commission will notify the applicant in writing of its approval or denial; an approval will include the length of the hardship extension.
- (5) 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 anytime and apply for a new service permit.
- (6) 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. The applicant must also include the \$10 service permit application fee.
- (7) Sections (3) and (4) apply to all completed service permit applications received by the Commission on or after March 1, 1999. The rest of the rule applies to all completed service permit applications received by the Commission.

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

Stats. Implemented: ORS 471.542 & ORS 471.547
 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; OLCC 1-1999, f. 1-25-99, cert. ef. 3-1-99; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-009-0105

The Examination (Service Permittees and Service Permit Applicants)

- (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 date the applicant took the course. If the applicant fails to pass both retake exams, he/she must retake the server education course and exam.
- (4) If the applicant does not take and pass the exam within 45 days of the date their application was received, the Commission will deny the application. When the applicant receives the denial letter, the applicant must stop selling and serving alcoholic beverages immediately. If the applicant still wants a service permit, he/she 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) First, pass the server education course, and then complete and file a new application along with the appropriate fee.
- (5) 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 & 472, including 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

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 & 472, including 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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

Server Education Hearings: Licensees, Service Permittees, and Applicants

(1) If the Commission denies a license or service permit because the applicant, licensee, or permittee fails to meet the alcohol server education requirement, the applicant, licensee, or permittee is entitled to a hearing under the procedures in OAR chapter 137, division 003 and OAR chapter 845, division 003.

(2) Despite section (1) of this rule, the applicant, licensee, or permittee is not entitled to a hearing if the applicant, licensee, or permittee fails to pass the alcohol server exam.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.542 & ORS 183
 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-009-0130

Training Brochure Requirement for Off-Premises Sales Employees

(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 Off-Premises Sales employees about liquor laws and the risks involved in violating those laws. The purpose of this rule is to help Off-Premises Sales 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 Store 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 material 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 licensees training brochure/material, on the licensed premises as long as the person is employed by the licensee;

(b) Despite section (6)(a), 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.

(8) The requirements of sections (1) through (7) of this rule apply to Package Store licenses issued under former ORS 471.260. This section expires October 1, 2001.

Stat. Auth.: ORS 471, including 471.030, 471.949, 471.730(1) & (5)
 Stats. Implemented: ORS 471.730(1)
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-009-0135

Responsible Vendor Program

(1) Purpose. ORS 471.344 requires the Commission to establish a Responsible Vendor Program for retail licensees, including the positive measures a licensee must take to participate in the program. The purpose of this rule is to set standards and procedures for program participation.

(2) Definitions. For purposes of this rule,

(a) "Retail licensee" and "licensee" mean a retail licensee as defined in ORS 471.392;

(b) "Program" means "Responsible Vendor Program;"

(c) "Alcohol" means alcoholic beverages;

(d) "Employee" means any employee, corporate officer, volunteer, or other person whose responsibilities include the sale or service of alcohol.

(3) Application Process. Any retail licensee who meets the program standards may participate. To apply for the program, the licensee must complete and submit a Commission-provided application form. Commission staff will review the application for completeness, and will:

(a) Approve a completed application that clearly indicates the licensee has all program standards in place; put the application in the licensee's file; and send a certificate to the licensee acknowledging the licensee as an approved Responsible Vendor. The Responsible Vendor Program is a self-certifying program. The approval means only that staff has reviewed the application to confirm that it is complete and that the licensee states in writing that he/she has all the program standards in place. The Commission may take administrative action if it learns that the licensee did not meet all the standards at the time of application; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will include a letter highlighting the reason/s the application is being returned.

(4) Program Standards. To qualify as a Responsible Vendor, a licensee must:

(a) Train each employee in alcohol sales. Except for an on-premises employee who has a valid service permit, each employee must:

(A) Before selling alcohol, read and sign the Commission-provided off-premises brochure or, at the licensee's discretion, meet the alternative requirements of OAR 845-009-0130, Training Brochure Requirement for Off-Premises Sales Employees. Licensees must comply with the record keeping requirements of OAR 845-009-0130; and

(B) Within three days of beginning to sell alcohol, receive training that covers at a minimum the topics listed in Section (5) of this rule. Licensees may train their employees themselves; licensee's trainings do not require Commission approval. Licensees may also choose to use any clerk training course approved by the Commission under OAR 845-009-0145, Clerk Training Courses. Additionally, servers who have not completed a Server Education course must do so within the time required in OAR 845-009-0100, Service Permittee Requirements.

(b) Accept only identification allowed in ORS 471.130.

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(A) A list of valid types of identification which are accepted at the premises;

(B) Directions for properly checking identification, including the requirement to check anyone who appears to be under the age of 26 years. A licensee may have a house policy to check customers who appear to be older than 26 years; and

(C) Consequences for selling alcohol to a minor.

(d) Permanently post signs reminding patrons and employees of the legal requirements for selling alcohol. The signs must include:

(A) A list of valid types of identification which are accepted at the premises;

(B) A notice that anyone who appears to be under the age of 26 years must show valid identification. A licensee may post that their house policy is to check customers who appear to be older than 26 years.

(e) At a minimum, provide four employee trainings spaced at regular intervals within each 12-month period. The licensee must ensure that employees attend the trainings. The licensee must keep a record of each training which includes the date of the training, names of the employees who participated, and a summary of the training. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be

done individually or in a group. At a minimum, each training must cover the topics listed in Section (5) of this rule.

(f) Have no prior Category I or II violation within the last five years for the licensee personally.

(g) Have no significant aggravating circumstances surrounding a violation by the licensee personally within the last year for selling alcohol to a minor. Aggravating circumstances include, but are not limited to, the licensee participating in or committing the violation (except as provided for under Section (6)(e) of this rule); an intentional sale to a minor; multiple employees or patrons involved in the violation; the violation results in death or personal injury; the sale was made to a person under age 18 who appeared to be under the age of 21 when the sale was made.

(5) Topics to be Covered in Responsible Vendor Training. All training required by this rule must include at a minimum the following topics:

(a) Guidelines for recognizing minors and visibly intoxicated persons;

(b) Legal forms of identification for purchasing alcohol;

(c) How to properly check identification, and how to recognize false or altered identification;

(d) The requirement that anyone who appears to be under the age of 26 years must show valid identification. If the licensee's house policy requires that they check customers who appear to be older than 26 years, the licensee must include that information;

(e) Recommended approaches for refusing sales of alcohol to minors or visibly intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or visibly intoxicated persons; and

(g) A review of house policies on alcohol sales. Each licensee must ensure that his/her employees receive training that covers the licensee's own house policies.

(6) Maintenance of Responsible Vendor Status. To retain Responsible Vendor certification, a licensee must:

(a) Continue to meet all of the qualifying standards listed in Section (4) of this rule;

(b) Continue to have no Category I or II violation by the licensee personally;

(c) Require an Off-Premises Sales employee who sold alcohol to a minor or failed to properly verify identification to complete a clerk training course as required by OAR 845-009-0145, Clerk Training Courses; require an on-premises employee who sold alcohol to a minor or failed to properly verify identification to complete a training course that covers all the topics listed in Section (5) of this rule or a Commission-approved Alcohol Server Education course within 45 days of official Commission notification of the violation;

(d) Have had all Responsible Vendor standards in place at the time an employee or licensee sold alcohol to a minor or failed to properly verify identification; and

(e) Not personally sell alcohol to a minor more than one time in a two year period. There can be no significant aggravation surrounding the violation and all other elements of the program must remain in place.

(7) Sanctions. If the licensee's employee sells to a minor and the licensee is a certified Responsible Vendor who has all program standards in place, the Commission will not cancel the license of the licensee, or deny issuance of a license to the person who holds the retail license. The licensee will be eligible for reduced sanctions based on OAR 845-006-0500, Suspensions and Civil Penalties.

(8) Removal from Program and Reinstatement.

(a) For a sale to a minor or failure to properly verify identification by an employee, if the licensee did not have all of the Responsible Vendor standards in place at the time of the violation, the licensee is removed from the program. The licensee may reapply for the program one year after the violation is ratified.

(b) For a first sale to a minor or first failure to properly verify identification by a licensee personally, if there is aggravation, the licensee is removed from the program. The licensee may reapply for the program in one year.

(c) For a second sale to a minor and/or second failure to properly verify identification by a licensee personally within a two year

period, the licensee is removed from the program. The licensee may reapply for the program in one year.

(d) For a Category I or II violation by the licensee personally, the licensee is removed from the program. The licensee may not reapply for the program. For a Category I or II violation by an employee, the licensee is removed from the program, but may reapply for the program in one year.

(e) If aggravating circumstances are involved in a sale to a minor or failure to properly verify identification by the licensee personally or by an employee, the licensee is removed from the program. The licensee may reapply for the program in one year.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040 & 471.730(1) & (5)
 Stats. Implemented: ORS 471.344
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-009-0140

Age Verification Equipment

(1) As used in this rule:

(a) "Retail licensee" and "licensee" mean a retail licensee as defined in ORS 471.392;

(b) "Violation" means a violation by a retail licensee or an employee of a retail licensee for sale of alcoholic beverages to a minor, or for failure to properly verify identification of a person who purchases alcoholic beverages;

(c) "Equipment and "age verification equipment" mean equipment that verifies the age of customers who purchase alcoholic beverages. The equipment must trigger an age verification process or the equipment itself must verify the age. In either case, the equipment must indicate to the licensee or employee if the customer is of legal age to purchase alcoholic beverages.

(2) If a retail licensee or an employee of a retail licensee sells alcoholic beverages to a minor, or fails to properly verify identification of a person who purchases alcoholic beverages, the Commission may allow the licensee to obtain and use age verification equipment to partially offset or in lieu of a civil penalty or denial, suspension, or cancellation of the license. (ORS 471.342)

(3) For the first violation in a two year period, the licensee may choose to purchase age verification equipment in lieu of paying a standard civil penalty or serving a suspension. The licensee is responsible for paying or serving any portion of the sanction charged in excess of the standard sanction due to aggravating circumstances. A licensee may choose this option only one time per license. If the licensee purchased equipment before the first sale, the Commission may allow the licensee to use the purchase of the equipment in lieu of paying a civil penalty or serving a suspension, if the licensee has not previously received this option.

(4) If the violation is the licensee's second or subsequent violation in a two year period, the Commission may consider the purchase and use of equipment as mitigation to reduce the sanction. The Commission may approve mitigation up to a 10 day reduction of a suspension, or up to the equivalent \$1650 reduction in a civil penalty. A licensee is eligible for this relief only one time per license, and may not use this mitigation if the licensee has already purchased age verification in lieu of a civil penalty or suspension per (3) of this rule.

(5) The licensee must notify the Commission within 15 days of receiving the Commission's Notice of Violation of their intention to obtain and use the equipment. The licensee must be using the equipment within 30 days of receiving the Notice of Violation.

(6) The licensee must use the equipment at every point of sale used to sell alcoholic beverages.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040 & 471.730(1) & (5)
 Stats. Implemented: ORS 471.342
 Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2003, f. 3-31-03 cert. ef. 4-1-03

845-009-0145

Clerk Training Courses

(1) ORS 471.341 requires an Off-Premises Sales clerk to complete a Commission-approved training course if the clerk sold alcohol to a minor or if the clerk failed to properly verify identification of a person who purchased alcohol. The clerk must complete the training within the time specified in this rule as a condition of con-

tinuing to make alcohol sales. Based on ORS 471.030, 471.040, and 471.750, the Commission requires a liquor store clerk to complete a Commission-approved training course within the time frames specified in this rule if the clerk sold alcohol to a minor or failed to properly verify identification, and requires a liquor agent to comply with the requirements of this rule if a clerk sold alcohol to a minor or failed to properly verify identification. ORS 471.341 requires the Commission to establish timelines for completing the training and to approve all training courses offered for purposes of this rule. This rule establishes notice requirements and times for completing the training, sets standards and approval procedures for training courses, and sets an administrative fee for the expenses incurred by the Commission.

(2) As used in this rule,

(a) "Clerk," "Off-Premises Sales clerk," "liquor store clerk," or "employee" means an Off-Premises Sales or liquor store employee, corporate officer, manager, or any other person whose job includes selling packaged alcohol, but does not include an individual named on the license or on the liquor agent contract;

(b) "Alcohol" means alcoholic beverages;

(c) "Clerk Training Courses," "course," or "approved training course" means a course approved by the Commission for the purposes of ORS 471.341.

(3) Clerk Responsibilities. If the Commission determines that a clerk sold alcohol to a minor or failed to properly verify identification, the clerk must complete a Commission-approved Clerk Training Course within 45 days of the date the Commission notifies the licensee or liquor agent of the clerk's act. If the clerk does not complete the training within 45 days, the clerk may not continue to sell alcohol.

(4) Licensee and Liquor Agent Responsibilities. If the Commission determines that an Off-Premises Sales licensee's employee or a liquor agent's employee sold alcohol to a minor or failed to properly verify identification, the licensee or liquor agent may not allow that employee to sell alcohol if the employee has not completed an approved training course within the required time.

(5) Notice and Reporting Requirements.

(a) When the Commission determines that a clerk sold alcohol to a minor or failed to properly verify identification, the Commission will notify the licensee or liquor agent in writing that the clerk must complete a Commission-approved training course within 45 days of the notice as a condition of continuing to sell alcohol.

(b) When the clerk has completed the required training, the licensee or liquor agent must:

(A) Notify the Commission within seven days on a Commission-provided form that the employee has completed the training;

(B) Attach a copy of written certification of course completion; and

(C) Include a \$10 administrative fee.

(c) The licensee or liquor agent must notify the Commission using the Commission-provided form if:

(A) The clerk does not complete the training; or

(B) The clerk is no longer employed by the licensee or liquor agent to sell alcohol.

(d) The Commission will put the notification from the licensee or liquor agent in the licensee or liquor agent's Commission file.

(6) Administrative Fee. The Commission assesses a \$10 administrative fee for each employee who completes an approved Clerk Training Course.

(7) Course Approval Standards and Process. A licensee or liquor agent may use a Commission-approved course, or may apply for Commission approval of their own course.

(a) For a course to be approved, a Clerk Training Course applicant must:

(A) Submit a completed application packet provided by the Commission;

(B) Have a course that meets the Commission's Clerk Training Course Minimum Standards (published December 21, 1999, and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR);

(C) Explain in writing how the course will provide written certification of course completion to each student who completes the course.

(b) Commission staff will review the application, and will:

(A) Approve a completed application that meets the requirements in Section

(7)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course; or

(B) Return an incomplete application or one that does not meet the requirements of Section (7)(a).

(8) Penalties.

(a) Violation of Section (3) of this rule is a Category III violation.

(b) Violation of Section (4) of this rule is a Category III violation. For a liquor agent, violation of Section (4) may result in a Notice of Violation.

(c) Violation of Section (5)(b), (5)(c)(A), or (5)(c)(B) of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5) & 471.750
Stats. Implemented: ORS 471.341 & ORS 471.750

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-009-0200

Uniform Standards for Minor Decoy Operations

(1) Purpose. ORS 471.346 directs the Oregon Liquor Control Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the Commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages. It is the Oregon Liquor Control Commission's intention that decoy operations are to be an impartial test of a licensee or agent's ability and willingness to obey laws on preventing sale or service of alcoholic beverages to minors.

(2) Uniform standards for minors used in minor decoy operations:

- (a) The minor must be under 21 years of age; and
- (b) The minor may not use false identification; and
- (c) The minor must look under the age of 26 years; and
- (d) The minor may not lie about their age.

(3) Uniform standards for operations. In cities with populations of 20,000 or more, minor decoy operations must be conducted on either a random or targeted basis.

(a) "Random" decoy operations. Selection of the agent(s) or licensee(s) to be visited will be done using simple random sampling which ensures to the greatest extent possible that each licensee or agent has an equal chance of being selected. The simple random sampling may be performed using a variety of generally accepted simple random sampling tools, such as a random number table, a random number generator, or other method.

(b) "Targeted" minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance problem with the specific licensee or agent that is the target of the operation.

(4) Uniform standards for coordination with law enforcement agencies. The Oregon Liquor Control Commission will coordinate with law enforcement agencies to ensure, to the greatest extent possible, that:

- (a) Law enforcement agencies are informed of the Commission's uniform standards for minor decoy operations; and
- (b) Law enforcement agencies provide the Commission with copies of their minor decoy policies;
- (c) In order for the Commission to process violation cases in a timely manner, law enforcement agencies will be encouraged to provide the Commission with the results of their minor decoy operation(s).

(5) DEFINITIONS: Documented compliance problem. For purposes of this rule, "documented compliance problem" means:

(a) OLCC/Law Enforcement has received one or more documented complaints about a business, agent, licensee or license applicant alleging one or more of the following:

- (A) Failed to check, or failed to properly check identification;

- (B) Allowed minors in prohibited areas;
- (C) Allowed minors to consume alcohol;
- (D) Sold alcohol to minors; or

(b) The business, agent, licensee or license applicant has received one or more citations, or administrative Notice of Warning or Notice of Violation tickets for one or more of the following:

- (A) Failed to check, or failed to properly check identification;
- (B) Allowed minors in prohibited areas;
- (C) Allowed minors to consume alcohol;
- (D) Sold alcohol to minors; or

(c) The business, licensee or license applicant is operating under a 90-day letter of authority to sell/serve alcohol and there is a past history from either (5)(a)(A) or (5)(a)(B) above at the business location.

(6) Uniform standards for licensees. A licensee using a person under the age of 21 years for the purpose of investigating possible violations by employees of the licensee for sale of alcoholic beverages to a person or persons who are under the age of 21 years must:

(a) Comply with the uniform standards for minors used in minor decoy operations; and

(b) Notify the Director of the OLCC Field Operations Division and the Chief or Sheriff of their local law enforcement agency of the minor decoy's name, date of birth, provide a current photograph of the minor decoy, and the date(s) and location(s) of the minor decoy operation(s) at least 24 hours prior to the use of the minor decoy.

(7) Licensees, service permittees, licensee's employee(s), agents, and agent's employee(s) must immediately return identification presented by the minor decoy upon request of law enforcement or an OLCC representative.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)
Stats. Implemented: ORS 30.960, ORS 165.805 & ORS 471.430
Hist.: OLCC 11-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; OLCC 8-2002, f. 6-12-02 cert. ef. 6-30-02

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) & (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 474.115 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 474.115, and will service all retail licensees within the designated territory who want to sell the product.

(6) The Commission's only responsibilities under ORS 474.115 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) & (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; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

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 prescribes 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) & (5)

Stats. Implemented: ORS 471, 472 & 473, including 471.030, 471.392 - 402, 472.030 & 473.140 - 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) & (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 Commissions advertising rules (OAR chapter 845, division 007), the Bottle Bill (ORS 459A.700 to 459A.740 and OAR chapter 845, division 020), 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 licensees 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 471.448 prohibits calling a malt beverage beer if it contains more than six percent alcohol by volume. All malt beverages exceeding six 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 471.040, 471.730(1) & (5)
 Stats. Implemented: ORS 471.445, ORS 471.446(2) & ORS 471.448
 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

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 requirement 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" means an event for which the Commission issues a temporary license pursuant to OAR 845-005-0415 or, for a regular licensee, an event that is not part of the licensee's usual business operation.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.730(1) & (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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

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) & (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 474.115 prohibits 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) & (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; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

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 through 0930 impose requirements beyond those in these federal regulations, or disallow any practice the federal regulations allow, OAR 845-010-0905 through 0930 prevail.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.730(1) & (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) & (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) & (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) & (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) & (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) & (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) 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, Petite Verdot, 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) Albarino;
- (b) Aligote;
- (c) Arneis;
- (d) Aurora;
- (e) Auxerrois;
- (f) Bacchus;
- (g) Barbera;
- (h) Baco noir;
- (i) Cabernet franc;
- (j) Cabernet Sauvignon;
- (k) Carigan Carmenere;
- (l) Carmenere;
- (m) Carmine;
- (n) Carnelan;
- (o) Cascade;
- (p) Chancellor;
- (q) Chardonnay;
- (r) Chasselas blanc;
- (s) Chasselas dore;
- (t) Chasselas rouge;
- (u) Chelois;
- (v) Chenin blanc;
- (w) Colombard;
- (x) Dolcetto;
- (y) Durif;
- (z) Early Muscat;
- (aa) Ehrenfelser;
- (bb) Flora;
- (cc) Folle blanche;
- (dd) Furmint;
- (ee) Gamay noir;
- (ff) Gewurztraminer;
- (gg) Grand noir;
- (hh) Grenache;
- (ii) Grignolino;
- (jj) Kerner;

- (kk) Lemberger (Limberger);
- (ll) Madeleine Angevine;
- (mm) Malbec;
- (nn) Malvasia bianca;
- (oo) Marechal Foch;
- (pp) Melon;
- (qq) Merlot;
- (rr) Morio-Muskat;
- (ss) Muller-Thurgau;
- (tt) Muscat blanc;
- (u) Muscat of Alexandria;
- (vv) Muscat Ottonel;
- (ww) Muscadelle;
- (xx) Nebbiolo;
- (yy) Petit Verdot;
- (zz) Pinot blanc;
- (aaa) Pinot gris;
- (bbb) Pinot Meunier;
- (ccc) Pinot noir;
- (ddd) Royalty;
- (eee) Sangiovese;
- (fff) Sauvignon blanc (Fume blanc);
- (ggg) Scheurebe;
- (hhh) Semillon;
- (iii) Seyval;
- (jjj) Siegerrebe;
- (kkk) Sylvaner (Silvaner);
- (lll) Symphony;
- (mmm) Syrah;
- (nnn) Tempranillo;
- (ooo) Trebbiano;
- (ppp) Trousseau gris;
- (qqq) Valdiguie
- (rrr) Viognier;
- (sss) White Riesling (Riesling);
- (ttt) 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 471.030, 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; OLCC 5-1999, f. 3-18-99, cert. ef. 4-1-99; OLCC 8-2003, f. 5-20-03, cert. ef. 6-1-03

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 "Viticultural 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) & (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; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

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) & (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) & (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) & (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) & (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 prohibit 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 471.398, 471.400, 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, brewpub and grower sales privilege licensees;

(d) "Retailer," "retail license," and "any licensee authorized to sell alcoholic liquor at retail" includes any officer, director, agent, employee or substantial stockholder of the licensed business;

(e) "Substantial stockholder" as used in subsection (2)(d) 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 Alcohol and Tobacco Tax and Trade Bureau (TTB) before applying these rules to their wine business;

(b) Manufacturers and wholesalers may give or loan the point of sale material (OAR 845-013-0050), items of nominal value (OAR 845-013-0060), and services of nominal value (OAR 845-013-0070) described in these rules:

(A) Only for the manufacturer's 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's 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 845-013-0070) described in these rules, they must not alter or disturb another manufacturer's 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 845-013-0050) or items of nominal value (OAR 845-013-0060). 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 845-013-0070 (Services of Nominal Value) allows. These records

must include dates, times, amounts and names 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 to a retailer items, labor, or services that ORS 471.398 prohibits. As used in this section, a reasonable fee for labor or service is one that covers at least the manufacturer's 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. The manufacturer or wholesaler and the retailer must keep a record of the sale.

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

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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;

OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

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 sports 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 471.398 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 Retailers 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 retailers premises. With a Temporary Sales License, one or more brewery-public houses (Brew-Pubs) may hold and promote a malt beverage tasting festival or similar event on a retailers 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) Anyone who sells or serves alcoholic beverages at these tastings must have a service permit except the Special Events Winery or Temporary Sales licensee.

(8) Holding Conventions. Like other businesses, a manufacturer or wholesaler may want to hold and promote a convention or similar function. A manufacturer or wholesaler may use a retailers 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 retailers facility and anything else the retailer provides.

(c) The manufacturer or wholesaler may include the retailers 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 manufacturers or wholesalers 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 non-event days;

(d) The retailer must not solicit donations; and

(e) An individual manufacturer or wholesaler may donate to only one event per retailers premises each calendar year. The donation does not exceed \$2,000. The event lasts 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5) 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0020

Money, Credit, Discounts; ORS 471.398(2) and 471.400(3)(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 Commissions 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 Temporary Sales license event except for Full On-Premises Sales licenses.

(b) Give credit for wine or malt beverages that the retailer cannot exchange as allowed in OAR 845-013-0070(3)(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 retailers next purchase;

(B) Get the Commissions prior written approval if the credit is for more than one case; and

(C) Limit the amount of the credit to the retailers 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 471.400(3)(a). The manufacturer or wholesaler has not given financial assistance under this section 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. 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, including ORS 471.030, ORS 471.040, 471.730(1) & (5) Stats. Implemented: ORS 471.398(2) & ORS 471.400(3)(a) 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

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 & 472, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)
 Stats. Implemented: ORS 471.398(3)
 Hist.: OLCC 8-1992, f. 8-25-92, cert. ef. 10-1-92; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

845-013-0040
Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer. 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, 471.730(1) & (5), 472.030, 472.060(1) & (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 & 472, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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 retail-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, 471.730(1) & (5), 472.030, 472.060(1) & (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

845-013-0070**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 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's or wholesaler's alcoholic beverage products such as:

(a) Delivering to the designated place on the retailers 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's 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 alcoholic beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;

(e) Exchanging products 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 845-013-0020(1)(b)). If the amount exchanged is one case or less of malt beverages, the manufacturer or wholesaler may substitute another malt beverage product of similar value. 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 845-006-0353, 845-006-0427, and 845-006-0450.

NOTE: ORS 471.186(4) 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's or wholesaler's product on a retailer's premises as long as:

(A) Neither the manufacturer/wholesaler nor 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, including ORS 471.030, ORS 471.040, 471.730(1) & (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; OLCC 17-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

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 845-006-0362). 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, 471.730(1) & (5)

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 3-1994, f. 8-3-94, cert. ef. 10-1-94; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-013-0090**Wholesale-Retail Relations: Non-Profit Temporary Sales Licenses**

(1) ORS 471.400(1) permits the Commission to allow manufacturers and wholesalers to provide products and services to non-profit Temporary Sales 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 845-013-0070 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 Temporary Sales 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 Temporary Sales licensee, and if the product was sold to the Temporary Sales 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 Temporary Sales license event as long as the employee has successfully completed an approved alcohol server education course within the last five years or has a valid service permit; and

(c) Banners for interior or exterior display at the licensed premises that advertise a special event and prominently display the manufacturer's or wholesaler's alcoholic beverage brand name. These banners may be displayed before and during the Temporary Sales 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 Temporary Sales licensee is a non-profit or charitable organization that is registered with the state, a political committee that has a current statement of organization filed under ORS 260.039 or 260.042, an agency of the State, or a local government or an agency or department of a local government; and

(b) The Temporary Sales 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 temporary sales licensee.

Stat. Auth.: ORS 471, including ORS 471.030, 471.040, 471.730(1) & (5)
 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
 OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-013-0100

Wholesale-Retail Relations; Sale at Both Wholesale and Retail

(1) Except as provided in ORS 471.396, 471.394(1) prohibits 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, wholesalers, and manufacturers of any alcoholic beverages and their managers, officers and directors;

(b) "Licensee" also includes retailers', wholesalers', 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 retailers 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, including ORS 471.030, 471.040, 471.730(1) & (5)
 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; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

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 & 472, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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

845-015-0101

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) "Commission" includes the 5 member body of Commissioners appointed by the Governor, the administrator (director) and agency staff. Any of the actions or decisions specified in this division may be delegated to the administrator (director) as provided in ORS 471.040 (2)

(3) "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.

(4) "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.

(5) "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.

(6) "Temporary Agent" is an individual person selected by the Commission to temporarily operate a retail liquor store.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0007

845-015-0105

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 845-015-0143 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 845-015-0110 apply to such changes.

(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 471.030, ORS 471.730(1) & (5)
 Stats. Implemented: ORS 471.750(1)
 Hist.: LCC 21-1986, f. 10-16-86, ef. 1-1-87; OLCC 7-2002, f. 5-10-02, cert. ef. 6-1-02; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0012

845-015-0110

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 845-015-0120 and 845-015-0125 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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0020

845-015-0115

Retail Sales Agent Eligibility

(1) A retail sales agent must be at least 21 years old. Retail sales agents 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 845-015-0118 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 an Off Premises Sales 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; or

(c) The Commission may appoint a retail licensee as a non-exclusive retail sales agent as part of a pilot project that will last no more than two years.

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

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; OLCC 7-1999(Temp), f. 5-25-99, cert. ef. 6-1-99 thru 11-27-99; OLCC 19-1999, f. 11-2-99, cert. ef. 11-28-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0027; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-015-0118

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 as a retail sales agent, as defined in OAR 845-015-0101(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 Full On-Premises Sales 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 Full On-Premises Sales 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 Full On-Premises Sales, 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 agents household or immediate family may be employed by a business that is licensed as a distillery or Full On-Premises Sales 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 agents 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 applicants household or immediate family has, that the applicant would reasonably know of, with a distillery, Full On-Premises Sales 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 applicants

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 agents district manager, any prohibited interest or connection with a distillery, Full On-Premises Sales 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 agents contract.

(4) Gifts and Gratuities: No retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee or any person representing a distillery, except that a retail sales agent may accept:

(a) Items totaling \$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, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.710(3)

Hist.: OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0028

845-015-0120

Retail Sales Agent Selection Procedure

(1) When the Commission fills a retail sales agent vacancy other than as OAR 845-015-0125(2) describes, the Commission seeks applications from the public.

(2) The Commission advertises to fill a vacancy in at least one daily statewide newspaper. It may also publish intent to fill a vacancy in other ways.

(3) After an application deadline, all applications will be screened according to selection criteria in OAR 845-015-0125 and qualified applicants will be selected for interview. After reviewing applications and screening results, an interview committee conducts personal interviews. The interview committee scores the applicants and ranks them by qualifications. The interview committee recommends finalists, who are most qualified based on the selection criteria in OAR 845-015-0125. From the finalists, the Commission appoints a retail sales agent using the criteria in OAR 845-015-0125. A public presentation at a Commission meeting may be required. Advance notice of the public meeting date will be given to all finalists.

(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 Commission(ers) may select another applicant from the list of finalists.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 20-1986, f. 10-16-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0022

845-015-0125**Retail Sales Agent Selection Criteria**

(1) When the Commission selects a retail sales agent using the procedure in OAR 845-015-0120, 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 interviews, the Commissioners decide if the applicant is qualified.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0025

845-015-0130**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) A retail sales agent may 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.

(3) Agents may not use or refer to specific brand names of distilled spirits in their advertising.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0090; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

845-015-0135**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 cri-

teria for liquor store establishment and relocation. OAR 845-015-0110 and set out these criteria.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)
Stats. Implemented: ORS 471.750(1)
Hist.: OLCC 20-1987, f. 9-2-87, ef. 10-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0086

845-015-0140**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) Except for Sundays and holidays, 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) Except for Sundays and holidays, retail liquor stores will be open a minimum of eight hours each day.

(3) On Sundays or holidays, retail liquor stores may be open for any number of hours, but may not be open before 7 a.m. or after 10 p.m. Sunday and holiday openings are optional for Retail Sales Agents.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
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; OLCC 4-2002(Temp), f. & cert. ef. 4-12-02 thru 10-8-02; OLCC 11-2002, f. 8-29-02, cert. ef. 10-9-02; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0035; OLCC 16-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 1-2004, f. 1-21-04, cert. ef. 3-21-04

845-015-0143**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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0045

845-015-0145**Solicitation; Incentives**

(1) A retail sales agent may seek business from any business or Full On-Premises Sales 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 Full On-Premises Sales customer to visit a retail liquor store.

(2) A retail sales agent must not:

(a) Solicit, ask, suggest or urge anyone except a Full On-Premises Sales 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 recipients business with the retail sales agent.

(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 Com-

mission 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 Commissions established price.

(5) A retail sales agent may deliver alcoholic liquor or related items to a Full On-Premises Sales licensee premises only as provided in and consistent with the Agency Agreement and the Commissions Retail Operations Manual.

Stat. Auth.: ORS 471.730(5)

Stats. Implemented: ORS 471.750

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; OLCC 15-2000 f. 9-13-00, cert. ef. 10-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0050

845-015-0148

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 4-1985, f. 2-28-85, ef. 4-1-85; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0060

845-015-0150

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 must refuse to sell alcoholic liquor to anyone who is visibly intoxicated, and may refuse service to anyone who is disruptive or abusive in a retail liquor store.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 25-1986, f. 11-20-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0080

845-015-0155

Consumption in a Retail Liquor Store

(1) The Commission allows sponsors to conduct distilled spirits sample tastings in retail liquor stores at the sole discretion of the retail sales agent for the purpose of promoting the sponsor's products. For purposes of this rule, "sponsors" are: Oregon Distillery licensees, out-of-state manufacturers of distilled spirits, importers of distilled spirits, distillery representatives, and the employees or agents of Distillery licensees, out-of-state manufacturers, importers, and distillery representatives. Sample tastings are subject to the requirements and limits described in this rule.

(2) Sample Sizes, Number of Samples per Customer. The size of each distilled spirits sample must not exceed one-quarter ounce per sample. Tastings are limited to two samples per customer per tasting session. A sponsor may not provide more than one-half ounce total of distilled spirits samples per customer per day.

(3) The product(s) provided for sample tastings must be available for sale at the retail sales agency where the sample tasting occurs at the time of the sample tasting.

(4) Identified Tasting Area. Retail sales agents who allow tastings at their retail liquor store must identify a specific tasting area. The area 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 until they have finished consuming the sample(s). In exclusive retail liquor stores, the tasting area may be the entire retail liquor store. In non-exclusive retail liquor stores, the retail sales agent must identify a tasting area, and keep on file at the retail liquor store a floor plan sketch identifying the tasting area.

(5) Duration of Tastings Allowed. Tastings are limited to a maximum of three consecutive hours per sponsor per retail sales agen-

cy per day. Only one sponsor at a time may conduct sample tastings in a retail sales agency.

(6) Server Requirements. Alcohol servers must have valid Oregon service permits.

(7) Record Keeping. The sponsor 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. The sponsor must retain records of tastings for one year.

(8) Sponsor responsibilities. Sponsors 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 distilled spirits being tasted. The server must be a sponsor or an employee or agent of the sponsor;

(c) Not compensate the retail sales agent, or any employee or agent of the retail sales agent to participate in the tasting; and

(d) Not advertise the tasting outside of the retail liquor store.

(9) Retail Sales Agent Responsibilities. Retail sales agents:

(a) Must not advertise the sample tasting outside the retail sales agency; and

(b) Are responsible for liquor law violations occurring in the retail sales agency which are not related to the sample tasting.

(10) Violations Associated with the Sample Tasting. In the case of a liquor law violation associated with sample tasting (for example, service of a sample to a minor or a visibly intoxicated person), both the server and the sponsor may be held responsible for violations of Oregon liquor laws which occur due to or during the tasting. Violations which occur due to a sponsor or server violating the law will not be charged to the retail sales agent.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 27-1986, f. 11-20-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0095; OLCC 9-2004, f. 6-29-04 cert. ef. 7-1-04

845-015-0160

Sale of Lottery Tickets

Despite OAR 845-015-0143(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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 5-1985, f. 3-28-85, ef. 4-1-85; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0065

845-015-0165

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 845-015-0175, 845-015-0177, 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 only by mail;

(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 845-015-0175, 845-015-0177, 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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0055; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

845-015-0168

Refunds, Exchanges

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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)
 Stats. Implemented: ORS 471.740 & ORS 471.750
 Hist.: LCC 8-1985, f. 10-9-85, ef. 3-1-86; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0070

845-015-0170

Payment for Distilled Spirits

(1) A customer may 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 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

(f) 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.

(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 a reasonable basis to believe a customer is not lawfully presenting payment.

(5) A retail sales agent may elect to not take personal checks only if the retail sales agent accepts debit and credit cards using Commission-approved equipment.

(6) 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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 16-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0075

845-015-0173

Discount for Full On Premises Sales Licensees' Distilled Spirits Purchases

Full On-Premises Sales 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 Full On-Premises Sales businesses. The discount will be given at the time of purchase.

Stat. Auth.: ORS 471, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)
 Stats. Implemented: ORS 471.745 & ORS 471.750(1)
 Hist.: OLCC 4-1993, f. 11-1-93, cert. ef. 11-4-93; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0078

845-015-0175

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 as permitted by this rule and OAR 845-015-0177.

(2) General Requirements. The Commission allows signs and displays that:

- (a) Comply with ORS 471.750(2), and Bureau of Alcohol, Tobacco, Firearms, and Explosives (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 845-015-0165 allows), sweepstakes or offer a premium or an on-pack for the consumer. However,

(A) 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.

- (B) 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 appearing to be under 26 years of age 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) The Commission retains the right to remove point of sale material(s) the Commission finds objectionable.

(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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)
 Stats. 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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0091; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

845-015-0177

Specific Requirements 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.

(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. Signs may not be placed in the window(s) of a retail liquor store;

(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 845-015-0143 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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0092; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

845-015-0180

Distilled Spirits Samples Offered by Distillery Representatives

(1) Distillery representatives may not give samples to retail sales agents, their employees or customers in a retail liquor store.

(2) Despite section (1) of this rule, a retail sales agent may accept samples of not more than four 50 ml manufacturer 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, the retail sales agent may accept a single sample in the next larger available size if the distillery representative has written approval from the Listing Committee of the Commission to offer samples in a larger size. Samples may not be consumed in a retail liquor store or within its immediate vicinity.

(3) Retail sales agents may give samples received according to section (2) of this rule to their employees that are at least 21 years of age.

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

Stat. Implemented: ORS 471.750

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0096

845-015-0185

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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0100

845-015-0190

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 agents 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 stores 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 Commissions recruiting process to assure finding qualified applicants. If the Commissions 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 agents 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 declines the opportunity. During the 12-day period, the outgoing agent will introduce the incoming agent to Full On Premises Sales 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 agents 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 agents 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 or the agent has shortages that exceed the estimated amount of compensation due that agent. In these situations, 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) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any Full On-Premises Sales 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 stores customers to assist any agent (other than the incoming agent) in soliciting the stores 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 Full On-Premises Sales 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 agents ability to advertise under OAR 845-015-0130.(10) Definitions.

(a) "Solicit," "solicitation" and "soliciting" have the meaning given them under OAR 845-015-0145. These terms also include any act or contact directed at a specific business, Full On Premises Sales or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, Full On Premises Sales or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Full On Premises Sales" means any person or entity holding a Full On Premises Sales license.

(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.

(11) Violation of Section (9). If, during the two-year period:

(a) An outgoing agent violates section (9) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (9) 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 (9) remain in effect.

(12) 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, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)

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; OLCC 4-1999, f. 2-16-99, cert. ef. 3-17-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0032

845-015-0193

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.

(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, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0010

845-015-0196

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 is appointed and 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 845-015-0110, 845-015-0120 and 845-015-0125.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0030

845-015-0199

Liquor Stores-Within-Grocery Stores Pilot Program

(1) Purpose. The Liquor Stores-Within-Grocery Stores Pilot Program is a program wherein the Oregon Liquor Control Commission (Commission) appoints temporary retail sales agents to operate Liquor Stores which are physically located within retail grocery stores. The purposes of the Pilot Program include obtaining data on the efficacy of such a retail operation for the benefit of the Legislative Assembly as it considers alternative liquor retailing models. The Commission will collect data on a variety of subjects, including but not limited to: economic viability (profitability) of the Pilot Program business model for the retail grocery store, the Pilot Program Agent, and the state of Oregon; public safety impacts on the community; and public response to the program.

(2) Definitions. The following definitions apply only to this rule:

(a) The Liquor Stores-Within-Grocery Stores Pilot Program is called the "Pilot Program".

(b) The temporary agent appointed to the pilot agency is called a "Pilot Program Retail Sales Agent", or "Pilot Program Agent".

(c) "Pilot Program Retail Sales Agent Agreement" or "Pilot Program Agreement" is the agreement between the Pilot Program Agent and the Oregon Liquor Control Commission.

(d) The location where the Commission appoints a temporary retail sales agent to operate a Liquor Store physically located within a retail grocery store is called a "Pilot Liquor Store".

(e) "Liquor Store" means a retail sales agency of the Oregon Liquor Control Commission.

(3) Number of Pilot Liquor Stores; Factors Considered when Siting Pilot Liquor Stores. The Pilot Program will consist of up to six new Pilot Liquor Stores located within retail grocery stores. The

Commission will consider the following factors in determining the locations of Pilot Liquor Stores:

(a) Population growth trends in an area, including population fluctuations due to tourism, and the number of existing Liquor Stores in the area;

(b) Distance from existing Liquor Store(s);

(c) Sales volume of nearest existing Liquor Store;

(d) Convenience and accessibility for consumers;

(e) Size and characteristics of retail grocery store which will host the Pilot Liquor Store;

(f) Size of Pilot Liquor Store, including retail floor space and storage space;

(g) The ability of the Commission and the Pilot Program Agent to negotiate acceptable terms with the host retail grocery store.

(4) Length of Pilot Program Retail Sales Agent Agreements.

Each Pilot Program Agent and the Commission will execute a Pilot Program Agent Agreement, the duration of which will not exceed two years from the effective date of the Pilot Program Agent's initial appointment. Ninety days before the expiration of each Pilot Program Retail Sales Agent Agreement, the performance of the applicable Pilot Liquor Store will be evaluated. The Commission will evaluate performance consistent with section (9)(a)–(c) of this rule, the terms of the applicable Pilot Program Retail Sales Agent Agreement, and the Retail Operations Manual. A process to create a permanent Liquor Store at the applicable location will be initiated by the Commission if it determines the applicable Pilot Liquor Store is a success.

(5) All statutes and administrative rules governing retail liquor agents will apply to this Pilot Program, with the following exceptions:

(a) OAR 845-015-0115(2) Retail Sales Agent Eligibility;

(b) OAR 845-015-0120 Retail Sales Agent Procedure;

(c) OAR 845-015-0130(1)(b) Advertising a Retail Liquor Store;

(d) OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents;

(e) OAR 845-015-0193(1) & (2) Terminating an Agency Agreement;

(f) OAR 845-015-0196 Appointment of a Temporary Agent.

(6) The Retail Operations Manual, including any Pilot Program Appendix, and other relevant Commission policies will apply to the Pilot Program, unless otherwise provided in the Pilot Program Agreement.

(7) All personnel working in the Pilot Liquor Store must meet all the standards and requirements for liquor store clerks which are required by the Pilot Program Agreement and the Retail Operations Manual.

(8) Pilot Program Agents will provide the Commission with any and all data related to the operation of the Pilot Liquor Store as specified in the Pilot Program Agreement, including the Retail Operations Manual.

(9) Measuring Success of the Pilot Program. The Commission will evaluate the success of the Pilot Program as a business model within 90 days of the expiration of the last Pilot Program Agreement signed. Factors the Commission will consider in measuring the success of the Pilot Program include but are not limited to:

(a) Economic viability of the Pilot Program business model for Pilot Program Agents, retail grocery stores, and the Commission;

(b) Effects on the public safety of the surrounding community;

(c) Public response concerning sales of distilled spirits in retail grocery stores.

Stat. Auth.: ORS 471.730(5)

Stats. Implemented: ORS 471.750

Hist.: OLCC 5-2004(Temp), f. 4-27-04, cert. ef. 5-1-04 thru 10-28-04; OLCC 11-2004, f. 10-15-04 cert. ef. 10-29-04

DIVISION 16

SERVER EDUCATION PROGRAM PROVIDER CERTIFICATION

Oregon Administrative Rules Compilation

845-016-0001

Purpose

ORS 471.542 and 471.547 require the Commission to establish standards for an alcohol education course, 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, including ORS 471.030; 471.730 (1) & (5)

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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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 percent 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, 471.730(1) & (5), 472.030, 472.060(1) & (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 of Alcohol Server Education Courses 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 course/s 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 course 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 course 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, including ORS 471.030; 471.730 (1) & (5)
 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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

**845-016-0015
 Alcohol Server Education Provider Standards**

To be certified, a provider must:

(1) Have a 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 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 course 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 course 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 57 and ORS 648.005, if applicable.

Stat. Auth.: ORS 471, including ORS 471.030; 471.730 (1) & (5)
 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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

**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(5); 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 471.542(5).

(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), 472.060(1) & (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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

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 course, a statement that says, "If you have questions, or comments or complaints about the course, 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 presentation. 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 Course standards.

- (5) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).
Stat. Auth.: ORS 471, including ORS 471.030; 471.730 (1) & (5)
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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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) & (5), 472.030, 472.060(1) & (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 Commission 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) & (5), 472.030, 472.060(1) & (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 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 course;
- (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 recertification, a provider, instructor, or applicant may make a written request for a hearing under the provisions of OAR 845, division 3 (Contested Case Procedures).

Stat. Auth.: ORS 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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) & (5), 472.030, 472.060(1) & (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 & 472, including 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (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 Course, 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 course, 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 another Oregon Alcohol Server Education Course, 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 teaches the provider's course.

(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 addi-

tion. 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, including ORS 471.030; 471.730(1) & (5)

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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0065

Provider Advertising and Promotion Standards

(1) Provider advertising related to the course must include:

(a) The provider's telephone number and cancellation policy;

(b) The total amount of course time which includes instruction, exam and break time;

(c) A statement that students must attend the entire course 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 course.

(3) The provider will give the Commission copies of course publications, brochures, pamphlets, tear sheets, scripts or any other representation of advertising materials related to the course 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, including ORS 471.030; 471.730(1) & (5)

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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0068

Alcohol Server Education Renewal Requirements for Service Permittees and Licensees; Examination; Approval Standards and Process

(1) ORS 471.542(1) requires applicants for any license that authorizes the sale or service of alcoholic beverages for consumption on the premises and service permits to complete an approved alcohol server education course and examination in order to qualify for a license or permit. ORS 471.542(3) requires the Commission to establish by rule the requirements that licensees and permittees must comply with as a condition of requalifying for a license or permit every five years.

(2) Once every five years after completing the initial alcohol server education course and examination required in ORS 471.542(1), licensees and permittees may satisfy the requirement of ORS 471.542(3) by:

(a) Repeating the initial alcohol server education course and examination; or

(b) Completing a renewal alcohol server education course and examination.

(3) Renewal Course Examination

(a) Despite OAR 845-009-0085(1) and 845-009-0105(1), a passing grade on a renewal course exam is 80 percent.

(b) Despite OAR 845-009-0085(3) and (4) and 845-009-0105(3), a student who does not pass a renewal course exam must repeat the initial alcohol server education course and examination to meet the renewal requirement.

(4) Renewal Course Approval Standards and Process

(a) For a course to be approved, an applicant must:

(A) Submit a completed application packet provided by the Commission; and

(B) Have a course that meets the Commission's Minimum Curriculum and Instruction Standards for an Alcohol Server Education Renewal Course (published June 22, 2000, and available at the Commission's main office at 9079 SE McLoughlin Blvd., Portland, Oregon).

(b) Commission staff will review the application and will:

(A) Approve a completed application that meets the requirements in section (4)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course, or;

(B) Return an incomplete application or one that does not meet the requirements of section (4)(a).

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

Stats. Implemented: ORS 471.542

Hist. OLCC 13-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2001, f. 6-11-01, cert. ef. 7-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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 course instructor, personnel or representative that violates any law or administrative rule affecting provider privileges.

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

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; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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) & (5), 472.030, 472.060(1) & (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, 471.547 & 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 course 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 Course 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 845, division 3 (Procedures Applicable to Contested Case Hearings).

[ED. NOTE: Exhibits referenced are available from the agency.]

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

Stats. Implemented: ORS 471.322(3), ORS 471.542, 471.547 & 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 ; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

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, 459.992(4), ORS 471 & 472, including 471.030, ORS 471.730(1) & (5), 472.030, 472.060(1) & (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) & (3), ORS 459A.730(1) & (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) & (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 harborages 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:

(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 distributors, 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 requirement of the Beverage Container Act that dealers accept return of up to 144 beverage containers sold in Oregon from any person in any one day.

Stat. Auth.: ORS 459A, ORS 459.992, 471.030, 471.730, 472.030 & 472.060

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; OLCC 15-1999, f. 6-9-99, cert. ef. 7-1-99