

## Chapter 845 Oregon Liquor Control Commission

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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 or e-mailing a copy of the notice to persons on the mailing list established pursuant to ORS 183.335 (8) at least 28 days prior to the effective date. If a hearing is scheduled after the original notice, the subsequent notice must be mailed or e-mailed at least 21 days before the date of the hearing;

(3) By mailing or e-mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(4) By mailing, e-mailing, or furnishing a copy of the notice to:

(a) The Associated Press; and

(b) Associations or organizations having an interest in the rule matter.

Stat. Auth.: ORS 183.341, 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 183.335 & 183.341

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; OLCC 8-2009, f. 7-13-09, cert. ef. 8-1-09

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 1, 2008. 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 & 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; OLCC 4-2007, f. 3-22-07, cert. ef. 4-1-07; OLCC 5-2008, f. 3-25-08, cert. ef. 4-1-08

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 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 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, 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, 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 com-

munications 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 17.095 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, 36.228, 36.230 & 36.232

Hist.: OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

#### 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 of 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 2

### CRIMINAL RECORDS CHECK AND FITNESS DETERMINATION

#### 845-002-0200

##### Statement of Purpose and Statutory Authority

(1) Purpose. These rules control the Commission's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the Commission as an employee, volunteer, contractor or vendor in a position covered by OAR 845-002-0220. The fact that the Commission approves a subject individual as fit does not guarantee the individual a position as a Commission employee, volunteer, contractor or vendor.

(2) Authority. These rules are authorized under ORS 181.534, and 471.030, 471.040, 471.695 and 471.730.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

#### 845-002-0210

##### Definitions

As used in OAR chapter 845, division 002, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that, pursuant to a preliminary fitness determination under OAR 845-002-0240 or a final fitness determination under 845-002-0260, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, contractor or vendor in a position covered by 845-002-0220.

(2) "Authorized Designee" means a Commission employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Commission", "The Commission" or "OLCC" means the Oregon Liquor Control Commission or any subdivision thereof.

(4) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(5) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(6) "Criminal Records Check" or "CRC" means one of three processes undertaken to check the criminal history of a subject individual:

(a) A check of criminal offender information and motor vehicle registration and driving records conducted through the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at the Commission's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the Commission's request (Nationwide Criminal Records Check).

(7) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 845, division 002.

(8) "Denied" means that, pursuant to a preliminary fitness determination under OAR 845-002-0240 or a final fitness determination under 845-002-0260, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by 845-002-0220.

(9) “False Statement” means that, in association with an activity governed by these rules, a subject individual either provided the Commission with materially false information about his or her criminal history, such as materially false information about his or her identity or conviction record, or failed to provide to the Commission information material to determining his or her criminal history.

(10) “Fitness Determination” means a determination made by an authorized designee pursuant to the process established in OAR 845-002-0240 (preliminary fitness determination) or 845-002-0260 (final fitness determination) that a subject individual is or is not fit to be a Commission employee, volunteer, contractor or vendor in a position covered by 845-002-0220.

(11) “Other Criminal Records Information” means any information, in addition to criminal offender information, sought or obtained by the Commission about a subject individual relevant to determining the individual’s criminal history.

(12) “Potentially Disqualifying Crimes” means a crime listed or described in OAR 845-002-0270.

(13) “Related” means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, step-parent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(14) “Subject Individual” means an individual identified in OAR 845-002-0220 as someone whom the Commission may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-002-0220

#### Subject Individual

(1) “Subject Individual” means a person from whom the Commission may require fingerprints for the purpose of conducting a criminal records check because the person:

(a) Is employed by or applying for employment with the Commission; or

(b) Provides services or seeks to provide services to the Commission as a volunteer, contractor, or vendor; and

(2) Is, or will be, working or providing services in a position:

(a) In which the person works in the licensing or enforcement divisions; or

(b) In which the person has access to criminal background information.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-002-0230

#### Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

(a) Preliminary to a criminal records check, a subject individual shall complete and sign the OLCC Criminal Records Request form and, if requested by the Commission, a fingerprint card. Both forms ask for identifying information, e.g., name, birth date, Social Security Number, physical characteristics, marital status, driver’s license or identification card number, and current address. The OLCC Criminal Records Request form also asks for information about prior residences and for details concerning circumstances listed in OAR 845-002-0240(3)(a)–(f).

(b) A subject individual shall complete and submit to the Commission the OLCC Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(c) The Commission shall receive a fingerprint card from a subject individual under the age of 18 years only if the subject individual also submits the written consent of a parent or guardian.

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the Commission in order to resolve an issue hindering the completion of a criminal records check, e.g., providing additional proof of identity.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when:

(a) An individual meets the definition of “subject individual”, but has not been approved under these rules, unless the individual was a Commission employee serving in his or her current position prior to the effective date of these rules and that position does not involve authorized designee responsibilities;

(b) an individual employed by the Commission meets the definition of “subject individual” because he or she is either moving to or applying for a position that meets the criteria of OAR 845-002-0220(2)(a)–(b), if:

(A) The Commission has not conducted a fitness determination on the subject individual within the previous three years;

(B) The subject individual had been previously approved under OAR 845-002-0260(3)(b); or

(C) An authorized designee determines that the new position requires greater responsibility for functions covered by OAR 845-002-0220(2)(a)–(b) than the subject individual’s prior position;

(c) An authorized designee has reason to believe that a subject individual committed a crime listed or described in OAR 845-002-0270 and either a fitness determination has not yet been done on the subject individual or the crime had not been identified in a prior fitness determination;

(d) An authorized designee has reason to believe that a factor relevant to a fitness determination listed in OAR 845-002-0260(2), not previously identified in a fitness determination, applies to a subject individual who had been previously approved under 845-002-0260(3)(b); or

(e) As required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with the Commission.

(3) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal record check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(b) Oregon Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct an Oregon criminal records check as part of any fitness determination conducted in regard to a subject individual.

(c) Nationwide Criminal Records Check. The authorized designee shall request that the Oregon Department of State Police conduct a nationwide criminal records check as part of any fitness determination conducted in regard to a subject individual.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-002-0240

#### Preliminary Fitness Determination

(1) An authorized designee may conduct a preliminary fitness determination if the Commission is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) An authorized designee shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under OAR 845-002-0230(1) and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed or described under OAR 845-002-0270;

(b) Within the last five years, has been arrested for or charged with a crime listed or described under OAR 845-002-0270;

(c) Is being investigated for, or has an outstanding warrant for a crime listed or described under OAR 845-002-0270;

(d) Is currently on probation, parole, or another form of post-prison supervision for a crime listed or described under OAR 845-002-0270;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed or described under OAR 845-002-0270; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed or described under OAR 845-002-0270.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to the Commission, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 845-002-0260.

(6) A subject individual may not appeal a preliminary fitness determination, under the process provided under OAR 845-002-0300 or otherwise.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

#### 845-002-0250

##### Hiring or Appointing on a Preliminary Basis

(1) The Commission may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 845-002-0240.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the Commission.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if removed from trial service prior to completion of a final fitness determination under OAR 845-002-0260, may not appeal the trial service removal under the process provided under OAR 845-002-0300.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, as provided under OAR 845-002-0260(3)(d), then the Commission shall immediately terminate the subject individual's employment or appointment.

(5) A subject individual whose employment or appointment is terminated under subsection (4) of this rule may avail himself or herself of the appeal process provided under OAR 845-002-0300.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

#### 845-002-0260

##### Final Fitness Determination

(1) An authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 845-002-0230(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 845-002-0230(1), and LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other criminal records information from the subject individual or any other source, including law enforcement agencies or courts within or outside of Oregon. To acquire other criminal offender information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials from him or her, or both. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed or described under OAR 845-002-0270;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services, or employment; and

(f) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed or described under OAR 845-002-0270;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(F) A recommendation of an employer;

(G) The disposition of a pending indictment identified under subsection (a);

(H) Whether the subject individual has been arrested for or charged with a crime listed or described under OAR 845-002-0270 within the last five years;

(I) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed or described under OAR 845-002-0270;

(J) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed or described under OAR 845-002-0270;

(K) Whether the subject individual has a deferred sentence or a conditional discharge or is participating in a diversion program in connection with a crime listed or described under OAR 845-002-0270;

(L) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed or described under OAR 845-002-0270 if committed by an adult;

(M) Periods of incarceration of the subject individual;

(N) Whether the subject individual has a history of drug or alcohol abuse which relates to his or her criminal activity and the subject individual's history of treatment or rehabilitation for such abuse; and

(O) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(3) Possible Outcomes of a Final Fitness Determination:

(a) Automatic Approval. An authorized designee shall approve a subject individual if the information described in sections (1) and (2) shows:

(A) No credible evidence that the subject individual has been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed or described under OAR 845-002-0270;

(B) No credible evidence that the subject individual has a pending indictment for a crime listed or described under OAR 845-002-0270;

(C) No credible evidence of the subject individual having made a false statement; and

(D) No discrepancies between the criminal offender information, other criminal records information and information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(D) of this rule, an authorized designee may approve the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines that the subject individual acting in the position for which the fitness determina-

tion is being conducted would not pose a risk of harm to the Commission, its client entities, the State, or members of the public.

(c) Restricted Approval.

(A) If an authorized designee approves a subject individual under subsection (3)(b) of this rule, the authorized designee may restrict the approval to specific activities or locations.

(B) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to removing a restriction.

(d) Denial.

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(D) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the Commission, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.

(C) If a subject individual is denied as not fit, then the subject individual may not be employed by or provide services as a volunteer, contractor or vendor to the Commission in a position covered by OAR 845-002-0220(2).

(4) Final Order. A completed final fitness determination becomes a final order of the Commission unless the affected subject individual appeals by requesting either a contested case hearing as provided by OAR 845-002-0300(2)(a) or an alternative appeals process as provided by 845-002-0300(6).

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

## 845-002-0270

### Potentially Disqualifying Crimes

(1) FELONIES AND MISDEMEANORS. A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565). No crimes are considered automatically disqualifying under these rules.

(a) Any federal crime.

(b) Any U.S. military crime.

(c) Felonies and misdemeanors in Oregon. Any felony or misdemeanor in Oregon Revised Statutes.

(d) Crimes Outside Oregon. Any felony or misdemeanor in a jurisdiction outside Oregon (including crimes outside the United States) that is the substantial equivalent of any Oregon crime, or that is serious and indicates behavior that poses a threat or jeopardizes the safety of the Commission, its client entities, the State, or members of the public as determined by the authorized designee.

(e) Inchoate crimes. Any inchoate crime or attempt, solicitation or conspiracy to commit a crime listed or described in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155. If the crime occurred outside Oregon, similar inchoate crimes from local jurisdictions shall be considered by the authorized designee.

(f) Repealed crimes. Any offense that no longer constitutes a crime under Oregon law or the law of another jurisdiction, but is the substantial equivalent of any of the crimes listed or described in this section (section (1)) as determined by the authorized designee.

(2) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(3) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

## 845-002-0280

### Incomplete Fitness Determination

(1) The Commission will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a “subject individual” under OAR 845-002-0220;

(b) The subject individual does not provide materials or information under OAR 845-002-0230(1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee’s attempts to acquire other criminal records information under OAR 845-002-0260(2); or

(e) The Commission determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor or volunteer) for a reason unrelated to the fitness determination process.

(2) A subject individual does not have a right to a contested case hearing under OAR 845-002-0300 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

## 845-002-0290

### Notice to Subject Individual of Fitness Determination

(1) An authorized designee shall provide, in a format approved by the Commission, written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing of a fitness determination due to incompleteness.

(a) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed.

(b) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual’s right to request a contested case hearing to appeal the Commission’s determination and containing the information required by OAR 137-003-0505.

(2) An authorized designee shall provide for hand delivery or first class mail delivery of the notice as soon as possible after completion or closure of a fitness determination, but in no case later than 14 calendar days after the date of completion or closure, to the address provided by the subject individual on the OLCC Criminal Records Request form, or to an updated address as provided in writing by the subject individual. If the separate notice regarding hearing rights is included pursuant to subsection (1)(b) of this rule, then such notice shall be provided by personal service or service by registered or certified mail.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

## 845-002-0300

### Appealing a Fitness Determination

(1) Purpose. This rule sets forth a contested case hearing process by which a subject individual may appeal a completed fitness determination made under OAR 845-002-0260 that he or she is fit or not fit to hold a position with, or provide services to the Commission as an employee, volunteer, contractor, or vendor. Section (6) of the rule identifies an alternative appeal process available only to current Commission employees.

(2) Process:

(a) A subject individual may appeal a fitness determination by submitting a written request for a contested case hearing to the address specified in the notice provided under OAR 845-002-0290(1)(b), within 14 calendar days of the date appearing on the notice. The Commission shall address a request received after expiration of the deadline as provided under 137-003-0528.

(b) When a timely request is received by the Commission under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General’s Model Rules for Contested Cases, “Rules for the Office of Administrative Hearings” OAR

137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

(c) The Commission shall provide the subject individual or the subject individual's legal representative with all of the information required under OAR 137-003-0510.

(d) As provided in OAR 137-003-0510(3), if participating in a contested case hearing, the Commission and the subject individual may agree to use a collaborative method of dispute resolution designed to encourage them to work together to develop a mutually agreeable solution, such as negotiation or a settlement conference.

(3) Discovery:

(a) A subject individual's hearing request under section (2)(a) of this rule shall constitute a discovery request for the following records:

(A) Any records the subject individual has a right to inspect under OAR 845-002-0310(2)(e); and

(B) In accordance with the Public Records Law, any records described in OAR 845-002-0310(3)(a).

(b) The Commission or the administrative law judge may protect information made confidential by ORS 181.534(15) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(5) Proposed and Final Order:

(a) Proposed Order. After a hearing, the administrative law judge shall issue a proposed order. If the subject individual or subject individual's legal counsel does not file written exceptions with the Commission within 15 calendar days of the mailing of the proposed order, the proposed order shall become the final order.

(b) Exceptions. If the subject individual or the subject individual's legal counsel files timely written exceptions to the proposed order with the Commission, the Commission Administrator or Administrator's designee shall consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(c) Default. A completed final fitness determination made under OAR 845-002-0260 shall constitute a final order without a hearing as provided under 137-003-0672.

(6) Alternative Process. A subject individual currently employed by the OLCC may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies, and collective bargaining provisions. A subject individual's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation.

(a) To challenge information identified in this section (7), a subject individual may use any process made available by the providing agency.

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the Commission conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 845-002-0260 by submitting a new OLCC Criminal Records Request form.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-002-0310

#### Record Keeping and Confidentiality

(1) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(2) Records Received from the Oregon Department of State Police.

(a) Records the Commission receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

(b) Within the Commission, only authorized designees shall have access to records the Commission receives from the Oregon Department of State Police resulting from a criminal records check.

(c) An authorized designee shall have access to records received from the Oregon Department of State Police in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) Authorized designees shall maintain and disclose records received from the Oregon Department of State Police resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS Chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the Commission and the Oregon Department of State Police.

(e) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the Commission shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(f) If a subject individual with a right to inspect criminal offender information under subsection (e) requests, the Commission shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law.

(3) Other Records.

(a) The Commission shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including OLCC Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15).

(b) Within the Commission, only authorized designees shall have access to the records identified under subsection (a).

(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(d) A subject individual shall have access to records identified under subsection (a) pursuant to the terms of the Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-002-0320

#### Authorized Designees

(1) Appointment.

(a) The Commission Administrator or the Administrator's designee shall designate positions within the Human Resources Unit and the Enforcement & Compliance Unit as including the responsibilities of an authorized designee.

(b) Appointment to one of the designated positions shall be contingent upon an individual being approved under the Commission's criminal records check and fitness determination process.

(c) Appointments shall be made by the Commission Administrator or the Administrator's designee at his or her discretion.

(2) The Commission Administrator and Deputy Administrator may also serve as authorized designees, contingent on being approved under the Commission's criminal records check and fitness determination process.

(3) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is related to the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a

financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status.

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.

(b) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed or described under OAR 845-002-0270. Failure to make the required report is grounds for termination of his or her status as an authorized designee.

(c) The Commission must suspend or terminate the appointment as an authorized designee if the authorized designee fails to comply with the rules of the Commission or fails to continue to meet the qualifications for the status of authorized designee, as applicable.

(d) A termination of authorized designee status due to a Final Fitness Determination is not subject to hearing rights under these rules unless the termination results in loss of employment or position, in which case they have the same hearing rights related to Fitness Determinations as other subject individuals under these rules.

(5) Review of Appointment. The Commission will develop a procedure to review and update appointments of authorized designees, up to and including a new application and criminal records check, to assure that all requirements of this rule are met:

(a) Every three years; or

(b) If the Commission has reason to believe the person no longer meets the qualifications to be an authorized designee, such as but not limited to, any indication of criminal behavior.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-002-0330

#### Fees

(1) The Commission may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Commission by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

(2) The Commission may charge the fee to the subject individual on whom the criminal offender information is sought, or, if the subject individual is an employee of a Commission contractor or vendor and is undergoing a fitness determination in that capacity, the Commission may charge the fee to the subject individual's employer.

(3) The Commission shall not charge a fee if the subject individual is a Commission employee, a Commission volunteer, or an applicant for employment or a volunteer position with the Commission.

Stat. Auth.: ORS 181.534 & 471.030, 471.040, 471.730

Stats. Implemented: ORS 181.534, 471.695

Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

## 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), 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

#### 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), 471.730(5) & (6), 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), 471.730(5) & (6), 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.310 & 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 a charging document is:

(a) 30 days after mailing of the charging document for violation matters, except that for violations of ORS 471.315(1)(c), the time limit shall be 20 days;

(b) 15 days after mailing of the charging document for service permit refusals based on failure to complete the alcohol server education course and examination and 30 days after mailing of the charging document for all other service permit refusals;

(c) 60 days after mailing of the charging document for license or certification refusal or non-renewal, except that for non-renewal of a license under ORS 471.313(5), the time limit shall be 20 days;

(d) Within the time period provided in the retail sales agent agreement between the Commission and the agent for agency cases, if the agreement provides for a hearing;

(e) Within the time period provided in the charging document for all other matters not listed above.

(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), 183.745, 471.730(5) & (6)  
 Stats. Implemented: ORS 183.341(2), 183.430(2), 183.435, 183.745, 471.331(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; OLCC 18-2007, f. 9-27-07, cert. ef. 10-1-07

### 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, 183.341(2), 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)(c)(A) and (B), when a party or a witness in a contested case proceeding, who is an individual with a disability, or who 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 assistive communication device or an interpreter, the agency shall appoint and pay the fees and expenses of a qualified interpreter or assistive communication device whenever it is necessary to interpret the proceedings.

(2) The administrative law judge shall explain to the person with a disability or 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, or contact the agency to arrange for use of an assistive communication device, and that the translation or use of the assistive communication device itself is at no cost to the party. The interpreter shall provide to the administrative law judge 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. The agency will provide to the administrative law judge and the party the name, phone number and address of the contact person at the agency who can arrange for an assistive communication device.

(3) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, 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;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability;

(B) For a non-English speaking person, a person readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6);  
 Stats. Implemented: 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; OLCC 5-2006, f. 4-18-06, cert. ef. 5-1-06

### 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), 471.730(5) & (6), 472.060(1) & (2)(d)  
 Stats. Implemented: ORS 183.341(2), 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 an order granting or denying late hearing requests (frequently called requests for relief from default) as provided in OAR 137-003-0528.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying requests to participate as a party, limited party or interested agency in a contested case under OAR 137-003-0535 or 137-003-0540 and to make all decisions incidental to the request, including, but not limited to, specifying the areas of participation and procedural limitations of participation, granting or denying late petitions, shortening the time within which responses to the petition shall be filed and/or postponing the hearing until disposition is made of the petition.

(4) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying a petition for an order to take a deposition of a party pursuant to OAR 137-003-0572. This authority includes, but is not limited to, the ability to designate the terms of the deposition such as the location, manner of recording, time of day and persons permitted to be present during the deposition.

(5) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying discovery motions pursuant to OAR 137-003-0570 submitted prior to referral of the contested case to the Office of Administrative Hearings and, if applicable, after the assigned administrative law judge issues a proposed order.

(6) The Commissioners delegate to the Administrator the authority to respond to questions transmitted to the agency as set forth at OAR 137-003-0635. The scope of the issues that may be transmitted to the agency includes the agency's interpretation of its rules and applicable statutes and which rules or statutes apply to a proceeding.

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

(8) 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 or withdrawal of a hearing request; or when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.

(9) The Commissioners delegate to the ALJ the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to appear at the time scheduled for hearing and the agency file constitutes the sole record.

(10) 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.

(11) 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).

(12) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying a motion to postpone oral argument to the Commissioners on any comments or exceptions to a proposed order.

(13) 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.

(14) The Commissioners delegate to the Administrator the authority to prepare and issue an order granting or denying a request to stay the enforcement of a Final Order pending judicial review and in cases where judicial review has not been requested.

(15) "Administrator" means the Executive Director of the Oregon Liquor Control Commission or his or her designee.

Stat. Auth.: ORS 183.341(2) & 471.730(5)(6)  
 Stats. Implemented: 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; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2003, f. 11-24-03, cert. ef. 12-1-03; OLCC 2-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 1-2008, f. 1-16-08, cert. ef. 2-1-08; OLCC 16-2010, f. 12-22-10, cert. ef. 1-1-11

## 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 or Domestic Partner, 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.

(i) “Domestic Partner” means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

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

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; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

**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 471.030, 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**

**Public Records and Miscellaneous Fees**

(1) Public Records Requests. The Commission charges the fees described in sections (2) through (7) of this rule for retrieving, copying and making records available in response to public records requests. Public records requests must be in writing.

(2) Reimbursement of Commission staff time. An hourly rate of \$25.00 will be assessed for any Commission staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, reproducing records onto a disk or other electronic format, certifying records, and mailing records. This charge is in addition to the charges for the copies of the documents. The Commission may charge for the cost of searching for records regardless of whether the Commission was able to locate the requested record.

(3) Hard copy Records. The fee schedule listed below is reasonably calculated to reimburse the Commission for the actual costs of providing hard copies of records.

(a) Hard copy (black and white, letter size): \$0.25 per page. Costs for other sized or color copies will be the Commission's actual cost.

(b) Fax charges: \$0.50 (per page up to a maximum of 20 pages). If the fax is over 20 pages the Commission will provide the records in another appropriate format or manner such as a disk or hard copies.

(c) Archive Retrieval: actual cost.

(d) Whenever feasible the Commission will provide double-sided copies of a record request. Each side of a double-sided copy will constitute one page.

(4) Electronic Records.

(a) Copies of requested electronic records may be provided in the format or manner maintained by the Commission. Some records maintained by the Commission are in hard copy format only and therefore not all records are available in electronic form. The Commission will perform all downloading, reproducing, formatting and manipulating of records. Records that are placed on a CD-ROM disk, including recorded proceedings, will incur a fee of \$5.00 per disk. The Commission does not provide transcription service. In order to protect the integrity of the Commission's records, the records requestor may not provide the disk or any other medium for the electronic records storage. The reimbursement of staff time to provide records in electronic form will be charged in accordance with section (2) of this rule.

(b) Records that are sent via electronic mail will not be charged a fee for transmission up to a file size of 10 MB. If the file size is over 10 MB the Commission will provide the records in another appropriate format or manner such as a disk or hard copies.

(5) Certification of Copies of Records. Certification of both hard and electronic copies of records may be provided upon request. The Commission will only certify that on the date copied the copy was a true and correct copy of the original record. The Commission cannot certify as to any subsequent changes or manipulation of the record.

(6) Reasonable costs associated with responding to a request to review or copy a record not specifically addressed by this rule may be assessed, including but not limited to the actual costs for the Commission to have a person make copies of the records.

(7) The Commission may not include in a fee charged under sections (2) through (6) of this rule the cost of time spent by an attorney for the public body in determining the application of the provisions of ORS 192.410 to 192.505.

(8) Collection of Fees.

(a) Method. Payment may be made in the form of cash, check, or money order. Make checks payable to "Oregon Liquor Control Commission". Payments may be made in person at: OLCC, 9079 SE McLoughlin Blvd., Portland, Oregon 97222-7355. Payments may also be mailed to: OLCC, PO Box 22297, Milwaukie, Oregon 97269-2297.

(b) Receipts. A receipt may be given, upon request, for charges incurred.

(c) Prepayment and Notification of Copy Costs.

(A) If a fee charged under sections (2) through (6) of this rule is estimated to be greater than \$25.00, the Commission must provide the requestor with a written notification of the estimated amount of the fee. The Commission shall not process the public records request until it receives confirmation from the requestor that the requestor wants the Commission to proceed with making the public record available.

(B) Depending on the volume of the records requested, the difficulty in determining whether any of the records are exempt from disclosure, and the necessity of consulting legal counsel, the Commission may preliminarily estimate the charges for responding to a record request and require prepayment of the estimated charges. If the actual charges are less than the prepayment, any overpayment will be refunded to the requestor.

(d) Waiver of Fees.

(A) Ordinarily there will be no waiver of fees.

(B) The Commission will not charge a fee if a record can be provided at nominal expense. Nominal expense means costing less than \$5.00, including the labor required to fulfill the request.

(C) 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. Examples include when the material requested is currently being distributed as part of the public participation process such as a news release or public notice, or the material requested has been distributed through mass

mailing and is readily available to the Commission at the time of the request.

(D) The Commission considers the following factors in determining whether to waive or reduce fees pursuant to subsection (8)(d)(C) of this rule:

(i) Any financial hardship on the Commission;

(ii) The extent of time, expense and interference with the Commission's regular business;

(iii) The volume of the records requested; or

(iv) The necessity to segregate exempt from non-exempt materials.

(9) Miscellaneous Distilled Spirits Fees:

(a) Representatives of distilled spirits' suppliers may purchase monthly reports of sales and inventory by code number (brand) by retail outlet. The fee is \$20.00 for preparation of the report, plus \$2.00 for each code included in the report. The Commission will bill representatives monthly, with payment due within 30 days.

(b) 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.

(c) 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.

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

Stats. Implemented: ORS 192.440

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; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 10-2005, f. 12-19-05, cert. ef. 1-1-06; OLCC 12-2010, f. 10-18-10, cert. ef. 11-1-10

#### **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 471.030, 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 let-

ter 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 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, pur-

suant 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 & 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) and 471.404 allow the Commission to license, regulate and control the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

(2) To meet the needs of those who use grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes, the Commission requires these users to secure Importation Permit/s. For purposes of this rule, the Commission considers agricultural use of this product to be an industrial use. Importation Permits may be issued for alcohol importation to a person who is not a Brewery, Winery, Distillery, or wholesale licensee.

(3) 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 Importation Permit application; and

(C) Sends the application to the Commission at any time. The application must be received at least 30 days prior to the first purchase or use of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

(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, 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) Before the end of each calendar year, Importation Permit holders must send the Commission a listing of the 190 or 200 proof alcohol which the Permit holder used during that calendar year.

(4) The Commission retains the right to audit the records of alcohol vendors and Importation Permit holders at any time to determine compliance with this rule and other regulations of the Oregon Liquor Control Commission.

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

Stats. Implemented: ORS 471.404 & 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; OLCC 13-2004, f. 11-18-04, cert. ef. 1-1-05

#### 845-004-0105

##### **Domestic 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) The Commission requires those who use grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes, and who purchase such grain and ethyl alcohol from Oregon vendors, to secure an Open Purchase Order. For purposes of this rule, the Commission considers agricultural use of this product to be an industrial use. Open Purchase Orders as described in this rule may be issued for domestic ethyl alcohol purchases to a person who is not a Brewery, Winery, Distillery, or wholesale licensee of the Commission.

(3) Open Purchase Order for Domestic Purchase of Grain and Ethyl Alcohol:

(a) The Commission may issue an Open Purchase Order that allows a person to purchase 190 proof through 200 proof alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes from an Oregon vendor of ethyl alcohol to a person who:

(A) Is at least 21 years old;

(B) Completes a request for an Open Purchase Order with the Commission; and

(C) Sends the completed application to the Commission at least 30 days prior to the first purchase of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

(b) If the person is eligible for an Open Purchase Order, the Commission will establish an Open Purchase Order for that person. The person may then order grain and ethyl alcohol from an Oregon alcohol vendor and must include a copy of the Open Purchase Order with their order to each vendor from whom they purchase.

(c) The Commission may refuse to issue an Open Purchase Order if the person does not complete the application, proposes an unacceptable use for the alcohol or makes a false statement on the application. If the person uses the alcohol other than described in the application, or the Commission discovers after issuing the Open Purchase Order that the person made a false statement on the application, the Commission may withdraw any existing Open Purchase Order previously issued to the person.

(d) Before the end of each calendar year, each holder of an Open Purchase Order as described by this rule must send the Commission a listing of the 190 proof through 200 proof alcohol which the Open Purchase Order holder purchased from an Oregon vendor during that calendar year.

(4) The Commission retains the right to audit the records of alcohol vendors and holders of Open Purchase Orders as described by this rule at any time to determine compliance with this rule and other regulations of the Oregon Liquor Control Commission.

(5) Open Purchase Orders for domestic purchase of grain and ethyl alcohol below 190 proof will be reviewed by the Director of the Distilled Spirits Program, and approved if uses are consistent with this rule.

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

Stats. Implemented: ORS 471.730(8)

Hist.: OLCC 4-2006, f. 2-22-06, cert. ef. 3-1-06

#### 845-004-0120

##### **Investigative Subpoenas and Oaths**

(1) Purpose. 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. This 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. For purposes of this rule, the term "records" includes videotapes, DVDs, audiotapes, CDs, and other media used to capture or record information and activities.

(2) 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 books, payrolls, accounts, papers, documents or records 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 book, payroll, account, paper, document or record; the investigation might be compromised by asking the licensee or applicant for the book, payroll, account, paper, document or record; or the person in possession of the book, payroll, account, paper, document or record 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, Ser-

vice Permit application, or alleged liquor law violation. Investigators, Inspectors, Regional Coordinators and Regional Managers may conduct interviews of subpoenaed witnesses under oath.

(3) 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 including 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 471.760

Hist.: OLCC 16-1997, f. 7-24-97, cert. ef. 9-1-97; OLCC 6-2005, f. 10-19-05, cert. ef. 11-1-05

### DIVISION 5

#### TEMPORARY SALES LICENSES/SERVER AGE

##### 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, 471.040, 471.730(1) & (5)

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

Stats. Implemented: ORS 471.292 & 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 of 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 for 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, limitations or 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 471.040, 471.157, 471.730(5) & (6)  
Stats. Implemented: ORS 471.155, 471.168, 471.311 & 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; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

#### 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 dis-

turbances 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 applicant's eligibility for a license; and

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

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 8-2005, f. 11-21-05, cert. ef. 12-1-05

#### 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 body's 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 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.166 & 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 circumstances exist with regard to any person who has any financial interest in the licensed business or place of business such that the Commission would have a basis to cancel or refuse to issue a license to the person with a financial interest if that person were the licensee or applicant. 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 (lower case) 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. Domestic partner (lower case) also includes a "Domestic Partner" (upper case), which means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(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 471.030, 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; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 1-2011, f. 2-23-11, cert. ef. 3-1-11

**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) The Commission requires applicants to submit Individual History forms from managers when the applicant is inexperienced or new to the industry, or when the applicant will not personally manage the premises, or when the applicant's premises has a history of problems or is located in a problem area. For purposes of this rule a manager is an individual who has the authority to act on behalf of the applicant when the applicant is not on the premises.

(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 Commission's Administrator 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.

[ED. NOTE: Forms referenced are available from the agency.]  
 Stat. Auth.: ORS 471, including 471.030, 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 16-2004, f. 12-22-04, cert. ef. 1-1-05

**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 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 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 471.030, 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; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

### 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 471.030, 471.040, 471.730(1) & (5)

Stat. Implemented: ORS 471.311(1), 471.155, 471.313 & 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 in writing that 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 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.

(6) The applicant fails to successfully complete an approved Alcohol Server Education Course as ORS 471.542 and the Commission rules require.

(7) 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.

(8) 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.

(9) 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.

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

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

Stats. Implemented: ORS 471.168 & 471.313

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 12-2008, f. 10-13-08, cert. ef. 11-1-08; OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09

### 845-005-0321

#### Additional License Refusal Reasons for a Full On-Premises Sales License for a Nonprofit Private Club

ORS 471.175 allows the Commission to issue a full on-premises sales license to a nonprofit private club as described in 471.175(8). This rule sets criteria to refuse to issue or renew a Full On-Premises Sales License for a Nonprofit Private Club. These criteria are in addition to other refusal criteria set out in ORS Chapter 471 and OAR chapter 845 division 5.

(1) Definitions. For this rule and OAR 845-006-0490:

(a) "Auxiliary Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be an auxiliary member and has been designated as an auxiliary member with certain limited membership privileges by the nonprofit corporation.

(b) "Full Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be a full member and has been designated as a full member by the nonprofit corporation. A full member must pay dues to the club, have full-time membership privileges equal to all other full members of the club, and be entitled to vote in all elections for directors of the nonprofit corporation licensee of the club.

(c) "Nonmember" means an individual who is not a full member or auxiliary member and who is at the club for the purpose of benefiting from the club's services or facility.

(d) "Nonprofit Corporation" means a mutual benefit corporation, a public benefit corporation, or religious corporation as defined in ORS Chapter 65.

(2) The Commission may refuse to issue or renew a Full On-Premises Sales License for a Nonprofit Private Club when the applicant:

(a) Is not a nonprofit corporation currently registered as such with Oregon's Office of the Secretary of State; or

(b) At the time of initial application for licensure, has not been registered as a nonprofit corporation with Oregon's Office of the Secretary of State for a minimum of one year immediately prior to the date of the application; or

(c) Does not have a minimum of 100 full members.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.175 & 471.730(1) & (5)

Stats. Implemented: ORS 471.175

Hist.: OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09; OLCC 13-2010, f. 10-18-10, cert. ef. 11-1-10

### 845-005-0322

#### Additional License Refusal Reasons for a Full On-Premises Sales License for a For-Profit Private Club

ORS 471.175 allows the Commission to issue a full on-premises sales license to a for-profit private club as described in the definition of a "commercial establishment" in ORS 471.001(2). This rule sets criteria to refuse to issue or renew a Full On-Premises Sales License for a For-Profit Private Club. These criteria are in addition to other refusal criteria set out in ORS Chapter 471 and OAR chapter 845, division 5.

(1) Definitions. For this rule and OAR 845-006-0495:

(a) "Member" means a living individual that has been accepted by the club as a member, pays dues to the club, and has full-time membership privileges.

(b) "Nonmember" means an individual who is not a member and who is at the club for the purpose of benefiting from the club's services or facility.

(2) The Commission may refuse to issue or renew a Full On-Premises Sales License for a For-Profit Private Club when the applicant does not have a minimum of 100 members.

Stat. Auth.: ORS 471, 471.001, 471.030, 471.040, 471.175, & 471.730(1) & (5)

Stats. Implemented: ORS 471.001 & 471.175

Hist.: OLCC 13-2010, f. 10-18-10, cert. ef. 11-1-10

**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 applicant's record, passage of time since last relevant incident and previous record of compliance.

(5) The applicant has been convicted of a felony when there is a relationship between the facts that support the conviction and applicant's fitness to exercise the license privileges. When there is a relationship between the applicant's fitness and the felony, the Commission considers any intervening circumstances 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313 & 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, 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 appli-

cant'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; or 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)(c) 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.

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

Stats. Implemented: ORS 471.313

## Chapter 845 Oregon Liquor Control Commission

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; OLCC 2-2007, f. 2-20-07, cert. ef. 3-1-07

### 845-005-0331

#### Licensing Exterior Areas

(1) The Commission shall refuse to license an exterior area, and may revoke its approval of an outdoor area previously licensed, for any of the reasons listed in this rule unless the applicant shows good cause that outweighs the refusal basis. The following sections 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, or withdraws its approval of, the use proposed by the applicant or licensee.

(3) The exterior area proposed to be licensed is not adjacent to the licensee's existing or the applicant's 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.

(5) The applicant or licensee will allow entertainment in the exterior area between 12:00 a.m. and 7:00 a.m.

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 2-2011, f. 2-23-11, cert. ef. 3-1-11

### 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 471.030, 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 471.030, 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

### 845-005-0355

#### 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);

(c) The Commission determines that a restriction is in the public interest or convenience; or

(d) The Commission has a basis to refuse the license and the applicant or licensee has submitted a qualifying control or operating plan as good cause to overcome the refusal basis. In these circumstances the Commission shall impose as restrictions those elements of the control or operating plan that the Commission determines are essential to overcoming the refusal basis.

(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, including conditions that have or are likely to contribute to noise, music or sound vibrations from inside or outside the premises that a reasonable person would consider excessive or obtrusive; 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 Category I violation.

(6) A restriction remains in effect until the Commission removes it. The licensee or permittee may ask the Commission to remove or modify a restriction. The written request must explain why the licensee or permittee believes the Commission should remove or modify the restriction. The Commission will notify the licensee or permittee, in writing, of its decision to approve or deny the request and

the basis for its decision. If the Commission denies the request, the licensee or permittee has the right to a hearing under the procedures in ORS Chapter 183; OAR chapter 137, division 003; and 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 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.313 & 471.405(1)  
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 7-2006(Temp), f. & cert. ef. 6-15-06 thru 12-11-06; OLCC 13-2006, f. 10-19-06, cert. ef. 12-12-06; OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11

### 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 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 471.030, 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.313, 471.292(1)(e) & 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.030 & 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 471.168 to maintain liquor liability insurance or bond. In addition to other requirements, the Commission has determined that licensees listed in 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.313(4)(i) & 471.168  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

**845-005-0405**

**Full or Limited On-Premises 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 at locations other than the licensee's annually licensed premises when catering small-scale temporary events where the licensee will furnish food and beverage services for 100 or fewer guests of the catering client. This rule refers to this type of catering as small-scale private catering.

(2) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day, or any part of a license day.

(d) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(e) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(3) 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 alcohol and food service for a specific number of guests or participants;

(b) The number of guests or participants is 100 or fewer;

(c) The licensee is not the client;

(d) Alcoholic beverage service is only in conjunction with food service; and

(e) The provision of alcohol at the catered event must not be more than one license day's duration unless the event is a closed conference or seminar.

(4) ORS 471.184(1) authorizes the Commission to grant pre-approval to provide the service of small-scale private catering. Applicants must apply in writing using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to beginning the service of small-scale private catering. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(5) General pre-approval to provide the service of small-scale private catering shall not include any event at a particular location more than one license day per week, unless the event is a closed conference or seminar.

(6) An event that does not qualify as a small-scale private catered event under this rule must be approved as a large-scale private catered event or a temporary use of an annual license event under OAR 845-005-0410.

(7) The licensee's application for pre-approval to provide the service of small-scale private catering shall be made in writing and include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) All events to prevent problems and violations;

(B) Patronage by minors as set out in subsection (8) of this rule; and

(C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (4) of this rule to refuse to process any application that is not complete;

(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;

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

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

(8) A plan for managing patronage by minors under subsection (7)(a) of this rule must meet the following requirements:

(a) If the catered event will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the catered event will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(9) Minors are prohibited from the catered licensed premises or portions of the catered licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(10) 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.

(11) The Commission may deny, cancel, or restrict temporary off-premises license use for small-scale private catering if the licensee has a serious violation history at small-scale private catering events within the past 36 months.

(12) 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.

(13) When the Commission approves a written plan under subsection (7)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(14) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the small-scale private catering licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

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

Stats. Implemented: ORS 471.184

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 1-2009, f. 3-17-09, cert. ef. 4-1-09

**845-005-0410**

**Full or Limited On-Premises Licensee Large-Scale Private Catered Events and Temporary Use of an Annual License for Events at Another Location**

(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) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day, or any part of a license day.

(d) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(e) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(3) 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 locations other than the licensee's annually licensed premises at large-scale catered events or temporary use of an annual license events after having obtained prior written Commission approval. This rule refers to these types of events as either large-scale private catered events or temporary use of an annual license events.

(4) For purposes of this rule, large-scale private catered events are events, such as weddings, receptions, conferences, company picnics and parties, and company sponsored events, that:

(a) Are not open to the general public. However, a large-scale private event may be open to the general public if the purpose of the event is fund raising for a charitable or nonprofit organization that is registered as such with Oregon's Secretary of State;

(b) Are catered for 101 or more guests or participants;

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

(d) Have alcoholic beverage service as secondary to and in conjunction with food service at the event;

(e) Have the licensee not as the client; and

(f) Have the provision of alcohol at the catered event be not more than one license day's duration unless the event is a closed conference or seminar.

(5) An event that doesn't qualify as a large-scale private catered event under this rule may be approved as a temporary use of an annual license event under this rule.

(6) For purposes of this rule, temporary use of an annual license events are events at which the licensee:

(a) Does not have, or is not eligible for, pre-approval to provide the service of small-scale private catering as per OAR 845-005-0405; and

(b) Does not have, or is not eligible for, pre-approval to provide the service of large-scale private catering as per this rule.

(7) Application. Applicants for events under this rule must apply in writing using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to beginning the service of large-scale private catering or prior to the date of the temporary use event. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(8) The Commission may grant pre-approval to provide the service of large-scale private catering for events that meet the requirements of section (4) of this rule. The licensee's application for pre-approval for future large-scale private catered events shall be made in writing and include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) All events to prevent problems and violations;

(B) Patronage by minors as set out in subsection (10) of this rule; and

(C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (7) of this rule to refuse to process any application that is not complete;

(b) A brief description of the types of events to be catered;

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

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

(9) The Commission does not grant pre-approval for the temporary use of an annual license for events at another location. The licensee may apply for approval of each temporary use of an annual license event as provided in this section. The licensee's application for the temporary use of an annual license at another location must be in writing and must be on a separate application form for each event. The Commission will not approve more than seven license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than seven days. The application must include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) All events to prevent problems and violations;

(B) Patronage by minors as set out in subsection (10) of this rule; and

(C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (7) of this rule to refuse to process any application that is not complete;

(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) A written proposal showing compliance with the food service standards of OAR 845-006-0462;

(f) The recommendation of the local governing body where the licensed premises will be located; and

(g) Processing fee established by Commission rule.

(10) A plan for managing patronage by minors under subsections (8)(a) and (9)(a) of this rule must meet the following requirements:

(a) If the large-scale catered event premises or temporary use of an annual licensed premises will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the catered or temporary use of an annual licensed premises will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(11) Minors are prohibited from the large-scale catered event premises or temporary use of an annual licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(12) The Commission may deny, cancel or restrict temporary off-premises license use for large-scale private catering or temporary use of an annual license for any reason for which the Commission may deny, cancel or restrict a regular license.

(13) The Commission may deny or restrict temporary off-premises license use for large-scale private catering or temporary use of an annual license events if the applicant has a serious violation history within the past 36 months.

(14) The Commission shall limit approval of the temporary use of an annual license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(15) When the Commission approves a written plan under subsections (8)(a) or (9)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(16) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the large-scale private catering or temporary use licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

Stat. Auth.: ORS 471, including 471.030, 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; OLCC 1-2009, f. 3-17-09, cert. ef. 4-1-09

#### 845-005-0413

##### Special Events Distillery License

ORS 471.230 authorizes the Commission to issue a Special Events Distillery (SED) license to an Oregon Distillery licensee. This rule sets the qualifications and requirements for a Special Events Distillery license.

(1) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(e) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(f) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(g) "Trade visitor" means a person whose job includes the purchase, or recommended purchase, of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(h) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(2) Only the holder of a Distillery license issued under ORS 471.230 may qualify for a Special Events Distillery license.

(a) The SED license is only for a location other than that designated as the Distillery licensee's annually licensed premises.

(b) A distillery licensee providing tastings of distilled liquor for retailers at an educational seminar that is not open to the public is not required to obtain a SED and is subject to OAR 845-013-0060.

(c) A distillery licensee providing tastings of distilled liquor at a retail liquor store must follow OAR 845-015-0155. A distillery licensee is not eligible for a SED at a retail liquor store.

(3) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

(4) Applicants must apply in writing for a Special Events Distillery license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(5) The application for a SED license under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (6) of this rule; and

(C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (4) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage events on the SED licensed premises;

(c) Identification of the premises or area 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) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by the use of badges or name tags;

(f) The recommendation in writing of the local governing body where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(6) A plan for managing patronage by minors under subsection (5)(a) of this rule must meet the following requirements:

(a) If the SED license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the SED license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(7) Minors are prohibited from the SED licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

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

(9) The Commission may deny or restrict a SED license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(10) The Commission shall limit the issuance of a SED license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(11) The Commission may refund the SED 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 licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(13) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

(14) The tastings of distilled liquor are allowed only within the premises or area as identified in the Special Events Distillery application per subsection (5)(c) of this rule.

(15) A Distillery licensee may provide only tastings and only of distilled liquor manufactured by the Distillery licensee that are approved by the Commission for sale in Oregon.

(16) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per license day.

(17) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public per subsection (5)(e) of this rule.

(18) Alcohol servers who pour tastings must have valid service permits and be at least 21 years of age.

(19) A violation of sections (14)–(18) of this rule is a Category III violation.

Stat. Auth.: ORS 471.471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.230

Hist.: OLCC 1-2010, f. 2-22-10, cert. ef. 3-1-10

#### 845-005-0414

##### Special Events Brewery-Public House License

ORS 471.200 authorizes the Commission to issue a Special Events Brewery-Public House (SEBPH) license to a Brewery-Public House licensee. This rule sets the qualifications and requirements for a Special Events Brewery-Public House license.

(1) Definitions. For this rule:

(a) “Bar” means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) “Food counter” means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) “License day” means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) “Serious violation history” means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(e) “Social game” means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(f) “Video lottery game” means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(2) Only the holder of a Brewery-Public House license issued under ORS 471.200 may qualify for a Special Events Brewery-Public House license. The SEBPH license is only for a location other than that designated as the Brewery-Public House licensee’s annually licensed premises and may allow the licensee to sell wine, malt beverages and cider at retail for consumption on or off the licensed premises.

(3) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

(4) Applicants must apply in writing for a Special Events Brewery-Public House license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(5) The application for a SEBPH license under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (6) of this rule; and

(C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (4) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage events on the SEBPH licensed premises;

(c) Identification of the premises or area proposed to be licensed;

(d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465(2)–(4);

(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 where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(6) A plan for managing patronage by minors under subsection (5)(a) of this rule must meet the following requirements:

(a) If the SEBPH license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the SEBPH license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(7) Minors are prohibited from the SEBPH licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

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

(9) The Commission may deny or restrict a SEBPH license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(10) The Commission shall limit the issuance of a SEBPH license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(11) The Commission may refund the SEBPH 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 licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(13) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

Stat. Auth.: ORS 471.471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.200

Hist.: OLCC 1-2010, f. 2-22-10, cert. ef. 3-1-10

#### 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, malt beverages and cider allowed to be sold under the annual Winery license at retail for consumption on or off the licensed premises at a location other than that designated as the winery's annually licensed premises.

(2) ORS 471.227 authorizes the Commission to issue a Special Events Grower license to a Grower Sales Privilege licensee. The special license may allow the licensee to sell wine and cider allowed to be sold under the annual Grower Sales Privilege license at retail for consumption on or off the licensed premises at a location other than that designated as the grower's annually licensed premises.

(3) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(e) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(4) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any

application to a single license day or to any number of license days fewer than five days.

(5) Applicants must apply in writing for a Special Event Winery or Special Event Grower license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

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

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (7) of this rule; and

(C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (5) of this rule to refuse to process any application that is not complete;

(b) Identification of the individuals to be employed by the licensee to manage the event proposed in the application;

(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 where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(7) A plan for managing patronage by minors under subsection (6)(a) of this rule must meet the following requirements:

(a) If the special license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the special license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(8) Minors are prohibited from the special licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(9) 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.

(10) The Commission may deny or restrict a special license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(11) The Commission shall limit the issuance of a special license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(12) 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 licensee's control, or if the Commission determines the

applicant does not need a license for the event proposed in the application.

(13) When the Commission approves a written plan under subsection (6)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(14) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

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

Stats. Implemented: ORS 471.223 & 471.227

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; OLCC 6-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; OLCC 19-2007, f. 9-27-07, cert. ef. 11-11-07; OLCC 1-2009, f. 3-17-09, cert. ef. 4-1-09; OLCC 9-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 1-10-10; OLCC 12-2009, f. 10-19-09, cert. ef. 1-11-10

### Delivery of Malt Beverage, Wine or Cider to Individuals

#### 845-005-0416

##### Definitions

As used in OAR 845-005-0416 through 845-005-0426:

(1) The term “ship” means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term “deliver” has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.

(2) “Same-day delivery” means a person causes a resident of Oregon to receive malt beverages, wine or cider on the same day the person receives the order from the customer.

(3) “Next-day delivery” means a person causes a resident of Oregon to receive malt beverages, wine or cider after the day the person receives the order from the customer.

(4) “For-hire carrier” means any person or company who holds itself out to the public as willing to transport property in return for compensation. The term “for-hire carrier” can include a common carrier.

(5) “Month” means a calendar month.

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

Stats. Implemented: ORS 471.282

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### 845-005-0417

##### Qualifications for Direct Shipment of Wine or Cider to a Resident of Oregon

ORS 471.282 allows a person with a Direct Shipper Permit to sell and ship wine or cider directly to a resident of Oregon who is at least 21 years of age. 471.186 allows an off-premises sales licensee to deliver wine and cider to a resident of Oregon who is at least 21 years of age. This rule sets the qualifications to obtain a Direct Shipper Permit and for an off-premises sales licensee to obtain approval from the Commission to make same-day delivery of wine and cider.

(1) Only the following persons may qualify for a Direct Shipper Permit:

(a) A person holding a winery license issued under ORS 471.223 or a grower sales privilege license issued under 471.227.

(b) A person holding a temporary sales license issued under ORS 471.190 that is also a nonprofit trade association and that has a membership primarily composed of persons holding winery licenses issued under 471.223 and grower sales privilege licenses issued under 471.227.

(c) A person holding a license issued by another state within the United States that authorizes the manufacture of wine or cider.

(d) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the licensee.

(e) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider at retail for consumption off the licensed premises.

(2) Application for a Direct Shipper Permit. A person, other than an off-premises sales licensee, must make application to the Commission upon forms to be furnished by the Commission and receive

a Direct Shipper Permit from the Commission before shipping any wine or cider directly to a resident of Oregon. The application shall include:

(a) If the application is by a person described under subsection (1)(a) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392.

(b) If the application is by a person described under subsection (1)(b) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392; a bond or other security described in ORS 471.155 in the minimum amount of \$1,000; and a \$50 fee.

(c) If the application is by a person described under subsection (1)(c), (1)(d), or (1)(e) of this rule: a statement that the person understands and will follow the requirements listed in OAR 845-006-0392; a true copy of their license; a bond or other security described in ORS 471.155 in the minimum amount of \$1,000; and a \$50 fee.

(3) The Commission may revoke or refuse to issue or renew a Direct Shipper Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

(4) A Direct Shipper Permit must be renewed annually.

(a) If the person holds the permit based on a license issued by another state, the permit may be renewed by paying a \$50 renewal fee, providing the Commission with a true copy of a current license issued to the person by the other state, and providing proof of a bond or other security described in ORS 471.155 in the minimum amount of \$1,000.

(b) If the person holds the permit based on an annual license issued by this state, the permit may be renewed at the same time that the license is renewed.

(5) Application for Same-Day Delivery. A person who holds, or is applying for, a Direct Shipper Permit or an off-premises sales license issued by the Commission who intends to provide the service of same-day delivery of wine or cider to a resident of Oregon must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application for same-day delivery approval shall include a statement that the person understands and will follow the same-day delivery requirements listed in OAR 845-006-0392.

(6) The Commission may refuse to process any application required under this rule if the application 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 the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.186 & 471.730(1) & (5)

Stats. Implemented: ORS 471.155, 471.186 & 471.282

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### 845-005-0420

##### Qualifications for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

ORS 471.305 allows certain licensees of the Commission to deliver malt beverages to customers. This rule describes the qualifications to make same-day and next-day delivery of malt beverages to a resident of Oregon.

(1) Only a holder of one of the following licenses may qualify to deliver malt beverages to a resident of Oregon:

(a) An off-premises sales license issued under ORS 471.186.

(b) A brewery-public house license issued under ORS 471.200.

(2) Notice of Next-Day Delivery. A licensee that intends to provide the service of next-day delivery of malt beverages to a resident of Oregon must notify the Commission in writing prior to beginning the next-day delivery service that it intends to provide this service. All deliveries must meet the requirements set forth in OAR 845-006-0396 for next-day delivery.

(3)(a) Application for Same-Day Delivery. A licensee that intends to provide the service of same-day delivery of malt beverages to a resident of Oregon must make application to the Commission upon forms to be furnished by the Commission and receive approval from the

Commission prior to beginning the same-day delivery service. The application shall include:

(b) A statement that the person understands and will follow the requirements for same-day delivery listed in OAR 845-006-0396.

(4) The Commission may refuse to process 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 the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, including 471.030, 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; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

### 845-005-0424

#### Guidelines for Approval of a For-Hire Carrier's Plan for Delivery of Malt Beverages, Wine or Cider

The Commission will evaluate and may approve a for-hire carrier's plan to deliver malt beverages, wine and cider to a resident of Oregon and licensees of the Commission.

(1) Delivery to a resident of Oregon. In order to deliver malt beverages, wine or cider to a resident of Oregon, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine or cider to a resident of Oregon. The application shall include the for-hire carrier's plan for ensuring that:

(a) Only persons age 18 or over will be used to deliver the alcohol to the resident;

(b) The person used to deliver the alcohol will verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) The person used to deliver the alcohol will determine that the person receiving the alcohol is not visibly intoxicated;

(d) If the alcohol is delivered on the same day the order is received, the alcohol must be delivered before 9:00 pm;

(e) The alcohol is delivered only to a home or business where the home or business has a permanent street address;

(f) Any package containing alcohol is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission; and

(g) Information is collected that must be retained by the for-hire carrier for a minimum of eighteen months from the date of delivering the alcohol. The information may be collected and retained electronically (if the carrier so chooses) and must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(2) Delivery to a licensee of the Commission. In order to deliver malt beverages, wine or cider to a licensee of the Commission, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine or cider to a licensee.

(3) A for-hire carrier:

(a) Must allow the Commission to audit the carrier's records which are directly related to alcohol deliveries in Oregon upon request and shall make those records available to the Commission in Oregon. The for-hire carrier must make these records available to the Commission no later than 60 days after the Commission mails the notice; and

(b) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(4) The Commission may revoke its approval of a for-hire carrier's plan if the for-hire carrier fails to follow the plan approved by the Commission or comply with the provisions of this rule. A revocation under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

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

Stats. Implemented: ORS 471.282

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### Delivery of Wine or Cider Directly to Retail Licensees

### 845-005-0425

#### Qualifications for Wine Self-Distribution Permit for Wine and Cider

ORS 471.274 allows a manufacturer of wine or cider with a Wine Self-Distribution Permit to sell and ship wine and cider that the manufacturer produced directly to the Commission or to retail licensees of the Commission who hold a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit. This rule sets the qualifications to obtain a Wine Self-Distribution Permit.

(1) In order to qualify for a Wine Self-Distribution Permit, a person must:

(a) Hold a valid license issued by another state within the United States that authorizes the manufacture of wine or cider;

(b) Hold a valid Certificate of Approval issued under ORS 471.244; and

(c) Hold a bond or other security, as described in ORS 471.155, in the minimum amount of \$1,000.

(2) Application. A person must make application to the Commission upon forms to be furnished by the Commission and receive a Wine Self-Distribution Permit from the Commission before shipping any wine or cider directly to retail licensees of the Commission. The application shall include:

(a) A true copy of the applicant's license and any information required by the Commission to establish that the license authorizes the manufacture of wine or cider;

(b) A statement that the person understands and will follow Oregon's alcohol laws and rules regarding wine self-distribution, tied-house and financial assistance prohibitions, and wine and cider privilege tax;

(c) Proof of a valid Certificate of Approval issued under ORS 471.244;

(d) A \$100 fee; and

(e) Proof of posting a bond or other security, as described in ORS 471.155, in the minimum amount of \$1,000.

(3) The Commission may refuse to process any application required under this rule that 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 the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

(4) The Commission may revoke or refuse to issue or renew a Wine Self-Distribution Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

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

Stats. Implemented: ORS 471.272 & 471.274

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

### 845-005-0426

#### Qualifications for Retailer Endorsement to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit

ORS 471.274 allows a retail licensee to receive wine or cider from the holder of a Wine Self-Distribution Permit if the retail licensee has received prior authorization from the Commission via license endorsement. This rule sets the qualifications to obtain this endorsement.

(1) Only retail licensees with one or more of the following licenses may qualify to receive wine or cider at the licensed premises from the holder of a Wine Self-Distribution Permit:

(a) An off-premises license issued under ORS 471.186.

(b) A full on-premises license issued under ORS 471.175.

(c) A limited on-premises license issued under ORS 471.178.

(d) A brewery-public house license issued under ORS 471.200.

(e) A temporary sales license issued under ORS 471.190.

(2)(a) Application. A retail licensee must make application to the Commission upon forms to be furnished by the Commission and

receive approval from the Commission before receiving any wine or cider from a person with a Wine Self-Distribution Permit. The application shall include:

(b) A statement that the applicant understands and will comply with the reporting requirements listed in OAR 845-006-0401.

(3) The Commission may refuse to process 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 the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

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

Stats. Implemented: ORS 471.274 & 471.404

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

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

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

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

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

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

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

(e) Do not provide any other service normally provided by the Full On-Premises Sales licensee (for example: taking orders for alcohol or food, serving drinks to customers, promoting alcohol beyond service of the sample tasting);

(f) Provide the distilled spirits product to be sampled, and remove any remaining product at the end of the tasting;

(g) Provide only distilled spirits product approved for sale in Oregon;

(h) Do not give anything prohibited by division 13 of chapter 845 of the Commission's administrative rules to a retailer or its customers;

(i) Comply with ORS 471.398, and division 13 of chapter 845 of the Commission's administrative rules.

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

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

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

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

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

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

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

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

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

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

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

(D) Do not pay for advertising the event;

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

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

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

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

Stat. Auth.: ORS 471, including 471.030, 471.040 & 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; OLCC 7-2005, f. 10-19-05, cert. ef. 11-1-05; OLCC 5-2011, f. 8-15-11, cert. ef. 9-1-11

#### 845-005-0431

##### Qualifications for Oregon Distillery Licensee Providing Tastings of Distilled Liquor on the Distillery Premises or on Another Premises Owned or Leased by the Distillery

ORS 471.230 allows an Oregon distillery licensee to provide tastings of distilled liquor manufactured by the distillery licensee on the distillery licensee's premises, or another premises owned or leased by the licensee, or both. This rule sets the qualifications to obtain approval to provide these tastings.

(1) Definitions For this rule and OAR 845-006-0452:

(a) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

(b) "Identified tasting area" means a specific defined area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(c) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(d) "Another premises owned or leased by the distillery licensee" is an annually licensed second location of the distillery licensee at which the distillery licensee owns specific real estate or has a written contract which allows the licensee to exclusively possess or use specific real estate for a specified term and for a specified rent. The real estate must be off of the distillery licensee's annually licensed premises and may not be on the premises of a retail licensee as defined in ORS 471.392(2).

(e) "Trade visitor" means a person whose job includes the purchase, or recommended purchase, of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(2) A distillery licensee providing tastings of distilled liquor at the distillery licensee's own premises, or another premises owned or leased by the distillery licensee, must follow this rule and may offer tastings of distilled liquor in accordance with the requirements of OAR 845-006-0452.

(3) A distillery licensee providing tastings of distilled liquor for retailers at an educational seminar that is not open to the public is subject to OAR 845-013-0060 and is not subject to the requirements of this rule.

(4) A distillery licensee providing tastings of distilled liquor at a retail liquor store is subject to OAR 845-015-0155 and is not subject to the requirements of this rule.

(5) A distillery licensee providing tastings of distilled liquor on a full on-premises licensed premises that is other than the distillery licensee's full on-premises licensed premises is subject to OAR 845-005-0428 and is not subject to the requirements of this rule.

(6) If a distillery licensee also holds a full on-premises sales license as per ORS 471.175 on the distillery licensed premises or on another premises owned or leased by the distillery licensee, then all sale or service of alcohol for on-premises consumption at the full on-premises licensed location, including tastings, is provided under the full on-premises license and is not subject to this rule.

(7) A distillery licensee also holding a full on-premises sales license as per ORS 471.175 that provides alcohol service at a catered event that is on a premises approved as per OAR 845-005-0405 or 845-005-0410 is providing the alcohol service under the privilege of the full on-premises sales license and is not subject to the requirements of this rule.

(8) Application for tastings on the distillery licensee's annually licensed premises. A distillery licensee who intends to provide the service of distilled liquor tastings on the distillery licensed premises must make application to the Commission upon forms to be furnished by

the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. Once the Commission has given its approval for the tastings, the distillery licensee must re-apply if the licensee changes its identified tasting area. The application shall include:

(a) A floor plan showing the identified tasting area, on a form provided by the Commission;

(b) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by the use of badges or name tags; and

(c) A statement that the licensee understands and will comply with the requirements of OAR 845-006-0452.

(9) Application for tastings on another premises owned or leased by the distillery licensee. A distillery licensee who intends to provide the service of distilled liquor tastings on another premises owned or leased by the distillery licensee must make application to the Commission upon forms to be furnished by the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. Once the Commission has given its approval for the tastings, the distillery licensee must re-apply if the licensee changes its identified tasting area. The application shall include:

(a) All of the items required in section (8)(a)-(c);

(b) Either proof of ownership or the lease for the real estate for the address at which the other premises will be located; and

(c) A statement that the identified tasting area is not on the premises of a retail licensee as defined in ORS 471.392(2).

(10) Liquor liability insurance requirement. A distillery licensee providing only tastings under the requirements of this rule and OAR 845-006-0452 is not required to obtain or maintain liquor liability insurance.

(11) The Commission may refuse to process any application required under this rule if the application 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 the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS Ch 471, including 471.030, 471.040 & 471.730(1) & (5)  
 Stats. Implemented: ORS 471.230  
 Hist.: OLCC 11-2009, f. 8-26-09 cert. ef. 11-1-09

#### 845-005-0440

##### Temporary Sales Licenses

(1) A person must obtain from the Commission a license or authority to sell alcoholic beverages. ORS 471.405 establishes a prohibition on sale of alcoholic beverages without a license or authority. ORS 471.406 defines sale of alcoholic beverages. This rule sets the requirements for obtaining a Temporary Sales License.

(2) Definitions. For this rule:

(a) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$50 per license day or for any part of a license day.

(b) "Nonprofit trade association" means an organization comprised of individual or business members where the organization represents the interests of the members and is registered with the state of Oregon as a nonprofit association.

(c) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(d) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity.

(e) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not

limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(g) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(3) ORS 471.190 authorizes the Commission to issue a Temporary Sales License. Temporary Sales Licenses are issued in increments of one license day. The Commission will not approve more than seven license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than seven days. The Commission may issue a Temporary Sales License only to applicants that qualify under the Commission's licensing standards and that are:

(a) A nonprofit or charitable organization that is registered with the state, including nonprofit trade associations where at least 51% of the total membership is comprised of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under 471.227; or

(b) A political committee that has a current statement of organization filed under ORS 260.039 or 260.042; or

(c) An agency of the State; or

(d) A local government or an agency or department of a local government; or

(e) Any applicant not described in (3)(a)–(3)(d) of this subsection, including licensees of the Commission.

(4) A Temporary Sales License may authorize the licensee to sell wine, malt beverages and cider at retail for consumption on the licensed premises and for consumption off the licensed premises. All alcohol sold for consumption off the licensed premises must be in a manufacturer-sealed container that does not hold more than two and one-quarter gallons.

(5) A Temporary Sales License may authorize the licensee to sell distilled liquor by the drink at retail for consumption on the licensed premises.

(6) The Commission may authorize sales of manufacturer-sealed containers 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.

(7) Applicants must apply in writing for a Temporary Sales License, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(8) The application for a Temporary Sales License under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (9) of this rule; and

(C) Alcohol consumption by adults. An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (7) of this rule to refuse to process any application that is not complete;

(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 where the licensed premises will be located;

(g) License fees as established by ORS 471.311.

(9) A plan for managing patronage by minors under subsection (8)(a) of this rule must meet the following requirements:

(a) If the Temporary Sales License will be on any part of a premises, room, or area with a permanent license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the permanent license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the Temporary Sales License will not be on any part of a premises, room, or area with a permanent license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(10) Minors are prohibited from the licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there is video lottery games, social games, or nude entertainment or where such activities are visible.

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(11) Minimum Age of Servers. Alcohol servers at temporary sales licensed locations must be at least 21 years of age to sell or serve alcoholic beverages, with the following exceptions:

(a) In areas of the licensed premises not prohibited to minors, persons who are 18, 19, and 20 years of age may:

(A) Take orders for, serve and sell alcoholic beverages for on-premises consumption if the activity is incidental to the selling or serving of food in that area of the licensed premises, and may sell alcoholic beverages in manufacturer-sealed containers for off-premises consumption; or

(B) Sell tokens/script, including verifying age, to be redeemed for alcoholic beverages or food at the event.

(b) In areas of the licensed premises prohibited to minors, persons who are 18, 19, and 20 years of age may deliver food, restock non-alcohol supplies and perform other non-alcohol related duties, however the person shall not remain in the prohibited area longer than is necessary to perform these duties.

(12) Alcohol servers at locations licensed under subsections (3)(b)–(e) of this rule must hold valid service permits unless specifically exempted under authority of subsection (13) of this rule.

(13) The Commission may waive the service permit requirement for the holder of a Temporary Sales License issued under subsections (3)(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.

(14) At events licensed under subsection (3)(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.

(15) 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.

(16) The Commission may deny, cancel or restrict a Temporary Sales License for any reason for which the Commission may deny, cancel or restrict a regular license.

(17) The Commission may deny or restrict a Temporary Sales License if the applicant has a serious violation history at events previously licensed with a Temporary Sales License within the past 36 months.

(18) The Commission shall limit the issuance of Temporary Sales Licenses to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year, unless the Commission determines that the applicant would be eligible for an annual license based on the applicant's personal qualifications and the total number of license days at the same location does not exceed 60 in that calendar year.

(19) The Commission may refund the Temporary Sales 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.

(20) When the Commission approves a written plan under subsection (8)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a category III violation.

(21) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

Stat. Auth.: ORS 471.030, 471.040, 471.190 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.190, 471.360 & 471.482  
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; OLCC 24-2007, f. 12-17-07, cert. ef. 1-1-08; OLCC 17-2010, f. 12-22-10, cert. ef. 1-1-11

#### 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 Trustee, a Receiver, a Personal Representative or a Secured Party

(1) ORS 471.292(2)(b) and (c) allow the Commission to issue a temporary authority to operate a licensed business to a trustee, the receiver of an insolvent or bankrupt licensed business, the personal

representative of a deceased licensee, or a person holding a security interest in the business. 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.

(a) The trustee, receiver or personal representative must provide the Commission with the following information:

(A) Proof that the person is the legal trustee, receiver or personal representative for the business; and

(B) A written request for authority to operate as a trustee, receiver or personal representative, listing the address and telephone number of the trustee, receiver or personal representative.

(b) The secured party must provide the Commission with the following information:

(A) Proof of a security interest 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) The Commission may revoke or refuse to issue or extend authority for the trustee, receiver, personal representative, or secured party to operate:

(a) If the trustee, receiver, personal representative or secured party 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 trustee, receiver, personal representative or secured party operates the business in violation of ORS Chapter 471 or OAR chapter 845; or

(d) If a reasonable time for disposition of the business has elapsed.

(3) No person or entity described in section (1) of this rule may operate the business until a certificate of authority has been issued under this rule, except that the personal representative of a deceased licensee may operate the business for up to 10 days after the death provided that the personal representative submits the information required in section (1)(a) and obtains a certificate of authority within that time period.

(4) A certificate of authority under this rule is initially issued for a 60-day period and may be extended as reasonably necessary to allow for the disposition of the business.

Stat. Auth.: ORS 471, including 471.030, 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; OLCC 8-2006, f. 6-19-06, cert. ef. 7-1-06

## DIVISION 6

### APPLICATIONS; REQUIREMENTS; RESTRICTIONS; PROHIBITED CONDUCT

#### 845-006-0301

##### "Applicant" and "Licensee" Defined

(1) A license issued by the Commission shall include as licensees under a single license the individuals or legal entities who own or have an interest in the business as defined in OAR 845-005-0311(3). If any such licensee is a corporation or other legal entity, the following persons shall also be included as licensees under the license:

(a) Each principal officer as defined in OAR 845-006-0475(1)(d);

(b) Each director;

(c) Each person or entity who owns or controls 10% or more of the entity's stock or who holds 10% or more of the total membership interest in the entity or whose investment interest is 10% or more of the total investment interests in the entity;

(d) Each manager of a limited liability company and each general partner of a limited partnership.

(2) As used in ORS 471.313, "applicant" includes all of the entities and individuals (as applicable) listed in subsection (1) of this rule. As used in 471.315, "licensee" includes all of the entities and individuals (as applicable) listed in subsection (1) of this rule.

(3) In any proceeding brought under the authority of ORS 471.313 or subject to the penalty provisions of 471.315, each licensee

as defined in subsection (1) shall be individually responsible for any violation or other resolution of the proceeding and shall be jointly and severally liable for any sanction.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.313 & 471.315  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 1-2006, f. 1-19-06, cert. ef. 2-1-06

### 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.396(3) & 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 one or more of the following violations under this rule: 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 sanction the licensee or permittee separately under ORS 471.130 or 471.410(2) for the same conduct. The Commission may charge a licensee or permittee for one or more violations under this rule and also charge violation of one or more of the statutes in the alternative.

(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, and the licensee proposes to employ that minor to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, 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).

(c) If the minor is under 18 years old, and the licensee proposes to employ that minor to perform or entertain on the licensed premises in a capacity other than described in (6)(b) of this rule, before allowing the minor to perform on the licensed premises the licensee must apply for and receive prior written permission from the Administrator of the Oregon Liquor Control Commission, or the Administrator’s designee. Application must be made upon a form supplied by the Commission. The Administrator or designee shall grant such permission only if:

(A) The parents or legal guardians of the minor have consented to the child’s participation in such activity; and

(B) The Administrator or designee has found that participation in such activity will not be inconsistent with the health, safety and morals of the minor.

(d) Minors under 14 years old 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 or Domestic Partner who is at least 21 years old. “Domestic Partner” means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act. 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 471.030, 471.040, 471.482 & 471.730  
Stats. Implemented: : ORS 471.130, 471.410, 471.430, 471.480 & 471.482  
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; OLCC 9-2005, f. 11-21-05, cert. ef. 1-1-06; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 2-2009, f. 3-17-09, cert. ef. 4-1-09

### 845-006-0340

#### Minor Postings

(1) 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. This rule applies only to licenses that allow on-premises alcohol consumption including tastings, except for tasting areas at an Off-Premises license approved under OAR 845-006-0450.

##### (2) Definitions. For this rule:

(a) “Eating food is the predominant activity” means the Commission has determined that more people eat food than drink alcohol (or the Commission determines that the licensee has reasonably projected this).

(b) “Drinking predominates” means the Commission has determined that more people are, or at times are likely to be, drinking alcohol than not drinking alcohol.

(c) “Drinking environment” means the Commission determines that there is a combination of conditions or factors in a premises, room, or area which make it likely that minors will obtain alcohol or which create an environment where drinking alcohol is or appears to be the predominant activity. Some examples of factors that contribute to a drinking environment include but are not limited to cocktail tables, a bar, bar equipment and accessories, dim lighting, alcohol advertising, events or entertainment primarily targeted to adults, and events or operations where the monitoring of patron behavior is or could be insufficient to prevent minors from obtaining alcohol.

(d) “Recent serious violation history” means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors, at the premises by the applicant or licensee within the last two years. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II or IIa administrative violation at the premises by the applicant or licensee within the last two years; or

(C) The applicant or licensee has incurred an immediate license suspension at the premises within the last two years; or

(D) There are two or more crimes or offenses involving liquor laws within the last two years at the premises.

(e) “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.

(f) “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.

(g) “Minor” means a person under the age of 21.

(h) “Adult” means a person 21 years of age or older.

(i) “Bar” means a counter at which the preparation, pouring, serving, sale or consumption of alcoholic beverages is the primary activity.

(j) “Food counter” means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale or consumption of food.

(k) “Video lottery game” means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(l) “Social game” means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(m) “Domestic Partner” means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(n) “Minor control plan” means a written, dated and signed plan submitted to the Commission by an applicant or licensee for a premises, room, or area that shows where and when minors are permitted and the control measures used to prevent minors from obtaining alcohol, prohibit minors when drinking alcohol predominates, and minimize minors’ exposure to a drinking environment.

(3) The Commission uses Section (5) to assign minor postings to a premises, room, or area where alcohol is consumed or where there is a drinking environment. 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.

(4) Even when minors are otherwise allowed under this rule:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in a room or area where there is entertainment which is often found in a drinking environment. Examples include but are not limited to: video lottery games; social games; stage revues; nude entertainment; and wet t-shirt events. Minors may not be in an area where this entertainment is visible.

(c) Subsections (4)(a) through (4)(b) of this rule do not apply to a minor in the immediate company of his/her spouse or Domestic Part-

ner who is at least 21 years of age, if allowed by subsection (10)(d) of this rule.

(5) 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. In those circumstances when the licensee’s operation would qualify for a Number III, IIIA, IV, V, or VI minor posting, the licensee may have a Number I or II posting prohibiting minors.

(a) “No Minors Permitted Anywhere on This Premises”, (Number I Minor Posting). The Commission assigns this posting to an entire premises where there is a drinking environment or drinking alcohol does or is likely to predominate most of the time. An example could be a tavern.

(b) “No Minors Permitted in This Portion of The Premises or at This Bar”, (Number II Minor Posting). The Commission assigns this posting to rooms or areas of a premises where there is a drinking environment or drinking alcohol does or is likely to predominate most of the time. Some examples are lounges, gambling rooms, the bar and other rooms or areas where drinking alcohol is the predominant activity.

(c) “Minors Allowed in This Area”, (Number III Minor Posting). The Commission assigns this posting to a premises, room, or area where there is no drinking environment and drinking alcohol will never predominate. The Commission does not generally require the Number III sign to be physically posted. Minors may use entertainment devices. Some examples are restaurants and dining rooms in premises with separate lounges.

(d) “Minors Allowed From: \_\_\_\_ To: \_\_\_\_ (Hours) On: \_\_\_\_ (days)”, (Number III-A Minor Posting). The Commission assigns this posting to allow minors in a premises, room, or area during times when there is no drinking environment and drinking alcohol does not predominate and to prohibit minors during times when there is a drinking environment or drinking alcohol does or is likely to predominate. Minors may use entertainment devices during the times minors are allowed. An example is a pizza parlor with karaoke during some times. Minors are allowed in the area and may participate in karaoke during the times when there is no drinking environment and drinking alcohol 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 assigns this posting to an area or entire premises that often has a drinking environment to let minors consume food during times when drinking does not predominate and eating food is the predominant activity. Eating food must predominate during all times when minors are allowed, even if minors are not present. Minors may not use entertainment devices in this area.

(f) “Minors Allowed Only with their Parent or Spouse or Domestic Partner age 21 or over”, (Number V Minor Posting). The Commission assigns this posting to rooms or areas where the only alcoholic beverages served or consumed are sample tastings of distilled spirits, wine, malt beverages or cider. For purposes of this rule, a sample tasting is defined as a single container with no more than one and a half ounces of wine or cider, three ounces of malt beverages, one-half ounce of distilled spirits for the general public, or one ounce of distilled spirits for a trade visitor.

(g) “Minors Allowed in this Premises or in this Portion of this Premises only as provided in the Licensee’s Minor Control Plan Approved by the Commission” (Number VI Minor Posting). The Commission may assign this posting to a premises, room, or area where minors will be allowed only as per the minor control plan approved by the Commission. Minors are allowed only during the days and times or types of events approved in the minor control plan. The Commission will not approve a minor control plan that proposes to allow minors in a premises, room, or area during times when the Commission determines that the predominant activity is the consumption of alcohol or when the drinking environment is not minimized. The minor control plan must be in writing, dated and signed by the licensee, and approved by the Commission prior to operating with this posting.

(6) Temporary Relaxation of Minor Postings. The Commission recognizes that under special, limited circumstances, it may be appropriate to allow minors in a premises, room, or area where minors are normally prohibited. Therefore, the Commission may grant a temporary relaxation of a minor posting for an occasional event held on a

licensed premises. The licensee must submit a written, dated, and signed request, including a minor control plan, to the Commission explaining the details of the temporary relaxation and how the licensee will prevent minors from obtaining alcohol, prohibit minors when drinking alcohol predominates, and minimize minors' exposure to a drinking environment. The licensee must obtain Commission approval prior to temporarily relaxing the minor posting.

(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 premises, room, or area has or will have entertainment described under section (4)(b) of this rule. 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 during all times when minors are allowed, even if minors are not present;

(B) The activity is a family-oriented 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) All alcohol must be covered and may not be served or consumed in the room or area;

(iv) No imitation cocktails or non-alcoholic beer or non-alcoholic wine are allowed;

(v) No alcohol advertising is visible; and,

(vi) Minor posting signs which prohibit minors must be covered during the activity.

(c) When the Commission refuses to temporarily relax a minor posting, the licensee has a right to contest the decision. The licensee must comply with the assigned minor posting unless the refusal is overturned through the contested case process.

(7) Permanent Changes to Minor Postings:

(a) The Commission may change a minor posting at any time if:

(A) The existing posting is inconsistent with this rule;

(B) There has been a recent serious violation history in the premises, room, or area; or

(C) The Commission determines that the minor control plan that is the basis for the minor posting is not adequate to control the premises, room, or area.

(b) When the Commission changes a minor posting, and the licensee does not agree to the change, the licensee has a right to contest the decision. The licensee must comply with the changed minor posting unless the change is overturned through the contested case process.

(c) A licensee may not change a minor posting or the minor control plan on which a posting is based 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.

(d) The Commission may refuse a licensee's request to change a minor posting or minor control plan when:

(A) The requested posting is inconsistent with this rule;

(B) There has been a recent serious violation history in the premises, room, or area; or

(C) The Commission determines that the proposed minor control plan is not adequate to control the premises, room, or area.

(e) When the Commission refuses a licensee's request to change a minor posting or minor control plan, the licensee has a right to contest the decision. The licensee must comply with the assigned minor posting unless the refusal is overturned through the contested case process.

(8) Minor Control Plan:

(a) The minor control plan must explain where and when minors are permitted and the control measures the applicant or licensee will

use to prevent minors from obtaining alcohol, prohibit minors when drinking alcohol predominates, and minimize minors' exposure to a drinking environment. Examples of elements to be addressed in a minor control plan include but are not limited to: amount and type of bar equipment and accessories; alcohol advertising; how identification will be checked; methods for identifying minors or adults (such as with wristbands); lighting; ratio of licensee's staff to patrons; drink identification; drink limits; container sizes; if minor patrons are allowed without parent or guardian; separation of minors from alcohol; types and amount of food service; defined times when minors are allowed; type of activity or entertainment; posting signs explaining where and when minors are allowed; addressing unique requirements of the premises, room, or area; addressing the history of compliance with liquor laws and rules at the premises, room, or area; the projected average age of attendees at the event; and a plan for dealing with issues that arise (such as a minor in a prohibited area, a minor with fake identification, a minor found with alcohol, etc.). Further guidance on the elements that may be required in particular circumstances is set forth in guidelines as developed by the Commission.

(b) When the Commission approves a minor control plan that is the basis to assign a minor posting or temporarily relax a minor posting, the licensee must follow that minor control plan. Failure to follow that control plan is a Category III violation.

(c) The licensee must keep the minor control plan that was the basis to assign a minor posting and last approved by the Commission on the licensed premises and make the minor control plan available at any time for immediate inspection by any Commission employee or any peace officer. Failure to comply with this requirement is a Category IV violation.

(9) Licensee Responsibilities:

(a) The burden is on the licensee to convince the Commission that the premises does not have a "drinking environment" or that "eating food is the predominant activity" where those standards apply;

(b) The licensee is responsible for developing and completing any required written minor control plan;

(c) A licensee must use the minor posting signs provided by the Commission and 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.

(10) Other Information on Minor Postings.

(a) This rule does not apply to a premises with a temporary license that is not on any part of a premises with a permanent license issued by the Commission. Examples of a temporary license or authority include: a Temporary Sales License issued under ORS 471.190; a Special Events Winery license issued under 471.223; a Special Events Grower license issued under 471.227; and a temporary use of an annual license issued under OAR 845-005-0410.

(b) To prevent violations from occurring or reoccurring, or in response to the licensee's request, the Commission may assign a minor posting to the following businesses where a minor posting is not usually assigned:

(A) Private clubs licensed as per ORS 471.175;

(B) Pre-approved small-scale private catered events as per OAR 845-005-0405 and pre-approved large-scale private catered events as per 845-005-0410.

(c) Minor Postings apply 24 hours a day, including when the premises is closed to the public or the liquor license is suspended, except that the minor posting for an outdoor area that is on a sidewalk or other public right-of-way applies to that area only during the times the premises is open for business and there is the sale, service or consumption of alcohol in the outdoor area.

(d) Notwithstanding other provisions, a minor in the immediate company of his/her spouse or Domestic Partner who is at least 21 years old may be in a premises or area where minors are prohibited if the licensee permits it. The minor must not buy, possess, or drink alcoholic beverages.

Stat. Auth.: ORS 471, 471.030, 471.430(3) & 471.730(1) & (5)

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; OLCC 25-2007, f. 12-17-07, cert. ef. 1-1-08; OLCC 7-2008, f. 4-24-08, cert. ef. 6-1-08; OLCC 3-2010, f. 4-19-10, cert. ef. 5-1-10

**845-006-0345**

**Prohibited Conduct**

The Commission holds licensees accountable for the acts of their agents and employees. (OAR 845-006-0362). No employee or agent of a licensee may violate any provision of this rule. A violation of any section of this rule by an employee or agent of a licensee is considered a violation by the licensee.

(1) Drinking on Duty: No licensee or permittee will drink or be under the influence of intoxicants while on duty.

(a) "On duty" means from the beginning of a work shift that involves the mixing, 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.

(b) "On duty" also means, for those working outside a scheduled work shift, having the authority to put himself or herself on duty and performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection.

(c) "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who mix, sell or serve, check identification or control the premises.

(d) Being under the influence of intoxicants on duty is a Category II violation.

(e) Drinking on duty is a Category III violation.

(2) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. Violation of this section is a Category II violation.

(3) Evidence:

(a) 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.

(b) Violation of this section is a Category III violation.

(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.

(c) Violation of this section is a Category II violation.

(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. Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.

(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. Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only". Violation of this section is a Category V violation.

(7) Drive-up Window: No licensee or permittee will sell or deliver any alcoholic beverages through a drive-up window. Violation of this section is a Category III violation.

(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, exhibition, or any competition of any kind on the licensed premises. Violation of this section is a Category V violation.

(9) "Good Faith Effort": ORS 471.315(1)(a)(H), and 471.412(1) prohibit a licensee or permittee from 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) Promotions.

(a) The following practices are prohibited:

(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) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;

(C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower price as compared to the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and OAR 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events where the reasonably projected attendance is at least 20 patrons;

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (i.e. beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong";

(G) Permitting use of an alcohol vaporization device on a premises licensed for the sale of alcoholic liquor. An alcohol vaporization device, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

Stat. Auth.: ORS 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.030, 471.040 471.175, 471.178, 471.200, 471.315(1)(a)(H), 471.405(1), 471.408, 471.412, 471.675 & 471.730  
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; OLCC 5-2007, f. 3-22-07, cert. ef. 4-1-07; OLCC 3-2009, f. 4-21-09, cert. ef. 5-1-09; OLCC 18-2010, f. 12-22-10, cert. ef. 1-1-11; OLCC 8-2011, f. 11-1-11, cert. ef. 1-1-12

**845-006-0347**

**Noisy, Disorderly or Unlawful Activity 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) "Noisy activities" are those that a reasonable person would conclude interfere with normal living or business activities. The Com-

mission may consider a violation of Department of Environmental Quality or local noise pollution standards as prima facie evidence of noisy activities.

(2) Noisy or Disorderly Activity:

(a) No licensee or permittee will permit noisy 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.

(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. Unlawful activity includes any activity that violates a criminal statute. Examples include, but are not limited to, crimes related to prostitution, public indecency, controlled substances and gambling. The Commission does not require a conviction to establish a violation of this section except as ORS 471.315 and 471.700 requires.

(b) Violation of this section is a Category III violation.

(4) Eviction of Patrons:

(a) A licensee or permittee who knows that a patron has engaged in noisy, disorderly or unlawful activities 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.

(5) 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 471.030, 471.425(2) & 471.730(1)

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; OLCC 14-2006, f. 10-19-06, cert. ef. 11-1-06

### 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.

(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).

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

Stats. Implemented: ORS 471.316, 183.430(2)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 20-2007, f. 9-27-07, cert. ef. 10-1-07

### 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 471.030, 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 product 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, 471.030, 471.040, 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.030

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

### 845-006-0362

#### 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 ser-

vant, agent, employee, or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.030 & 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 wholesale licensee with an NSF check.

(2) A wholesale licensee must report any NSF check(s), including third party NSF checks, received during a calendar month to the Commission. The written report must include the trade name of 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 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.398  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

#### 845-006-0380

##### Certificate of Approval for Distilled Spirits

(1) The Commission issues a Certificate of Approval for Distilled Spirits (CER-D) to manufacturers, importers and others who import distilled spirits into Oregon for sale in the state. CER-Ds are also issued to vendors who import grain and ethyl alcohol into Oregon for scientific, pharmaceutical, manufacturing, mechanical or industrial use. There is no fee to obtain a CER-D.

(2) No person may import distilled spirits or grain and ethyl alcohol into Oregon who does not hold a CER-D or whose CER-D is suspended or revoked. Once a CER-D has been revoked it remains revoked until reinstated by the Commission.

(3) The holder of a CER-D is subject to and must comply with the tied house and financial assistance requirements contained in ORS 471.392-.400 and Division 13 of Chapter 845 of the Commission's administrative rules. Violation of any provisions of ORS 471.392-.400 or Division 13 by a CER-D holder or its agent is grounds for the Commission to suspend or revoke the CER-D.

Stat. Auth.: ORS 471, including 471.030, 471.251, & 471.730(1), (5) & (8)  
Stats. Implemented: ORS 471.251 & 471.404  
Hist.: OLCC 6-2010, f. 6-22-10, cert. ef. 7-1-10

#### 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 471.030, 471.730(1) & (5)  
Stats. Implemented: ORS 471.305 & 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

##### Delivery of Malt Beverage, Wine or Cider to Individuals

#### 845-006-0391

##### Definitions

As used in OAR 845-006-0391 through 845-006-0401:

(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.

(2) "Same-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine or cider on the same day the person receives the order from the customer.

(3) "Next-day delivery" means a person causes a resident of Oregon to receive malt beverages, wine or cider after the day the person receives the order from the customer.

(4) "For-hire carrier" means any person or company who holds itself out to the public as willing to transport property in return for compensation. The term "for-hire carrier" can include a common carrier.

(5) "Month" means a calendar month.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.282  
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### 845-006-0392

##### Requirements for Direct Shipment of Wine and Cider to a Resident of Oregon

(1) A person may sell and ship wine or cider to a resident of Oregon only if the person holds:

(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or

(b) An off-premises sales license issued by the Commission.

(2) A person holding a Direct Shipper Permit must ship not more than a total of two cases of wine or cider containing not more than nine

liters per case per month to a resident of Oregon who is at least 21 years of age.

(3) A person holding a Direct Shipper Permit or an off-premises sales license must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(4) A person holding a Direct Shipper Permit or an off-premises sales license must ship:

(a) Only wine or cider and only in manufacturer-sealed containers;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The product in a container that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the wine or cider that is received by the permit holder or licensee prior to shipment of the alcohol;

(f) Only for next-day delivery, unless the permit holder or licensee has been approved for same-day delivery; and

(g) Only to a home or business where the home or business has a permanent street address.

(5) If the permit holder or licensee ships via a for-hire carrier, the permit holder and licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and must comply with sections (2), (3), and (4) of this rule, as applicable.

(6) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with sections (2), (3), and (4) of this rule, as applicable, the person making the delivery of the wine or cider must:

(a) Be age 18 or over;

(b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the permit holder or licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information may be collected and retained electronically (if the permit holder or licensee so chooses) and must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(7) Same-day delivery for a permit holder. If a permit holder has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (2), (3), (4), and either (5) or (6) of this rule, the permit holder must receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon (and must also follow section (2) of this rule).

(8) Same-day delivery for a licensee. If a licensee has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (3), (4), and either (5) or (6) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon; or

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider if the alcohol accounts for no more than 25 percent of the retail cost of the order (at least 75 percent of the retail cost of the order must be items other than alcohol); or

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider.

(9) A permit holder must:

(a) Allow the Commission to audit the permit holder's records of wine and cider shipments to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(b) Report to the Commission all shipments of wine or cider made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and shipped directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax.

(10) If the permit holder is located in a state outside of Oregon, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(11) A violation of section (9) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for shipping wine or cider without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon licensee held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.289.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.186 & 471.730(1) & (5)

Stats. Implemented: ORS 471.186, 471.282 & 473

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### 845-006-0396

#### Requirements for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

This rule sets the requirements for same-day and next-day delivery of malt beverages to a resident of Oregon. A licensee must be approved by the Commission under OAR 845-005-0420 in order to provide same-day delivery of malt beverages.

(1) A licensee qualified to make same-day or next-day delivery of malt beverages under OAR 845-005-0420 must ship:

(a) Only malt beverages and only in a manufacturer-sealed container. A container must not hold more than two and one-quarter gallons;

(b) Only to a resident of Oregon who is at least 21 years of age and only if the malt beverage is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The malt beverage in a package that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the malt beverage that is received by the licensee prior to shipment of the alcohol;

(f) Only for next-day delivery unless the licensee has been approved for same-day delivery by the Commission; and

(g) Only to a home or business where the home or business has a permanent street address.

(2) A licensee must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(3) If the licensee ships via a for-hire carrier, in addition to complying with sections (1) and (2) of this rule, the licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(4) If the licensee does not use a for-hire carrier, in addition to complying with sections (1) and (2) of this rule, the person delivering the malt beverage must:

(a) Be age 18 or over;

(b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information may be collected and retained electronically (if the licensee so chooses) and must include:

(A) The date and time the alcohol was delivered to the resident;  
(B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(5) Same-day delivery. If the licensee is approved to make same-day delivery of malt beverages, in addition to complying with sections (1), (2), and either (3) or (4) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of five gallons of malt beverage per day to a resident of Oregon; or

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage if the alcohol accounts for no more than 25 percent of the retail cost of the order (at least 75 percent of the retail cost of the order must be items other than alcohol); or

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage.

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

Stat. Auth.: ORS 471, including 471.030, 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; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

### **Delivery of Wine or Cider Directly to Retail Licensees**

#### **845-006-0400**

#### **Requirements for Wine Self-Distribution Permit for Wine and Cider**

OAR 845-005-0425 sets the qualifications for a Wine Self-Distribution Permit. This rule sets the requirements for self-distribution of wine or cider.

(1) A person holding a Wine Self-Distribution Permit:

(a) May ship only wine or cider;

(b) May ship only to a retail licensee at an address holding a valid endorsement issued by the Commission authorizing receipt of wine or cider from the holder of a Wine Self-Distribution Permit;

(c) Shall keep a record of all shipment of wine or cider to Oregon licensees, including the name of the licensee, the date of shipment and the amount of wine or cider shipped, and shall retain such records for a minimum of two years from the date of the shipment. The permit holder must report to the Commission all shipment of wine or cider made to retail licensees under the permit as required by ORS Chapter 473. The report must be in a form prescribed by the Commission;

(d) Must allow the Commission to audit the permit holder's records upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(e) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules;

(f) Must timely pay to the Commission all taxes imposed under ORS Chapter 473 on all wine or cider sold and shipped directly under the permit. The permit holder, not the retail licensee, is responsible for the tax; and

(g) Must follow Oregon's alcohol laws and rules regarding wine self-distribution, tied-house and financial assistance prohibitions, and wine and cider privilege tax.

(2) If the permit holder ships wine or cider to a retail licensee via a for-hire carrier, the permit holder must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(3) If the permit holder does not use a for-hire carrier with an approved plan, the permit holder must ensure that at the time the wine or cider is received by a retail licensee of the Commission the person

delivering the wine or cider verifies that the retail licensee holds a valid endorsement issued by the Commission authorizing the receipt of the wine or cider from the permittee.

(4) A manufacturer may self-distribute wine or cider only if the manufacturer holds a valid Wine Self-Distribution Permit and a valid license issued by another state that qualifies the manufacturer to hold a Wine Self-Distribution Permit.

(5) A violation of any section of this rule is a Category IV violation. Self-distribution of wine or cider without a valid Wine Self-Distribution Permit issued by the Commission is grounds for revocation of the manufacturer's Certificate of Approval issued under ORS 471.289.

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

Stats. Implemented: ORS 471.272 & 471.274

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### **845-006-0401**

#### **Requirements for Oregon Retailers to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit**

OAR 845-005-0426 sets the qualifications for obtaining Commission approval to receive wine and cider from the holder of a wine self-distribution permit. This rule sets the requirements for receiving wine or cider from the holder of a Wine Self-Distribution Permit.

(1) No Oregon retail licensee may receive wine or cider directly from an out of state manufacturer via self-distribution unless the retail licensee has first applied for and received an endorsement pursuant to OAR 845-005-0426. No retail licensee may receive wine or cider via self-distribution unless the manufacturer supplying the wine or cider holds a valid Wine Self-Distribution Permit.

(2) The wine or cider must be received only at an address with a current and valid retail liquor license issued by the Commission and must not be for the purpose of distribution.

(3) Retail licensees holding an endorsement must retain the purchase records showing the amount of wine and cider received from each Wine Self-Distribution Permit holder for a minimum of two years from the date of receipt of the wine or cider.

(4) Except as described in section (5) of this rule, all retail licensees approved under OAR 845-005-0426 must report to the Commission on or before the 20th day of each month on a form prescribed by the Commission the quantity of wine and cider received from Wine Self-Distribution Permit holders during the preceding calendar month and the names of the permit holders from whom the wine or cider was received.

(5) The holder of a full or limited on-premises sales license and with an endorsement approved under OAR 845-005-0426 is not required to file a report for wine received in any month in which the licensee receives a total from all holders of Wine Self-Distribution Permits of two or fewer cases (containing a total of eighteen or fewer liters) of wine.

(6) A violation of any section of this rule is a Category IV violation.

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

Stats. Implemented: ORS 471.274 & 471.404

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

#### **845-006-0425**

#### **Hours of Sale**

(1) Except as provided by sections (2) and (3) of this rule, and OAR 845-015-0140, 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) Except as provided by section (3) of this rule, alcoholic liquor may be sold, dispensed, served, consumed on, or removed from a licensed premises located within any Oregon public use airport designated as a Category I – Commercial Service Airport by the Oregon Department of Aviation only between the hours of 5:00 a.m. and 2:30 a.m. However, from 5:00 a.m. to 7:00 a.m. alcoholic liquor may be sold, dispensed, or served only to a ticketed airline passenger with a valid same-day boarding pass.

(3) Licensees whose license privileges permit the sale and distribution of malt beverages, cider, and wines for resale may make deliveries of that alcohol to licensees at any time.

Stat. Auth.: ORS 471, including 471.030, 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; OLCC 7-2009, f. 6-22-09, cert. ef. 7-1-09; OLCC 3-2011, f. 4-25-11, cert. ef. 5-1-11

### 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 licensee's business hours. "Communicate effectively" means:

(a) Knowing how to lawfully sell and serve alcoholic beverages and communicating this to customers;

(b) Understanding Commission regulatory employees when the employees explain lawful sale and service of alcoholic beverages and responding in a way the employee understands.

(2) Failure of a licensee to comply with section (1) of this rule is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 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

### 845-006-0428

#### 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 471.030, 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 12 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 Commission's 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; OLCC 2-2006, f. 1-19-06, cert. ef. 2-1-06

### 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 471.030, 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 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 subsection of the rule if the Commission has reason to believe more frequent monitoring is necessary to prevent alcohol-related problems;

(B) No alcohol may be consumed in an arena suite from one hour after an arena event has ended until 7:00 a.m. Notwithstanding this portion of the rule, if the arena suite is used for a private party when no arena event is occurring, no alcohol may be consumed in the arena suite from 12:00 midnight until 7:00 a.m. Under no circumstances may alcohol be served or consumed between 2:30 and 7:00 a.m.

(C) If a service permittee observes a minor or visibly intoxicated person being served or consuming alcoholic beverages, the service permittee must:

(i) Remove the alcohol from the minor or visibly intoxicated person;

(ii) Lock the minibar;

(iii) Notify the licensee about the minor or visibly intoxicated person who was consuming alcohol;

(iv) Call arena security to carry out the arena’s operational plan with regard to minors or visibly intoxicated persons; and

(v) Serve all alcohol in the suite during the remainder of the event. After locking the minibar, a service permittee may either remain in the suite to serve alcohol throughout the remainder of the event or a permittee may serve alcohol to suite guests when monitoring the suite.

(D) If a minor has consumed alcohol in an arena suite, the minor must be removed from the arena suite.

(d) Keys to a Minibar: Only the licensee or a service permittee may unlock a minibar. The licensee or a service permittee must unlock a minibar only for a suite holder or suite holder’s representative.

(e) Restocking a Minibar:

(A) Any employee who is at least 18 years old may restock a minibar when there are no suite guests present and no event is occurring;

(B) Only a service permittee may restock a minibar during an event or when guests are present in the suite;

(C) Before restocking a minibar during an event or when guests are present in the suite, the service permittee must observe the guests to insure that there are no visibly intoxicated persons or minors con-

suming 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 471.030, 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; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

### **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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.351 & 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 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.398

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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 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

### 845-006-0443

#### 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 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; Renumbered from 845-008-0030, OLCC 13-2009, f. 10-19-09, cert. ef. 12-1-09

### 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 & 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 retailers 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 licensees 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.398 & 471.402

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

#### 845-006-0452

#### Requirements for Oregon Distillery Licensee Providing Tastings of Distilled Liquor on the Distillery Premises or on Another Premises Owned or Leased by the Distillery

OAR 845-005-0431 sets the qualifications for an Oregon distillery licensee to obtain Commission approval to provide tastings of distilled liquor manufactured by the distillery licensee for consumption on the distillery licensed premises, or on another premises owned or leased by the licensee, or both. This rule sets the requirements to provide the tastings.

(1) Definitions. For this rule and OAR 845-005-0431

(a) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

(b) "Identified tasting area" means a specific defined area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(c) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(d) "Another premises owned or leased by the distillery licensee" is an annually licensed second location of the distillery licensee at which the distillery licensee owns specific real estate or has a written contract which allows the licensee to exclusively possess or use specific real estate for a specified term and for a specified rent. The real estate must be off of the distillery licensee's annually licensed premises and may not be on the premises of a retail licensee as defined in ORS 471.392(2).

(e) "Trade visitor" means a person whose job includes the purchase, or recommended purchase, of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(2) The tastings of distilled liquor are allowed only within the identified tasting area approved by the Commission. The identified tasting area must be on the distillery licensee's annually licensed

premises or on another premises owned or leased by the licensee. Customers may not remove the tasting from the identified tasting area.

(3) A distillery licensee may provide only tastings and only of distilled liquor manufactured by the distillery licensee and approved by the Commission for sale in Oregon.

(4) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per day.

(5) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public (OAR 845-005-0431(8)(b)).

(6) Minors are permitted in the identified tasting area only if allowed by the Commission's rule on minor postings, OAR 845-006-0340.

(7) Alcohol servers who pour tastings must have valid service permits and be at least 21 years of age.

(8) Failing to obtain Commission approval as required by OAR 845-005-0431 prior to providing the service of distilled liquor tastings is a Category I violation. A violation of sections (1)-(7) of this rule is a Category III violation.

(9) A violation of a liquor law at another premises owned or leased by the distillery licensee is the responsibility of the distillery licensee.

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

Stats. Implemented: ORS 471.230

Hist.: OLCC 11-2009 f. 8-26-09 cert. ef. 11-1-09

#### 845-006-0459

#### Definitions

As used in OAR 845-006-0459 through 845-006-0469:

(1) "Substantial food items" means food items prepared or cooked on the licensed premises and that are typically served as a main course or entrée. Some examples could include but are not limited to items such as fish, steak, chicken, pasta, pizza, sandwiches, dinner salads, hot dogs, soup and sausages. Side dishes, appetizer items, dessert items, and snack items such as popcorn, peanuts, chips and crackers do not qualify as substantial food items.

(2) "Meal" means a substantial food item offered together with at least one side dish or a substantial food item with two or more side dishes available to order separately. Side dishes include but are not limited to vegetables, fruit, salad, rice, french fries and bread.

(3) "Different" means substantial food items that the Commission determines differ in their primary ingredients or method of preparation. For example, a turkey sandwich differs from a salami sandwich, a beef burger differs from a turkey burger, a pepperoni pizza differs from a cheese pizza, and fried chicken differs from baked chicken. Different sizes of the same item are not considered different under this rule. For example, a large cheese pizza is not different from a small cheese pizza and a large hot dog is not different from a small hot dog.

(4) "Dining seats" means seating at indoor tables or food counters as defined in OAR 845-006-0340(2)(j) located in areas of the licensed premises regularly open to the public where the Commission determines that each table top or seating area provides a minimum space that will accommodate a place setting consisting of a plate or dish, glassware, napkin and utensils for each seat.

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

Stats. Implemented: ORS 471.175

Hist.: OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

**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 where food is cooked and served, which has adequate kitchen facilities for the preparation and serving of meals, and has dining facilities adequate for the serving and consumption of meals. A commercial establishment must also either serve meals to the general public or, if a for-profit private club, must serve meals to the club's members and guests and comply with minimum food service requirements established by Commission rule. This rule sets the food service requirements for 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 at Required Meal Periods.

(a) A business open after 5:00 pm must make available to its patrons in all areas where alcohol service is available an offering of at least five different meals during a regular meal period which must last at least three hours. At least three out of the five different meals used to meet the minimum meal requirement must include a main course or entrée (substantial food item) which has been prepared or cooked on the premises in some manner beyond the simple re-heating of a pre-cooked frozen food or carry-out item obtained from a business other than the licensed premises. A business may have fewer than five different meals in the premises or in an area if the Commission determines that the clearly dominant emphasis in the premises or in the area is food service after 5:00 pm.

(b) A business not open after 5:00 pm must make available to its patrons in all areas where alcohol service is available an offering of at least five different meals during a required meal period which must last at least two hours. At least three out of the five different meals used to meet the minimum meal requirement must include a main course or entrée (substantial food item) which has been prepared or cooked on the premises in some manner beyond the simple re-heating of a pre-cooked frozen food or carry-out item obtained from a business other than the licensed premises. A business may have fewer than five different meals in the premises or in an area if the Commission determines that the clearly dominate emphasis in the premises or in the area is food service before 5:00 pm.

(c) One method for showing that the clearly dominant emphasis in the premises or in the area is food service is for the Commission to determine that the gross receipts from the sale of meals and substantial food items to patrons for consumption in the premises or in the area exceed or are reasonably expected to exceed the gross receipts from alcohol sales when alcohol service is available.

(3) Minimum Food Requirement at Times other than Required Meal Periods. At all times other than required meal periods and in all areas where alcohol service is available, businesses must make available to their patrons an offering of at least five different substantial food items.

(4) Dining Seats during Required Meal Periods: The licensed premises must have at least 30 dining seats during required meal periods. Seats at counters in entertainment areas and at bars as defined in OAR 845-006-0340(2)(i) do not qualify as dining seating. A premises may have less than 30 dining seats if the Commission determines that the clearly dominant emphasis of the premises is food service as described in section (2)(c) of this rule at all times and in all areas where alcohol service is available when open to the public.

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

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

Stats. Implemented: ORS 471.175

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08; OLCC 13-2010, f. 10-18-10, cert. ef. 11-1-10

**845-006-0461**

**Food Service Requirements for Nonprofit Private Clubs with a Full On-Premises Sales License**

(1) Purpose: ORS 471.175 allows nonprofit private clubs with food service to sell distilled spirits by the drink. ORS 471.175(8) requires a nonprofit private club, to meet minimum food service requirements established by Commission rule. This rule sets the food service requirements for nonprofit private clubs.

(2) A nonprofit private club must comply with the food service requirements of OAR 845-006-0460(2) & (3) during all times and in all areas it is serving alcohol to the general public.

(3) Food Requirements When Serving Alcohol in Areas where only Full and Auxiliary Members, and their Guests, are Present. At all times and in all areas where only full and auxiliary members, and their guests, are present and alcohol service is available, the club must make available at least three different substantial food items.

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

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

Stats. Implemented: ORS 471.175

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08; OLCC 13-2010, f. 10-18-10, cert. ef. 11-1-10

**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 845-005-0405 or 845-005-0410. This rule sets the food service requirements for off-premises events with a Full or Limited On-Premises Sales license.

(2) If the off-premises event would qualify for general pre-approval under OAR 845-005-0405 or 845-005-0410, the licensee must provide at all times and in all areas where alcohol service is available at least two different substantial food items, some of which the licensee prepares and cooks in sufficient quantity to provide at least one serving for each person at the event. A licensee may have fewer than two different substantial food items in the area where alcohol service is available if the Commission determines that the clearly dominant emphasis in this area is food service as described in 845-006-0460(2)(c).

(3) If the off-premises 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 provide at least five different substantial food items on the off-premises event's licensed premises at all times and in all areas where alcohol service is available.

(4) If the off-premises 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, the licensee or a contract food service provider must provide at least two different substantial food items on the off-premises event's licensed premises at all times and in all areas where alcohol service is available.

(5) If the licensee does not directly provide the food service required under sections (3) and (4) of this rule, the food service must be provided by a contractor or contractors. 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 provided to patrons at all times and in all areas where alcohol service is available. The Commission may waive the OAR 845-005-0311 requirement that a contract food service provider be a co-licensee at the event if the contract food provider does not provide any alcohol service and does not directly or indirectly manage people who sell or serve alcohol. A licensee may have fewer than the different substantial food items required under sections (3) and (4) of this rule in the area where alcohol service is available if the Commission determines that the clearly dominant emphasis in this area is food service as described in 845-006-0460(2)(c).

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

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

Stats. Implemented: ORS 471.175

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

**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.

ers 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 items such as sandwiches, pizza, bentos, dinner salads and 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 items such as sandwiches, pizza, bentos, dinner salads and 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's food service contractor or caterer be a co-licensee, if the contractor or caterer does not provide on-board services, and does not provide alcohol service on the airplane, train or boat.

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

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.175 & 471.182  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

#### 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) Other Public Locations are businesses open to the public where meals or substantial food items are offered, but where the predominant activity of the business is other than the preparation or serving of meals or the consumption of alcohol. Examples of such businesses are an auditorium; a music, dance, or performing arts facility; a banquet or special events facility; a lodging facility; a fairground; a sports stadium; an art gallery; or a convention, exhibition, or community center.

(2) Food Service: At all times and in all areas where alcohol service is available, the licensee must make available to patrons at least five different substantial food items.

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

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.175  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

#### 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's contract food service provider must provide at all times and in all areas where alcohol service is available at least three different substantial food items.

(2) If distilled spirits are not provided, the licensee or a contract food service provider must provide at all times and in all areas where alcohol service is available at least two different substantial food items.

(3) If the licensee does not directly provide the food service required under sections (1) and (2) of this rule, the food service must be provided by a contractor or contractors. 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 provided to patrons at all times and in all areas where alcohol service is available. The Commission may waive the OAR 845-005-0311 requirement that a contract food service provider be a co-licensee at the event if the contract food provider does not provide any alcohol service and does not directly or indirectly manage people who sell or serve alcohol. A licensee may have fewer than the different substantial food items required under sections (1) and (2) of this rule in the area where alcohol service is available if the Commission determines that the clearly dominant emphasis in this area is food service as described in 845-006-0460(2)(c).

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

Stat. Auth.: ORS 471, including 471.030, 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; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

#### 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. The food preparation area and equipment must be on the licensed premises except when the licensed premises is a location catered by a licensee under the authority of ORS 471.184.

(2) Discouraging food service: A Full On-Premises Sales licensee may not discourage or attempt to discourage a person from ordering or obtaining food from the licensee. Examples of discouraging food service include but are not limited to: A failure to take, prepare, cook, or deliver a food order in a timely manner; clearly over-pricing food for the clientele of the establishment; offering or serving unpalatable food; failing to provide required food service; and failing to provide a food service menu in a timely manner to a patron when requested by the patron.

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

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.175  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

#### 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.175  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08

#### 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 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 471.030, 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; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

### 845-006-0480

#### Changes in Premises or Operation: 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.

(2) A licensee licensed to sell alcoholic beverages at retail for on-premises consumption must notify the Commission in writing and provide an updated floor plan whenever the licensee changes the physical dimensions of the licensed premises within 30 days of the change.

(3) A licensee must notify the Commission in writing whenever the licensee changes the business trade name within 30 days of the change.

(4) A licensee licensed to sell alcoholic beverages for on-premises consumption must notify the Commission in writing of any change to the premises or the business operation that could reasonably affect the minor posting assigned to the premises or any room or area of the premises prior to the change.

(5) Failure to provide the notice that this rule requires is a Category V violation.

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

Stats. Implemented: ORS 471.313 & 471.315

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11

### 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.313, 471.315 & 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. The licensee must give notice of such closures as provided in this rule:

(a) A Full On-Premises Sales licensee licensed as a commercial establishment as authorized by ORS 471.175(2)(c) must notify the Commission in writing at least 48 hours before full closure of the licensed premises for private use. Partial closure of the licensed premises does not require notification to the Commission except as section (1)(b) of this rule requires;

(b) All Limited On-Premises Sales licensees and Full On-Premises Sales licensees must notify the Commission in writing prior to the event if any private use not approved at the time of licensing will restrict the general public more than once per week from areas that were approved for patronage by the general public.

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

(3) 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.

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

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

Stats. Implemented: ORS 471.030, 471.175, 471.178 & 471.730(1)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2007, f. 3-22-07, cert. ef. 4-1-07

### 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 ORS 471.182, and comply with the food service standards of 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 471.030, 471.040, 471.730(1) & (5)  
Stats. Implemented: ORS 471.175 & 471.182  
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

### 845-006-0490

#### Requirements for a Full On-Premises Sales License for a Nonprofit Private Club

This rule sets requirements in addition to other requirements set out in ORS Chapter 471 and OAR Chapter 845 Divisions 5 and 6 for a Full On-Premises Sales License for a Nonprofit Private Club.

(1) Definitions. For this rule and OAR 845-005-0321:

(a) "Auxiliary Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be an auxiliary member and has been designated as an auxiliary member with certain limited membership privileges by the nonprofit corporation.

(b) "Full Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be a full member and has been designated as a full member by the nonprofit corporation. A full member must pay dues to the club, have full-time membership privileges equal to all other full members of the club, and be entitled to vote in all elections for directors of the nonprofit corporation licensee of the club.

(c) "Nonmember" means an individual who is not a full member or auxiliary member and who is at the club for the purpose of benefiting from the club's services or facility.

(d) "Nonprofit Corporation" means a mutual benefit corporation, a public benefit corporation, or religious corporation as defined in ORS Chapter 65.

(2) Food service requirements. The licensee must meet the food service requirements of OAR 845-006-0461.

(a) For the purposes of food service requirements, guests are defined as:

(A) A nonmember who has been invited by a member (full or auxiliary) or the club and a member is present with that individual at all times in areas where alcohol is sold, served, or consumed; or

(B) A nonmember attending a family-oriented event of a member (full or auxiliary) and where eating or an activity appropriate for minors is the overall predominant activity in the area where the individual is present. Examples include but are not limited to: wedding; wedding reception; wedding anniversary; birthday; family reunion; and memorial service.

(b) For the purposes of food service requirements, the general public is anyone who is not a member (full or auxiliary) or a guest. This rule in no way requires a nonprofit private club to be open to the general public.

(3) Nonmembers.

(a) If one (or more) nonmember(s) is in an area where alcohol is sold, served, or consumed, at least one member (full or auxiliary) must be present in the area at all times.

(b) A violation of this section is a Category III violation.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.175 & 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; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; Renumbered from 845-008-0045 by OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09; OLCC 13-2010, f. 10-18-10, cert. ef. 11-1-10

### 845-006-0495

#### Requirements for a Full On-Premises Sales License for a For-Profit Private Club

This rule sets requirements in addition to other requirements set out in ORS Chapter 471 and OAR chapter 845 divisions 5 and 6 for a Full On-Premises Sales License for a For-Profit Private Club.

(1) Definitions. For this rule and OAR 845-005-0322:

(a) "Member" means a living individual that has been accepted by the club as a member, pays dues to the club, and has full-time membership privileges.

(b) "Nonmember" means an individual who is not a member and who is at the club for the purpose of benefiting from the club's services or facility.

(2) Food service requirements. The licensee must meet the food service requirements of OAR 845-006-0460.

(3) Nonmembers.

(a) If one (or more) nonmember(s) is in an area where alcohol is sold, served, or consumed, at least one member must be present in the area at all times.

(b) A violation of this section is a Category III violation.

(4) Access to Premises.

(a) The licensee must follow the requirements of OAR 845-006-0345(4).

(b) In addition, the licensee must provide the Commission with a means to gain immediate access to the premises. If the entrance to the premises is unattended, then the licensee must provide a valid mechanism for Commission employees to gain immediate entry, such as a keycard or keypad code.

(c) Violation of this section is a Category II violation.

Stat. Auth.: ORS 471, 471.001, 471.030, 471.040, 471.175 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.001 & 471.175

Hist.: OLCC 13-2010, f. 10-18-10, cert. ef. 11-1-10

### 845-006-0497

#### Enforceable Compliance Plans

(1) When the Commission issues a written Notice of Warning to a licensee for a history of serious and persistent problems under ORS 471.315(1)(c), the Commission shall require the licensee to submit a written compliance plan setting out the specific actions that the licensee will take to address the problems.

(2) A draft compliance plan required under this rule must be submitted to the Commission within 15 days of the licensee receiving notice of the requirement. The Commission will provide written feedback regarding the licensee's draft plan within 10 days of receipt. A final acceptable compliance plan must be submitted no later than 30 days from the date the licensee received initial notice of the requirement, or 5 days from the date the licensee received written feedback on their draft plan, whichever is later. The Commission will give written approval of a compliance plan as acceptable if it determines that implementation of the plan is reasonably likely to reduce or prevent the identified compliance problems. Under no circumstances will the time period between initial Commission notice of the requirement and Commission approval of a final acceptable compliance plan exceed 45 days.

(3) Once a compliance plan is approved, the licensee must follow the plan. The licensee may request Commission approval to discontinue a compliance plan no sooner than one year from the approval date. The licensee may request Commission approval to modify a compliance plan no sooner than six months from the approval date. The Commission will grant the request if it finds there is no longer a significant risk at the premises of future compliance problems pertaining to the elements of the plan contained in the licensee's request.

(4) Approval of a compliance plan under this rule does not prevent the Commission from taking any other compliance action.

(5) Failure to submit an acceptable compliance plan as required or to follow an approved compliance plan is a Category III violation.

(6) The licensee must keep the compliance plan on the licensed premises and make the compliance plan available at any time for immediate inspection by any Commission employee or any peace officer. Failure to comply with this requirement is a Category IV violation.

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

Hist.: OLCC 6-2011, f. 8-15-11, cert. ef. 9-1-11

### 845-006-0498

#### Suspended Licenses: Posting of Suspension Notice Sign, Activities Allowed During Suspension

(1) Before 7:00 a.m. on the date a liquor license suspension goes into effect, and until the suspension is completed, Commission staff will ensure that a suspension notice sign is posted on each outside entrance or door to the licensed establishment. The suspension notice sign must be posted in a way that allows any person entering the premises to read it. Licensees must use the suspension notice sign provided by the Commission. The sign will state that the liquor license has been suspended by order of the Commission due to violation(s) of the alcoholic liquor laws (statute or administrative rule) of Oregon.

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If there are multiple liquor licenses at the location, the sign will specify which license privileges have been suspended.

(2) During the period of license suspension, the licensee is responsible for ensuring:

(a) Compliance with all applicable laws and rules, including compliance with all minor postings assigned to the premises per OAR 845-006-0340;

(b) That the suspension notice sign is not removed, altered, or covered.

(3) No licensee, and no agent, servant or employee of such licensee, shall allow the sale, delivery, service, consumption, or receipt of alcoholic beverages at the licensed premises during the period of time that the license is under suspension pursuant to ORS 471.315, 471.316, or 183.430(2):

(a) A liquor licensee may operate his/her business provided there is no sale, delivery, service, consumption or receipt of alcoholic beverages. No banquet, temporary event or other special occasion function involving the sale, service, delivery or consumption of alcoholic beverages may be held on the premises during a period of liquor license suspension;

(b) When a Winery, Grower Sales Privilege or Brewery-Public House license is suspended, any and all locations operating under the underlying license are suspended.

(4) Sanction: A violation of section (3) of this rule is a Category I violation. A violation of sections (1) or (2)(b) of this rule is a Category IV violation.

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

Stats. Implemented: ORS 183.430(2), 471.315 & 471.316

Hist.: OLCC 12-2006, f. 8-21-06, cert. ef. 10-1-06; OLCC 15-2007, f. 7-18-07, cert. ef. 8-1-07

### 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 (chapter 845) the Commission adopts pursuant to these chapters;

(b) ORS 459.992(4) for violations of any provision of 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 Chapter 471 or any administrative rule (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.

(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 OR violations of the tied house or financial assistance prohibitions;

(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;

(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: 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: a prior warning about compliance problems; repeated failure to comply with laws; failure to use age verification equipment which was purchased as an offset to a previous penalty; 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.315, 471.322 & 471.327

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 21-2007, f. 9-27-07, cert. ef. 10-1-07; OLCC 4-2009, f. 4-21-09, cert. ef. 5-1-09

## 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) “Coupon” or “rebate coupon” means any coupon, ticket, certificate token or any other material that a person may use to obtain a price reduction or rebate in connection with 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, 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 845-010-0086; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90; OLCC 9-2010, f. 8-23-10, cert. ef. 9-1-10

### 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; and

(b) 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 allows manufacturers to give consumer rebates coupons on malt beverages, wine and cider. Progressive-type coupons which provide a larger rebate when progressively more alcohol is purchased are permitted. An example of this would be a rebate that offers \$5 for the purchase of one six-pack/bottle but \$12 for two. All advertising associated with rebate coupons must comply with applicable state and federal law and regulations. The manufacturer must furnish rebate coupons to all licensees carrying the product for off-premises consumption. The manufacturer is responsible for the redemption of rebate coupons. No retail licensee may receive any money or similar benefit from a manufacturer for the redemption of any coupons. All rebate coupons offered by manufacturers in the State of Oregon must meet the following requirements:

(a) Coupons must be redeemable only by mail, except that a manufacturer may offer instantly redeemable coupons for products sold to consumers under the manufacturer’s retail privileges at the manufacturer’s licensed premises;

(b) Coupons must bear an expiration date;

(c) Manufacturers must require proof of purchase;

(d) Coupons must be valid only for adults of legal drinking age.

(4) The Commission may require withdrawal of the rebate coupon if the manufacturer does not comply with the conditions of the rebate coupon or Commission rules.

(5) The Commission allows manufacturers to offer cross promotional rebate coupons that provide a discount or rebate on food, non-alcoholic beverages or non-food items with or without the purchase of an alcoholic beverage product (for example, \$1.00 off tortilla chips with the purchase of a six-pack of Corona beer). Such coupons may be offered for generic or branded products (for example, hot dogs or Armour hot dogs) but may not be limited to exclusive store brands or products. All manufacturer issued cross promotional coupons must comply with the requirements in section (3) of this rule.

(6) The Commission allows retailers to issue coupons on alcoholic beverages provided that the retailer bears all costs associated with the redemption of the coupon and receives no payment from any manufacturer. Examples of retailer issued coupons could include rain checks issued by a retailer that allow a customer to get the advertised price of an alcoholic beverage product when a product is temporarily out of stock, coupons or certificates that provide a discount on meals including alcohol to be consumed at a licensed premises, coupons that provide a discount on any products the retailer sells such as 10% off of a bill of \$50 or more, and customer loyalty programs such as club cards or frequent customer discount cards. Retailer issued coupons may be instantly redeemable or mail-in. The retail licensee must pay for all discounts on alcoholic beverages provided under retailer issued coupons.

(7) Use of coupons must conform with the principles of OAR 845-013-0001. A licensee who violates any section of this rule commits a Category IV violation under the Commission’s sanction schedule (OAR 845-006-0500).

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

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; OLCC 15-2006, f. 10-19-06, cert. ef. 11-1-06; OLCC 26-2007, f. 12-17-07, cert. ef. 1-1-08; OLCC 9-2010, f. 8-23-10, cert. ef. 9-1-10

### 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 any advertising of the promotional practices that are prohibited under OAR 845-006-0345(10).

(3) Outside the licensed premises, the Commission prohibits advertising of an alcoholic beverage for on-premises consumption if that advertising contains **both** a specified limited time period when a price or discount is available **and** either the price of the alcoholic beverage, or a specified dollar amount or percentage discount on the alcoholic beverage. Examples of specified limited time periods could include terms that reference a time of day such as “night” or “hour”, a day of the week such as “Thursdays”, a specific date such as “St. Patrick’s Day”, or similar terms.

(a) Examples of advertising that is prohibited under this section include: \$2.00 draft beer on Fridays, \$4.50 well drinks 4:00–6:00 p.m., \$1.00 off draft beer on Thursdays, half price gin and tonics 6:00–9:00 p.m., or ladies night margaritas \$4.00.

(b) Advertising the regular price of an alcoholic beverage outside the licensed premises, such as on a menu in the window or on a website, is allowed as long as there is no mention of a specified limited time period for those prices. Advertising that uses terms such as “happy hour” is also allowed as long as there is no mention of an alcoholic beverage’s price or discount.

(4) Outside the licensed premises, the Commission prohibits advertising of an alcoholic beverage for on-premises consumption where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as “two for the price of one”, “buy one — get one free”, or “two for \$\_\_\_\_\_”.

(5) Advertising is considered “outside the licensed premises” if the advertising is visible or audible from the outside, including advertising on a website or on a telephone answering machine recording. Responding via email or telephone to a question from a member of the public is not considered advertising and thus is allowed.

(6) The Commission prohibits advertising that violates OAR 845-015-0130 (Advertising a retail liquor store).

(7) 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, 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; OLCC 4-2010, f. 4-19-10, cert. ef. 5-1-10

**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 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**

**PRIVILEGE TAX**

**845-008-0050**

**Tax Reporting and Tax Liability**

All wineries must file tax statements with the Commission which include the quantity of wine produced, purchased or received during the calendar year. This rule explains the criteria to qualify as an annual reporter as well as the reporting requirements for both annual and monthly reporters.

- (1) Annual Reporting Eligibility and Requirements.

(a) A winery is eligible to file a single annual tax statement for any particular calendar year if the winery either:

(A) Was not liable for any privilege tax in the prior calendar year and does not expect to be liable for any privilege tax in the current calendar year; or

(B) The winery is in its first calendar year of operation and does not expect to be liable for any privilege tax in the current calendar year.

- (b) A winery that files annual tax statements must:

(A) Submit the statement and all required tax schedules for a given calendar year by January 20 of the following year;

(B) Submit a tax statement that shows the total amount of wine removed from federal bond during the calendar year preceding the reporting date as well as any exemptions being claimed for wine that was removed from bond;

(C) Submit by the January 20 reporting date any tax owed on wine removed from bond during a calendar year and not subject to exemption; and

(D) Submit an annual tax statement and supporting schedules by the due date even if the winery did not remove any wine from federal bond or the winery is claiming exemptions for all of the wine it removed from bond.

(c) If a winery discovers during the calendar year that it will owe tax, it no longer qualifies for annual filing and must begin monthly filing on the 20th of the following month. The month when monthly filing begins is also the catch-up month when any tax owed year-to-date must be submitted to the Commission.

(d) Failure to file a tax statement and supporting schedules or to pay tax owed by the January 20 due date may result in the assessment of penalties and interest as set forth in OAR 845-008-0080.

- (2) Monthly Reporting Requirements.

(a) A winery that does not qualify for annual reporting must file a monthly tax statement. If a winery knows or reasonably should know that it will have a tax liability in the current calendar year, it must report monthly.

- (b) A winery that files monthly tax statements must:

(A) Submit the statement and all required tax schedules by the 20th of each month for the preceding calendar month;

(B) Submit a tax statement that shows the total amount of wine removed from federal bond during the calendar month preceding the reporting date as well as any exemptions being claimed for wine that was removed from bond;

(C) Submit any tax owed on wine removed from bond during a calendar month and not subject to exemption by the monthly reporting date; and

(D) Submit a monthly tax statement and supporting schedules by the due date even if the winery did not remove any wine from federal bond or the winery is claiming exemptions for all of the wine it removed from bond.

(c) Failure to file a tax statement and supporting schedules or to pay tax owed by the monthly due date may result in the assessment of penalties and interest as set forth in OAR 845-008-0080.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020

Stats. Implemented: ORS 473.060 & 473.070

Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

**845-008-0060**

**Small Winery Exemption**

ORS 473.050(5) provides that no tax shall be levied, collected or imposed upon the first 40,000 gallons of wine sold annually in Oregon from a United States manufacturer of wine producing less than 100,000 gallons annually. This rule explains the criteria to qualify for this small winery exemption.

(1) A winery qualifies to take the small winery exemption if the winery produces less than 100,000 gallons of wine during the calendar year in which the exemption is claimed. A winery's total production for the year is measured by the volume of wine produced by fermentation as reported to the Alcohol and Tobacco Tax and Trade Bureau (TTB) for the calendar year. Wine is considered produced for Oregon tax purposes when fermentation is completed or the wine is removed from the fermentor.

(2) The winery claiming the small winery exemption must hold a federal basic permit to produce wine and must have produced a minimum of 1 gallon of wine in the calendar year that the exemption is taken. A winery that holds a federal basic permit to produce wine but does not produce any wine during a calendar year may not take the small winery exemption on any wine it removed from federal bond during that calendar year.

(3) A winery may exempt no more than 40,000 gallons of wine under this exemption during a calendar year. While eligibility for the small winery exemption is based on the current year's wine production (less than 100,000 gallons), the exemption itself (no more than 40,000 gallons combined total) can be taken on any wine removed from bond during the year regardless of the year it was produced.

(4) A winery may claim the small winery exemption for wine that it removes from federal bond and intends, at the time of removal, to sell in Oregon. The exemption may be taken at the time of removal if the winery intends in good faith to sell the wine in Oregon. Wine qualifies as being sold in Oregon if ownership of the wine is, or is expected to be, transferred to a person or entity located within this state.

(5) The winery claiming the small winery exemption must have removed the exempt wine from federal bond. No exemption is available for wine that was not removed from bond by the winery claiming the exemption, such as wine that the winery received or imported federally tax-paid, or wine that the winery has transferred to another entity in bond.

(6) The Commission will deny the small winery exemption if it determines that allowance of the exemption would benefit a winery who would otherwise fail to qualify for use of the exemption.

(7) Wine that is claimed as exempt under the small winery exemption may not be claimed as exempt from tax under any other provisions of ORS 473.

(8) A bonded winery or warehouse may claim the small winery exemption on behalf of an eligible small winery for wine that the winery or warehouse receives from the transferring small winery and removes from bond, provided that all of the following requirements are met:

(a) The wine on which the exemption is claimed must have been produced by the small winery that transfers the exemption and must be eligible for exemption if it were to have been removed from bond by the transferring winery. The exemption may not be transferred on wine that the transferring winery received from another producer.

(b) The winery or warehouse taking the exemption on behalf of the transferring winery must remove the wine from bond.

(c) The transferring winery must hold title to the wine for which the exemption is transferred at the time the wine is removed from bond.

(d) The total amount of the exemption that may be claimed by a winery or warehouse on behalf of a small winery in any calendar year may not exceed 40,000 gallons minus all amounts claimed under the small winery exemption by the transferring small winery or by others on its behalf for that year. The transferring winery must provide

to the transferee all information necessary for the transferee to determine the amount of exemption it may claim.

Stats Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats implemented: ORS 473.050  
Hist.: OLCC 13-2008, f. 12-17-08, cert. ef. 12-20-08; Renumbered from 845-010-0154 by OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

#### 845-008-0070

##### Export Exemption

ORS 473.050(2) provides that no tax shall be levied, collected or imposed upon any wine exported from the state. This rule explains the criteria to qualify for this export exemption.

(1) The export exemption can be used to recover taxes already paid to the Commission or to offset a current tax liability.

(2) A winery may claim the export exemption for wine that it removes from federal bond and exports from the state. The exemption may be taken at the time of removal if the winery intends in good faith to export the wine. Wine qualifies as being exported if the wine is, or is expected to be, transported to a location outside of Oregon. All export exemptions must be supported by proof of export such as a bill of lading or other shipping documentation.

(3) Wine that is claimed as exempt under the small winery exemption may not be claimed as exempt from tax under the export exemption.

(4) A winery may claim a refund for wine on which tax was paid to the Commission in a prior period if the wine is subsequently exported from the state. No refund will be issued if no tax was paid by the winery to the Commission on the wine being exported. No refund may be claimed on wine that was previously exempted from tax.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.050 & 473.060  
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

#### 845-008-0080

##### Penalties and Interest

This rule describes the penalties and interest that may be assessed on a winery's outstanding tax liability.

(1) Unless waived, the Commission will assess a penalty of 10% and interest at the rate of 1% per month on any tax that is not paid on the due date as specified in OAR 845-008-0050(1)(d) or (2)(c).

(2) ORS 473.060(2) provides that the Commission may waive any interest or penalty assessed on unpaid taxes if the Commission determines that the winery has made a good faith effort to comply with the privilege tax requirements set forth in ORS Chapter 473, OAR chapter 845 division 8, 845-010-0151, and 845-010-0170.

(3) Failure to file any tax statement and supporting schedules by the due date is a Category IV violation. Failure to file an accurate and complete tax statement and supporting schedules by the due date may result in the assessment of penalties and interest on any outstanding tax liability.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.060 & 473.140  
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

#### 845-008-0090

##### Refunds

ORS 473.060(1) provides that the Commission may refund any tax payment imposed upon or paid in error by a winery. This rule explains the criteria for the refund process.

(1) A refund is the Commission returning money to the winery for over-paid taxes. It is distinguished from a credit, which is also for over-paid taxes but is used to offset a new tax liability.

(2) Refunds of privilege tax paid in a prior reporting period will be issued upon a written request with proper documentation showing that the tax was paid in error or that an exemption applies to wine on which tax was previously paid to the Commission. A refund will be issued only to the entity that previously paid the tax for which the refund is being claimed.

(3) If the refund request is for an amount over \$1,000 an audit may be required before a refund will be issued.

(4) If at audit it is determined that a refund was issued in error and there is in fact an outstanding tax liability, then penalties and interest may be assessed.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020  
Stats. Implemented: ORS 473.060  
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

## TEMPORARY SALES LICENSES/SERVER AGE

#### 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 identification. Valid identification for the purpose of obtaining a service permit is limited to a state issued driver's license, state issued identification card or a passport. For purposes of this rule, "state issued" is defined as one of the fifty states in the United States of America.

Stat. Auth.: ORS 471, 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.

(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) (13), Temporary Sales Licenses).

(c) Per ORS 471.190, employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization with a temporary sales license are not required to have service permits (see OAR 845-005-0440(14), Temporary Sales Licenses).

(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 471.375 endorses indorses 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 471.471.030, 471.040, 471.190 & 471.730(1) & (5)

Stats. Implemented: ORS 471.190, 471.360, 471.365(2) & 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 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; OLCC 4-2005, f. 6-7-05, cert. ef. 7-1-05; OLCC 17-2010, f. 12-22-10, cert. ef. 1-1-11

#### 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, serve or to supervise those who 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-premises 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), the Commission 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) & 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; OLCC 4-2005, f. 6-7-05, cert. ef. 7-1-05

#### 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 con-

trolled 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 (DUI) convictions or diversions (OAR 845-009-0020(6)); or

(D) DUI 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 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 471.030, 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 471.030, 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 licensee's family is seriously ill, injured or has died;

(c) There is no course available within 100 miles of an applicant or licensee 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 471.030, 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 471.030, 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, including 471.030 & 471.730(1) & (5)

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

Stats. Implemented: ORS 471.542 & 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, including 471.030 & 471.730(1) & (5)

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 137, division 003 and OAR 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.542 & 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 licensee's 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 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 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 violation involving a minor, whether for sale of alcohol or failure to properly verify identification by a licensee personally within a two year period, and irrespective of which of the two formed the first violation, 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 471.030, 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; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

#### 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) "Equipment" and "age verification equipment" mean equipment used to verify the age of customers who purchase alcoholic beverages.

(2) In order to qualify for the credit provided under sections (3) and (4) of this rule, age verification equipment must meet all of the following standards:

(a) 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;

(b) The equipment must have a memory function and must be capable of producing a hard copy printout of the results of any verification transaction within the last seven days, either directly from the equipment or through a computer;

(c) The equipment must be able to perform the age verification function for identification from all states in the United States, via either the equipment reading the identification automatically or manual entry of the information; and

(d) The equipment must have the capacity to be updated or upgraded.

(3) For the first or second violation of ORS 471.410(2) or 845-006-0335(1) in a two-year period, the licensee may choose to purchase age verification equipment in lieu of the standard first level Category III sanction, not to exceed 10 days of the suspension or \$1650 of the civil penalty. The licensee is responsible for paying or serving any portion of the sanction charged in excess of the standard sanction.

(4) For the first or second violation of ORS 471.410(2) or 845-006-0335(1) in a two-year period by a member of the Responsible Vendor Program, the licensee may choose to purchase age verification equipment in lieu of the standard Category III(a) sanction. The licensee is responsible for paying or serving any portion of the sanction charged in excess of the standard sanction.

(5) A licensee may choose this option only one time per license. If the licensee previously purchased equipment, the Commission may allow the licensee to use the purchase of the equipment in lieu of paying up to \$1650 of the civil penalty or serving up to 10 days of the suspension, if the licensee has not previously received this option.

(6) In order to receive the credit under this rule, the licensee must be using the age verification equipment within the timeframe specified in either the Request to Exercise Age Verification Equipment Option form or a settlement agreement; otherwise the licensee is responsible for the full sanction.

(7) A licensee who has received a credit under this rule for age verification equipment is expected to maintain the equipment in working order and to use the equipment to verify age as OAR 845-006-0335 requires.

Stat. Auth.: ORS 471, 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; OLCC 9-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 9-2011, f. & cert. ef. 11-1-11

### 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 continuing to make alcohol sales. Based on 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 & 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

### 845-009-0150

#### Approved Seller Training Programs

(1) ORS 471.410 provides that an employee of a liquor licensee or retail sales agent who has sold, given or otherwise made available alcohol to a minor may receive a reduced criminal penalty if the employee either holds a valid Oregon service permit or has completed a Commission-approved training program. This rule sets the standards and procedures the Commission uses when approving seller training programs and clarifies recordkeeping responsibilities.

(2) As used in this rule,

(a) "Approved seller training program" means a program approved by the Commission for the purposes of ORS 471.410.

(b) "Seller" means an employee of a liquor licensee or retail sales agent who sells or serves alcohol for on or off-premises consumption.

(3) Program Approval Standards and Process. A licensee or liquor agent may offer a Commission-approved seller training program to its employees. The licensee or agent may apply for Commission approval of their own program or use a Commission-approved seller training program from another source.

(a) To obtain Commission approval of a seller training program an applicant must:

(A) Submit a completed application packet provided by the Commission;

(B) Have a program 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 program will provide written certification of program completion to each seller who completes the training program.

(b) Commission staff will review the application, and will:

(A) Approve a seller training program that meets the requirements in Section (3)(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 (3)(a).

(c) At its discretion, the Commission may periodically conduct a review of a Commission-approved training program to ensure it still meets the Commission's Clerk Training Course Minimum Standards. To conduct the review, the Commission may ask an approved program to submit copies of all current materials used in the program. If a training program is found to fall below minimum standards then program approval may be withdrawn.

(4) Record Keeping.

(a) The liquor licensee or retail sales agent should provide written certification of program completion to each seller who completes their Commission-approved seller training program.

(b) It is the seller's responsibility to verify that a training program, whether offered by their employer or from another source, has been Commission-approved, and they may do so by contacting the Commission.

(c) It is the seller (employee of the liquor licensee or retail sales agent) who is responsible for keeping their own records regarding completion of an approved training program. The seller should take these records with them from one employer to the next. It will be up to the seller to provide such records in order to receive the reduced criminal penalty available under ORS 471.410.

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

Stats. Implemented: ORS 471.410

Hist.: OLCC 7-2010, f. 6-22-10, cert. ef. 7-1-10

#### 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 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 or Law Enforcement has received one or more documented complaints about an agent, licensee or license applicant alleging one or more of the following occurred at the retail sales agency or on the licensed premises:

- (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 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.

(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 OLCC's Regulatory Program 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, 471.030, 471.040, 471.346 & 471.730(1) & (5)

Stats. Implemented: ORS 165.805, 471.346, 471.430 & 471.567

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; OLCC 15-2004, f. 12-22-04, cert. ef. 1-1-05

## 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) Destroys the defective product as indicated;

(b) Sends a Bad Order Claim (Form 434) and an Affidavit of Destruction to the Commission;

(c) Receives the Commission's written approval of the claim;

(d) Completes Schedule V — Authorized Deductions; and

(e) Sends the completed form and the Bad Order Claim approval letter to the Commission with the monthly privilege tax report.

(2) The Commission may require at least 24 hours notification before the wholesaler destroys the product of the date, time and place of the planned destruction.

(3) 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.

(4) 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 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 473.050(4) & 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; OLCC 11-2005, f. 12-19-05, cert. ef. 1-1-06

#### 845-010-0154 [Renumbered to 845-008-0060]

#### 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 471.030, 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 purchases, 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 reports that summarize the information in sections (2), (3) and (4) of this rule in a form and within a timeframe prescribed by the Commission.

(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 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471 & 473, including 471.030, 471.392 - 471.402 & 473.140 - 473.160

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 65, f. 9-22-77, ef. 10-4-77; OLCC 11-1989, f. 10-31-89, cert. ef. 1-1-90; OLCC 9-1991, f. 5-24-91, cert. ef. 7-1-91; OLCC 12-2005, f. 12-19-05, cert. ef. 1-1-06

### 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 471.030, 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 845, division 007), the Bottle Bill (ORS 459A.700 to 459A.740 and OAR 845, division 020), ORS 471.220, 471.235, OAR 845-010-0206 and this rule and must be approved by the Alcohol And Tobacco Tax and Trade Bureau (TTB). If a manufacturer or wholesaler sells a malt beverage in Oregon that does not comply with the labeling requirements, the Commission may, in addition to any other sanction, require the licensee to stop selling and recall the malt beverage.

(3) Any licensee dealing in malt beverages will give the Commission an analysis of the licensee's malt beverage product upon request. The Commission may prohibit the sale of any malt beverage if, in its discretion, it finds that the malt beverage is not of good quality or that the alcohol content does not conform to the law or to the label of the container.

(4) ORS 471.448 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 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.445, 471.446(2) & 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 471.030, 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 471.030, 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 471.030, 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 regulations of the Alcohol and Tobacco Tax and Trade Bureau (TTB) 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 845-010-0930 impose requirements beyond those in these federal regulations, or disallow any practice the federal regulations allow, 845-010-0905 through 845-010-0930 prevail.

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

Stats. Implemented: ORS 471.442, 471.445, 471.446

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; OLCC 22-2007, f. 10-24-07, cert. ef. 11-1-07

### 845-010-0290

#### Labeling Requirements for Wine

(1) "Label" means all information-bearing material attached to or a part of a wine container, including all closures.

(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 through 845-010-0930 (Oregon standards for wine identity) when applicable, and must be approved by the Alcohol and Tobacco Tax and Trade Bureau (TTB). 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, except wine producers, 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 471.030, 471.730(1) & (5)  
Stats. Implemented: ORS 471.442, 471.445 & 471.446  
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; OLCC 22-2007, f. 10-24-07, cert. ef. 11-1-07

#### 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 471.030, 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 471.030, 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 845-010-0930:

(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) "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.

(4) "Brand Label" means a label carrying the brand name of a wine, its class or type designation and its appellation of origin.

(5) "Class Designation" is a standard of identity of a wine. Some examples are "grape wine," "table wine," "dessert wine," "sparkling wine" and "carbonated grape."

(6) "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."

(7) "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 have permitted to designate a type of wine produced anywhere. Some examples specified in Federal regulations are "Anjelica," "Burgundy," "Chablis," "Champagne," "Chianti," "Claret," "Madeira," "Malaga," "Marsala," "Moselle," "Port," "Rhine Wine" or "Hock," "Sauterne," "Haut Sauterne," "Sherry" and "Tokay."

(8) "Appellation of Origin" is the name of the geographic area in which the grapes used to make a wine were grown. Appellations of origin are limited to the names of a country, state, or county or Amer-

ican Viticultural Area. Some examples are "American," "Oregon," "Yamhill County," and "Umpqua Valley."

(9) "American Viticultural Area" is a delimited grape-growing region that is distinguishable by geographic features and whose boundaries the Alcohol and Tobacco Tax and Trade Bureau (TTB) has defined.

Stat. Auth.: ORS 471, including 471.030 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.442, 471.445 & 471.446  
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 14-2004, f. 11-18-04 cert. ef. 12-1-04; OLCC 22-2007, f. 10-24-07, cert. ef. 11-1-07

#### 845-010-0910

##### Purpose and Applicability

(1) The Commission sets rigorous labeling standards for 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 845-010-0930 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 wines on which "Oregon" or an appellation of origin wholly within Oregon appears as the appellation of origin, regardless of where the wine was produced or bottled. These rules prevail in any conflict between these rules and other rules in chapter 845, division 010.

(3) OAR 845-010-0905 through 845-010-0930 apply to grape wines labeled after November 1, 2007.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)  
Stats. Implemented: ORS 471.442, 471.445 & 471.446  
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 22-2007, f. 10-24-07, cert. ef. 11-1-07

#### 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) As an exception to section (1) of this rule, a person may use any of the following type designations for a wine that derives at least 75 percent of its volume from grapes of the named variety:

- (a) Cabernet franc;
- (b) Cabernet Sauvignon;
- (c) Carmenère;
- (d) Durif (Petite Sirah);
- (e) Grenache (Garnacha);
- (f) Malbec;
- (g) Marsanne;
- (h) Merlot;
- (i) Mourvèdre;
- (j) Petit Verdot;
- (k) Roussanne;
- (l) Sangiovese;
- (m) Sauvignon blanc (Fumé blanc);
- (n) Sémillon;
- (o) Syrah;
- (p) Tannat;
- (q) Tempranillo;
- (r) Zinfandel.

(3) The Commission may revise the list in section (2) of this rule.

(4) A person may not use in any manner on a wine label a name that might be mistaken for a grape variety name, such as those listed in the Code of Federal Regulations, 27 CFR 4.91.

Stat. Auth.: ORS 471.030, 471.730(1) & (5)  
Stats. Implemented: ORS 471.442, 471.445 & 471.446  
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 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; OLCC 14-2004, f. 11-18-04 cert. ef. 12-1-04; OLCC 11-2006, f. 8-21-06, cert. ef. 9-1-06; OLCC 22-2007, f. 10-24-07, cert. ef. 11-1-07

**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.

(2) If the appellation of origin claimed or implied anywhere on a wine label is "Oregon", the name of one or more of its counties, or the name of an American Viticultural Area wholly within Oregon, then all grapes used in the production of the wine must have been grown in Oregon, and 95 percent of the grapes used in the production of the wine must have been grown within the defined boundaries of that appellation of origin.

(3) If the appellation of origin claimed or implied anywhere on a wine label is the name of an American Viticultural Area located in both Oregon and an adjoining state, then all grapes used in the production of the wine must have been grown in Oregon and/or that adjoining state, and the percentage of grapes grown within the federally defined boundaries of that American Viticultural Area must satisfy the least restrictive of:

(a) The 95 percent minimum described in section (2) of this rule; or

(b) The minimum percentage of grapes required by the adjoining state for the use of that American Viticultural Area as an appellation of origin.

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

Stats. Implemented: ORS 471.442, 471.445 & 471.446

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; OLCC 22-2007, f. 10-24-07, cert. ef. 11-1-07

**845-010-0930**

**Semi-Generic Designation of Geographic Significance**

(1) 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.

(2) As an exception to section (1) of this rule, a person may use the type designation "Claret" on a wine brand label only if:

(a) The wine derives 100% of its volume from a blend of two or more of the following grape varieties: Cabernet franc, Cabernet Sauvignon, Carmenère, Malbec, Merlot, or Petit Verdot; and

(b) A federal certificate of label approval (COLA) for a "Claret" wine was issued for the same brand name on or after December 1, 2004 and prior to March 10, 2006.

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

Stats. Implemented: ORS 471.442, 471.445 & 471.446

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 22-2007, f. 10-24-07, cert. ef. 11-1-07

**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, brew-pub 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 (845-013-0060), and services of nominal value (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 (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 845-013-0020(1)(a) and (b) allow and all exchanges and returns that 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 retailers 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 retailers 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 retailers premises as long as:

(A) Neither the manufacturer/wholesaler or retailer advertise or promote the persons 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 retailers 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 845, division 013 regulate. For example, 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 471.030, 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 Commission's prior written approval, for malt beverage or wine that a retailer returns:

(A) When the retailer terminates the business or seasonal license;

(B) When the retailer temporarily stops operating due to unforeseen circumstances like fire, flood or other natural disasters;

(C) When the retailer temporarily stops operating for more than 29 days; or

(D) After holding a 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 471.030, 471.040, 471.730(1) & (5)  
 Stats. Implemented: ORS 471.398(2) & 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 471.398(3)

ORS 471.398(3) prohibits a supplier (manufacturer, wholesaler, or its agents) from providing any fixtures, furniture or furnishings to a retailer. A supplier does not violate this prohibition if he/she provides a display bin or rack for manufacturer-sealed containers of alcoholic beverages for consumption off the licensed premises, if the following conditions are met:

- (1) The supplier provides no more than one bin or rack per brand name family per retailer at any given time;
- (2) The cost of the display bin or rack may not exceed \$100 (cost is the cost to the supplier who initially purchased or produced the bin or rack);
- (3) The supplier has permanently marked the bin or rack with a brand name or trade name of the supplier's alcoholic beverage product; and
- (4) The retailer uses the bin or rack to display only products from the brand name family or trade name permanently marked on the bin or rack;

(5) 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 Alcohol and Tobacco Tax and Trade Bureau (TTB) basic permit, i.e. Anheuser-Busch InBev; "brand name family" means all of the alcoholic beverage products included in a particular product line which are marketed and labeled with a particular brand name, i.e. Budweiser.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)  
 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; OLCC 4-2011, f. 4-25-11, cert. ef. 5-1-11

#### 845-013-0040

##### Advertising, ORS 471.398(4)

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

(1) Except as authorized under section (2) of this rule, the only advertising a supplier (manufacturer or wholesaler), or its agents, 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.

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

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

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)  
 Stats. Implemented: ORS 471.398(4) & 471.730(7)  
 Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124; OLCC 8-2010, f. 6-22-10, cert. ef. 7-1-10

#### 845-013-0050

##### Point of Sale Advertising Materials and Consumer Take-Aways, ORS 471.398(4)

(1) A supplier (manufacturer, wholesaler, or its agents), may provide point of sale materials and consumer take-aways to a retailer provided that the conditions prescribed in section (3) of this rule are met.

Suppliers may provide point of sale material only for display at the retailer's premises. No minimum purchase may be required of a retailer in order to have an item at their premises.

(2) Definitions. For this rule:

(a) Point of sale advertising materials are items designed to be used at a retail establishment to attract consumer attention to a supplier's products. Such materials include window decorations, posters, placards, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, calendars, alcohol beverage lists or menus, display mirrors, table tents, chalk boards, thermometers, and similar items of like value. Also allowed are signs (neon, electrical, mechanical, inflatable or otherwise). Point of sale items do not include fixtures, furniture or furnishings as prohibited by ORS 471.398(3) and OAR 845-013-0030.

(b) Consumer take-aways are items intended for use by the retailer's customers off the premises that provide information to the retailer's customers but do not promote the retailer's business. Only items made of paper or other similar inexpensive material are allowed to be given to the retailer and such informational items include recipes, sports and entertainment event schedules, and informational pamphlets.

(3) Conditions and limitations.

(a) All point of sale advertising materials and consumer take-aways must bear conspicuous and substantial advertising matter about the product or the supplier that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials only.

(b) The supplier may not directly or indirectly pay or credit the retailer for using or distributing these items or for any expense incidental to their use.

(c) The Commission prohibits any advertising that contains material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages (OAR 845-007-0020(1)(e)).

(d) Items that predominantly advertise the supplier's alcoholic beverage products but also advertise a generic food product are allowed. This subsection does not prohibit cross-promotions of the supplier's alcoholic beverage product with a specific food product or brand when the 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 item 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 an alcoholic beverage/generic food product item;

(e) Items that predominantly advertise the supplier's alcoholic beverage products but also have generic words or symbols for activities the supplier wants to associate with his/her alcoholic beverage products are allowed. Exterior material may, however, have only generic symbols relating to activities, not words.

(f) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limits items of nominal value to the supplier's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite 845-013-0001(3)(d) that prohibits customization, the supplier 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.

(g) Exterior point of sale material given or loaned under this rule must not exceed 2160 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 2160 square inches.

(4) A violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)  
 Stats. Implemented: ORS 471.398(4)  
 Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124; OLCC 5-2009, f. 4-21-09, cert. ef. 5-1-09; OLCC 4-2011, f. 4-25-11, cert. ef. 5-1-11

#### 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 supplier (manufacturer or wholesaler), or its agents, to provide items of nominal value to a retailer. This rule

describes the items of nominal value a supplier, or its agents, may give to a retailer.

(2) A supplier, or its agents, may give basic items that support the supplier'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 supplier'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-er educational seminars that are not open to the public.

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

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 5-2009, f. 4-21-09, cert. ef. 5-1-09

### 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 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 retailer's premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;

(b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;

(c) Pricing packages and containers of the manufacturer'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, or exchanging products that have been found to contain adulterated ingredients (See also OAR 845-013-0020(1)(b)). If the amount exchanged is one case or less of malt beverages or if the product contains adulterated ingredients, 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 and 845-006-0450.

**NOTE:** ORS 471.186(4) prohibits a manufacturer or wholesaler from pro-

viding 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, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.398(5) & 471.446(2)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; 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; OLCC 15-2010(Temp), f. & cert. ef. 12-3-10 thru 5-31-11; Administrative correction, 6-28-11; OLCC 10-2011, f. & cert. ef. 11-1-11

### 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 & 472, including 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

### 845 013-0080

#### Manufacturer or Wholesaler Sponsorship of a Temporary Special Event

ORS 471.398 and 471.400 allow manufacturers and wholesalers to provide certain items and services to retail licensees. This rule describes the terms and conditions under which a manufacturer or wholesaler may provide items or services to a retail licensee in connection with the sponsorship of a temporary special event.

(1) For this rule: "temporary special event" means an event licensed with a temporary sales license under ORS 471.190, a temporary use of an annual license under ORS 471.184(2), or a special event brewery public house license under ORS 471.200 where the event does not exceed five license days (which need not be consecutive), and the event is not on a licensee's annually licensed premises. It does not mean an event licensed with a special event winery license or a special event grower license issued under OAR 845-005-0415 or licensed with a special event distillery license under OAR 845-005-0413.

(2) This rule does not apply to the purchase of advertising from a licensee as authorized under ORS 471.401.

(3) This rule does not apply to items or services a manufacturer or wholesaler provides under OAR 845-013-0090 to a nonprofit or governmental temporary sales licensee as described in OAR 845-013-0090(4)(a).

(4) This rule does not apply to a manufacturer or wholesaler providing items and services to a retail licensee (Full On-Premises Sales licensee, Limited On-Premises Sales licensee, Off-Premises Sales licensee, and Brewery-Public House Sales licensee) at the retail licensee's annually licensed premises or at an event where the retail

licensee has pre-approval for small-scale private catering under OAR 845-005-0405 or large-scale private catering under OAR 845-005-0410. Instead, the manufacturer or wholesaler must comply with ORS 471.398, 471.400, 471.401, and division 13 of chapter 845 of the Commission's administrative rules.

(5) A manufacturer or wholesaler sponsoring a temporary special event may provide to the temporary special event licensee only the items or services allowed under division 13 of chapter 845 of the Commission's administrative rules. However, notwithstanding OAR 845-013-0040, a manufacturer or wholesaler may also provide advertising of a temporary special event that lists the name and location of the temporary special event along with the name of the manufacturer's or wholesaler's product.

(6) No monetary payments of any kind may be made by a manufacturer or wholesaler or its agent to a retail licensee in connection with a temporary special event, except for payments to purchase advertising allowed under ORS 471.401(1)(d). Any payments for advertising provided under this rule must be made by the manufacturer or wholesaler or its agent directly to the third party provider of the advertising (for example, payments for advertising furnished by the manufacturer or wholesaler must be made to the media outlet that provides the advertising and not to the retail licensee). Advertising does not include fixtures, furniture or furnishings as prohibited by ORS 471.398(3) and OAR 845-013-0030.

(7) All alcoholic beverages sold or served at a temporary special event must be purchased by the temporary special event licensee from a licensed manufacturer or wholesaler at the established wholesale price or from the Commission. The manufacturer or wholesaler may not require the temporary special event licensee to exclude any competitor's products.

(8) Each manufacturer or wholesaler and each retail licensee providing or accepting sponsorship for a temporary special event shall maintain an accurate and complete record of the sponsorship. These records must include the items or services provided in connection with the sponsorship, the name and duration of the event, and the names of the licensee and sponsoring manufacturers or wholesalers. These records must be retained for a period of two years from the date of the event, and this information shall be provided to the OLCC upon request.

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

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)  
Stats. Implemented: ORS 471.398 & 471.400  
Hist.: OLCC 7-2011, f. 8-15-11, cert. ef. 9-1-11

### 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 suc-

cessfully 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 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 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 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 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) "Full On-Premises Sales Licensee" means any person or entity holding a Full On-Premises Sales license.

(5) "Retail Liquor Store" is a premises or a specific area in a premises that the Commission approves for the sale of packaged distilled spirits for off premises consumption.

(6) "Retail Sales Agent" or "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.

(7) "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)

Stats. Implemented: ORS 471.750 & 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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

#### 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, 471.030, 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) "Alcoholic beverage licensee" means the holder of a Distillery license, a Full On-Premises Sales license, or a distillery whose products are sold in Oregon.

(b) "Liquor Store Agent" has the same meaning as a retail sales agent, as defined in OAR 845-015-0101(6);

(c) "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 with a Distillery or Full On-Premises Sales license or any distillery whose products are sold in Oregon;

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

(A) Knowingly providing anything of value to a person or business licensed with a Distillery or Full On-Premises Sales license 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 with a Distillery or Full On-Premises Sales license, or to any distillery whose products are sold in Oregon, and similar ventures formed for the purpose of making 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 or Domestic Partner, and juvenile dependent children.

(h) "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(2) Additional Prohibitions:

(a) No retail sales agent or member of the agent's household or immediate family may be employed by a business that is licensed with a Distillery or Full On-Premises Sales license unless:

(A) The person's job duties do not include involvement with that portion of the business that requires an alcoholic beverage license to operate; or

(B) The person exercises no management control over that portion of the business that requires an alcoholic beverage license to operate.

(b) No retail sales agent or member of the agent's household or immediate family may be employed by any distillery whose products are sold in Oregon.

(3) Reporting Requirements:

(a) All retail sales agent applicants must complete and sign a form describing any financial interest or business connection the applicant or any person in the applicant's household or immediate family has, that the applicant would reasonably know of, with a Distillery or Full On-Premises Sales licensee, or with a distillery whose products are sold in Oregon. The Commission will determine whether any prohibited interest or connection exists. An applicant or person in the applicant's household or immediate family who has a prohibited interest or connection must divest the interest or connection before the Commission appoints the applicant;

(b) A retail sales agent must report, to the agent's district manager, any prohibited interest or connection with a Distillery, Full On-Premises Sales licensee or a distillery whose products are sold in Oregon as soon as the agent would reasonably know of the interest or connection. If ORS 471.710(3) or this rule prohibits the interest or connection, the Commission will set a reasonable time period for divestiture. If the retail sales agent, household member or immediate family member fails to divest, the Commission will terminate the agent's contract.

(4) Gifts and Gratuities: No retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee 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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

### 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, except in remote or rural areas, where the Commission may advertise in the most widely read local 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 recommends finalists who are most qualified based on the selection criteria in 845-015-0125. From the finalists, the Commission appoints a retail sales agent using the criteria in 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 or provide fixtures and equipment where none are available for purchase, 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)

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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

### 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

(1) A retail sales agent may advertise a retail liquor store with prior Commission approval. This approval shall be based on the standards contained in the Retail Operations Manual.

(2) The Commission prohibits any advertising that contains material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages (OAR 845-007-0020(1)(e)).

(3) 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.

(4) Agents may not use or refer to specific brand names of distilled spirits in their advertising other than in a liquor store website that lists all brand names carried in their inventory. Prices may be included within the brand name website advertising.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5) & 471.750

Stats. Implemented: ORS 471.750(1) & (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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 5-2010, f. 4-19-10, cert. ef. 5-1-10

### 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) Providing a written notice to any residence, business, pre-elementary, elementary or secondary school, house of worship or alcoholic treatment facility within a minimum of a 500 foot radius of the proposed location and to the local governing body when the Commission is considering relocating a store to another governing body's jurisdiction, or when it establishes a new retail liquor store in the jurisdiction.

(2) These notices will ask for opinions on the proposed location and identify when, where and how the public can comment.

(3) The Commission will consider liquor-related public opinions. It considers these liquor-related comments together with its criteria for liquor store establishment and relocation. OAR 845-015-0110 sets out these criteria.

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

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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

### 845-015-0138

#### Retail Price for Distilled Spirits

Before the Commission implements a surcharge or change in the mark-up formula for distilled spirits that would result in an increase in the retail price of distilled spirits sold to the public, the Commission shall:

(1) Provide at least 45 days public notice before such a price increase takes effect;

(2) Provide the opportunity for submission of written comments regarding the proposed price increase;

(3) Conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and

(4) Consider any written or verbal comments before implementing such a price increase.

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

Stats. Implemented: ORS 471.745

Hist.: OLCC 20-2010, f. 12-22-10, cert. ef. 1-1-11

### 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

### 845-015-0141

#### Shipment of Distilled Spirits

All sales of distilled spirits to individual consumers must be made in-person at a retail liquor store location. A retail sales agent may ship distilled spirits purchased in-person to a resident of Oregon who is at least 21 years of age. In-person purchases may be shipped to a resident of a state other than Oregon only in accordance with the laws of that state.

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

Stats. Implemented: ORS 471.740 & ORS 471.750

Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

### 845-015-0143

#### Sale of Related Items

(1) In an 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;

(e) Liquor branded logo giftware and apparel; and

(f) 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)

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; OLCC 3-2005, f. 5-16-05, cert. ef. 6-1-05

### 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 flyer, personal letter or business card; and

(b) Inviting a potential business or Full On-Premises Sales licensee 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 recipient's 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 Commission may inspect the books and records of the associated business of a non-exclusive retail sales agent.

(4) A retail sales agent must sell Commission merchandise at the Commission's established price.

(5) A retail sales agent may deliver alcoholic liquor or related items only to a Full On-Premises Sales licensee's premises as provided in and consistent with the Agency Agreement and the Commission's 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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

### 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, spouse or Domestic Partner who is at least 21 years old. "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act. 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, including 471.030, 471.730(1) & (5)

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; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

### 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 tasting shall be no more than one-quarter fluid ounce of distilled spirits in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A sponsor may not provide more than one-half ounce total of distilled spirits per customer per day.

(3) The distilled spirits 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 agency 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 distilled spirits 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

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; OLCC 5-2011, f. 8-15-11, cert. ef. 9-1-11

**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. Progressive-type coupons which provide a larger rebate when progressively more alcohol is purchased are permitted. 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, including 471.030, 471.730(1) & (5)

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; OLCC 3-2006, f. 2-22-06, cert. ef. 3-1-06; OLCC 26-2007, f. 12-17-07, cert. ef. 1-1-08

**845-015-0168****Full On-Premises Sales Licensee Refund**

A Full On-Premises Sales licensee who is going out of business may make a written request to the Commission to return resalable merchandise for a refund. If the Commission approves the request, the Commission will issue a refund after it determines that the merchandise is resalable.

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

Stats. Implemented: ORS 471.740 & 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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

**845-015-0170****Payment for Distilled Spirits**

(1) Timing of Payment for Distilled Spirits Purchases. Payment for distilled spirits must be made at the time of purchase. If the purchaser is a Full On-Premises Sales licensee, and the distilled spirits being purchased are to be delivered, payment must be received at the liquor store not later than the store's close of business on the same day that the product was delivered to the licensee.

(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's 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 either a valid driver's license with photo or valid DMV Identification card with photo, name, date of birth and physical

description. 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)

Stats. Implemented: ORS 471.740 & 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; OLCC 5-2005, f. 8-16-05, cert. ef. 9-1-05; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

### 845-015-0173

#### Discount for Full On Premises Sales Licensees' Distilled Spirits Purchases

Full On-Premises Sales licensees will purchase distilled spirits from a retail sales agent at a discount of five percent off the listed price fixed by the Commission. Licensees will 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, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.745 & 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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

### 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 Alcohol and Tobacco Tax and Trade Bureau (TTB) 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, unless an exception is approved by Commission staff;

(ii) Not be a size 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) & 471.750

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; OLCC 17-2004, f. 12-22-04, cert. ef. 1-1-05; OLCC 11-2008, f. 8-18-08, cert. ef. 9-1-08

### 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 products in the store a reasonable opportunity to do so. The Commission prohibits advertising liquor in a retail liquor store other than as permitted by this rule and OAR 845-015-0175.

(1) The Commission allows signs and displays that:

(a) Function to advertise or display the distillery's alcoholic beverage products, or the approved 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;

(b) Are not placed in a window;

(c) Do not obstruct another distillery's products; and

(d) Are used only for advertising or display of the distillery's products and not for the retail sales agent's personal use.

(2) If the total value of the sign or display is \$500 or more, then the item can only be loaned to the retail sales agent, must be clearly marked as the property of the distillery representative, marked with the date the loan begins, and can only be loaned for a maximum of 90 days per calendar year. At no time can a loan period exceed more than 90 consecutive days. The distillery representative can only have one such sign or display at any one time in any one liquor store. The value of a sign or display is the actual cost to the supplier who initially purchased it. Transportation and installation costs are excluded.

(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.

(4) The Commission retains the right to remove signs and displays the Commission finds objectionable.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5) & 471.750

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; OLCC 11-2008, f. 8-18-08, cert. ef. 9-1-08

### 845-015-0180

#### Distilled Spirits Samples Offered to Retail Sales Agents

(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 from distillery representatives or OLCC staff 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. All samples must be sealed bottles. Samples as described in this rule are not sample tastings as described in OAR 845-015-0155.

(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, 471.030, 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; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

### 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) 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 licensee or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, Full On-Premises Sales licensee or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Full On-Premises Sales licensee" 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.

(d) "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act.

(3) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail liquor agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out) at the time of store takeover. The Commission calculates the buy-out by taking two percent of the 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.

(4) 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.

(5) Paying the Buy-Out. An incoming agent must pay a buy-out if the effective date of the incoming agent's appointment occurs when the program is in effect. The incoming agent provides full payment to the outgoing agent at the time of the store takeover. As a condition of eligibility for the buy-out, the outgoing agent must allow the incoming agent to spend a minimum of 12 working days in the store working productively together before the store takeover, unless the incoming agent declines the opportunity. During the 12-day period, the outgoing agent will introduce the incoming agent to Full On-Premises Sales licensees 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.

(6) Family Transfer of Agency When Agent Dies or is Disabled. If an agent dies or becomes unable to operate an agency due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse or Domestic Partner, or child, or a qualified spouse or Domestic Partner, or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse or Domestic Partner, or child in this situation, the Commission will waive the buy-out requirement at the request of the outgoing agent or the agent's estate.

(7) Probationary Agents. Except as provided in section (9), an agent who resigns during their probationary period is eligible for a buy-out.

(8) 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.

(9) Exceptions. Despite sections (1) and (3), 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.

(10) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any Full On-Premises Sales licensee 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 licensees and commercial accounts that have made a purchase from the store within the twelve months immediately preceding turnover of the store to the incoming agent;

(c) Apply only within:

(A) A geographic radius of ten miles from the location of the store if the store is located in a metropolitan or suburban area;

(B) A geographic radius of twenty-five miles from the location of the store for all other areas of the state;

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0130.

(11) Violation of Section (10). If, during the two-year period:

(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent;

(c) The Commission terminates the Resignation Buy-Out Program, the non-compete provisions in section (10) remain in effect.

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

Stats. Implemented: ORS 471.750 & 471.752(2)

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; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

### 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

### 845-015-0200

#### Satellite Liquor Stores Pilot Program

(1) Purpose. The Satellite Liquor Stores Pilot Program is a program wherein the Oregon Liquor Control Commission (Commission) appoints retail sales agents on a temporary basis to operate Pilot Satellite Liquor Stores under the terms set forth in this rule. Pilot Satellite Liquor Stores are non-exclusive retail liquor stores located in smaller communities where there is a fluctuating, seasonal demand for an additional small outlet due to tourism or other similar factors. The purpose of the Pilot Program is to obtain data on the efficacy of operating such satellite stores in these areas. In connection with the Pilot Program, the Commission will collect data on a variety of subjects, including but not limited to: the economic viability (profitability) of the Pilot Program business model for the Pilot Program Agent and the state of Oregon; public safety impacts on the community; and public response to the program including customer satisfaction and convenience.

(2) Definitions. The following definitions apply only to this rule:

(a) The Satellite Liquor Stores Pilot Program is called the Pilot Program.

(b) The agent appointed to the pilot agency is called a Pilot Program Retail Sales Agent, or Pilot Program Agent. Pilot Program Agent is a retail agent who currently operates a Liquor Store (the "Primary Liquor Store") in the community where the Pilot Satellite Liquor Store is located.

(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 retail sales agent on a temporary basis to operate a Liquor Store is called a Pilot Satellite 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 Situating Pilot Liquor Stores. The Pilot Program will consist of up to six new Pilot Satellite Liquor Stores to be selected within 12 months of the start of the Pilot Program. The Commission will consider the following factors in determining the locations of Pilot Satellite Liquor Stores:

(a) Population fluctuations, changes in consumer traffic patterns, and/or increased demand within a community during seasonal or peak periods due to tourism or other similar factors;

(b) Distance of the proposed Satellite Liquor Store from existing Liquor Store(s);

(c) Community proximity of the proposed Satellite Liquor Store to the Pilot Program Agent's Primary Liquor Store;

(d) Sales volume of the Pilot Program Agent's primary Liquor Store;

(e) Anticipated ability of the Pilot Satellite Liquor Store to accommodate seasonal, fluctuating demand (through operating days/hours, product mix, etc);

(f) Size of Pilot Satellite Liquor Store, including retail floor space and storage space. A Pilot Satellite Liquor Store may carry no more than 50 percent of the products carried in the Primary Liquor Store, as measured by SKUs;

(g) The ability of the Pilot Program Agent to negotiate acceptable terms for the Satellite Liquor Store location.

(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 three years from the effective date of the Pilot Program Agent's appointment at the Pilot Satellite Liquor Store. Six months 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)–(d) 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 Satellite Liquor Store at the applicable location will be initiated by the Commission if it determines the applicable Pilot Satellite 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 845-015-0110 Establishment of a Retail Liquor Store;
- (b) OAR 845-015-0120 Retail Sales Agent Selection Procedure;

(c) OAR 845-015-0135 Public Opinion on Retail Liquor Store Location;

(d) OAR 845-015-0140 Hours and Days of Operation;

(e) OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents;

(f) OAR 845-015-0193(1) & (2) Terminating an Agency Agreement;

(g) 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 Satellite 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 Satellite Liquor Store as specified in the Pilot Program Agreement and the Retail Operations Manual.

(9) Measuring Success of the Pilot Program. 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 and the Commission;

(b) Increase in total seasonal revenue from liquor sales in the community;

(c) Effects on the public safety of the surrounding community;

(d) Public response to the Satellite Liquor Stores, including customer satisfaction and convenience.

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

Stats. Implemented: ORS 471.750

Hist.: OLCC 10-2010, f. 8-23-10, cert. ef. 9-1-10

## DIVISION 16

### SERVER EDUCATION PROGRAM PROVIDER CERTIFICATION

#### 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 471.030 & 471.730 (1) & (5)

Stats. Implemented: ORS 471.542 & 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 or managing online operations.

(3) "Case Study" means a teaching method in which the instructor or actor(s) describes, orally or in writing, a situation directly related to the training. The students, instructor or actor(s) demonstrate a possible solution and then the students, instructor or actor(s) describe, demonstrate or discuss the strengths, weaknesses and alternatives to the solution.

(4) "Classroom course" or "classroom setting" means an Alcohol Server Education course (either initial or renewal) taught in a classroom setting with an instructor present.

(5) "Initial Alcohol Server Education course" or "initial course" means the course required by ORS 471.542 and OAR 845-009-0075.

(6) "Online course" means an Alcohol Server Education course (either initial or renewal) accessible via a computer or computer network.

(7) "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 845-006-0301, 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.

(8) "Renewal Alcohol Server Education course" or "renewal course" means the course required by ORS 471.542, OAR 845-009-0075, and 845-016-0068.

(9) "Role Play" means a teaching method in which the students or actors assume the roles of characters in a situation directly related to the training and then act out responses to the situation the scene presents. Role plays in online courses must meet the course design and technical standards in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Course Design and Technical Standards for Online Courses (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin Blvd., Portland, OR).

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

Stats. Implemented: ORS 471.542 & 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 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 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 or 845-016-0016; 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 or 845-016-0016.

(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.

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

Stats. Implemented: ORS 471.542 & 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 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 845-016-0015

##### Alcohol Server Education Provider Standards — Classroom Course

To be certified, a provider must:

(1) Have a course that meets the Commission's Alcohol Server Education Minimum Curriculum Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR) and that includes:

(a) Role-playing, case study exercises and other methods that actively involve students in acquiring behavioral skills in identifying minors and stopping service to visibly intoxicated persons.

(b) Regular intervals where students demonstrate comprehension of the material through knowledge or skills before continuing to the next unit.

(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 September 1, 2007 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 1, 2007 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.

(5) Comply with Secretary of State filing requirements for an Oregon business entity, nonprofit corporation, or assumed business name as specified in ORS 60, 62, 63, 65, 67, 70, and 648, if applicable.

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

Stats. Implemented: ORS 471.542 & 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; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07; OLCC 16-2007, f. 8-20-07, cert. ef. 9-1-07

### 845-016-0016

#### Alcohol Server Education Provider Standards for Initial Course When Given Online

To be certified to present the initial Alcohol Server Education course online, a provider must:

(1) Have a course that meets the Commission's Alcohol Server Education Minimum Curriculum Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR). The course approved for the initial online course must include:

(a) Role-playing, case study exercises and other methods that actively involve students in acquiring behavioral skills in identifying minors and stopping service to visibly intoxicated persons.

(b) Course design and technical standards the provider proposes and the Commission approves. The Commission will approve course design and technical standards based on the guidelines in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Course Design and Technical Standards for Online Courses, (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR); and

(c) A student workbook that meets the Commission's Minimum Workbook Standards for Online Courses (published September 1, 2007 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 or managing online operations. The provider applicant must submit a completed Provider Staff Certification form describing the provider applicant or authorized representative's qualifications, as appropriate.

(3) Meet all technical and security standards required by the Commission for transmission of electronic data and information to the Commission.

(4) Submit a completed Provider Staff Certification form and appropriate fees as OAR 845-016-0020 requires.

(5) Comply with Secretary of State filing requirements for an Oregon business entity, nonprofit corporation, or assumed business name as specified in ORS 60, 62, 63, 65, 67, 70, and 648, if applicable.

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

### 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, and who submits a Provider Certification form after September 1, 2007 must have:

(a) A minimum of four years of verified full-time employment (8,000 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 others, including the Commission staff.

(3) Provider Responsibility for Fee:

(a) The provider is responsible for submitting a completed Provider Staff Certification form and a \$100 fee for each instructor. 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. An instructor may not teach an Alcohol Server Education course until certified by the Commission;

(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 for classroom courses:

(a) The provider must submit a schedule of planned classes, with times and locations, to the Commission's Alcohol Server Education program 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, 471.730(1) & (5)

Stats. Implemented: ORS 471.542 & 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; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 845-016-0030

##### Student Enrollment, Information to be Provided to Students in Classroom and Online Courses

(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) In addition to the requirements in section (1) of this rule, the provider of an online course will provide to each student who is taking the course online the following information:

(a) At the time of enrollment, a statement informing students that there is assistance available to them for questions.

(b) At regular intervals throughout the training materials, the provider must repeat the statement about available assistance.

(c) Both the initial and repeated statements must direct students to a provider assistant who can answer the student's questions about course materials.

(3) For both classroom and online courses, 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.

(4) 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.

(5) The provider who is teaching the course in a classroom setting 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.

(6) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & 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 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 845-016-0035

##### Course Examination in a Classroom Setting

(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)

Stats. Implemented: ORS 471.542 & 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 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 845-016-0036

##### Course Examination in Online Courses

(1) The provider will:

(a) Administer the Commission-provided closed-book exam as a required portion of each course presentation;

(b) Transmit student and examination data in the electronic format specified by 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; and

(c) Ensure safe electronic storage of student information and testing materials as specified in technical specifications the Commission approves.

(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)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 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 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, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.542 & 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 recertification 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 recertification 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, 845-016-0016, 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)

Stats. Implemented: ORS 471.542 & 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 3-2007, f. 2-26-07, cert. ef. 9-1-07

#### 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, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.542 & 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 & 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 addition. Holidays and weekends are not included in counting the 36 hours.

(5) The Commission will evaluate any requested change and notify the provider in writing of its approval or denial.

(6) Violation of section (1) or (2) of this rule is a Category II violation. Violation of section (3) or (4) of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & 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 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 471.542 & 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 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 & 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 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 471.542 & 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 attended and completed the entire 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, 471.730(1) & (5)

Stats. Implemented: ORS 471.542 & 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; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

**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 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 471.322(3), 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), 471 & 472, including 471.030, 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), 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 con-

tainer for reuse as a beverage container and pay the refund value of the container.

Stat. Auth.: ORS 459A.725(1), 459A.725(3), 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**

(1) 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.

(2) The Commission considers factors such as the following in determining whether or not a redemption center provides a convenient service to consumers for the return of empty beverage containers:

(a) Location of the redemption center;

(b) Kinds of beverage containers accepted at the redemption center;

(c) Dealers to be served by the redemption center and their distance from the redemption center;

(d) Days and hours of operation of the redemption center;

(e) Parking facilities serving the redemption center;

(f) Evidence showing that the redemption center meets all applicable local ordinances and zoning requirements;

(g) The cap, if any, on the number of beverage containers per person per day that the redemption center will accept;

(h) Payment method(s) accepted by the redemption center for redeemed beverage containers;

(i) The projected volume of beverage container returns at the redemption center as compared to the actual returns at the dealers to be served by the redemption center;

(j) A description of how consumers will be notified of the redemption center's location, services, and service hours.

Stat. Auth.: ORS 459A.735(1), (3) & (4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0615; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

845-020-0025

**Application for Approval of Redemption Center**

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:

(1) Name and address of each person to be responsible for the establishment and operation of the redemption center;

(2) Exact location and mailing address of redemption center;

(3) Kinds of beverage containers that will be accepted at the redemption center;

(4) Names and addresses of the dealers to be served by the redemption center;

(5) Distances from the redemption center to the dealers to be served;

(6) Days and hours of operation of the redemption center;

(7) Description of parking facilities to serve the redemption center;

(8) Evidence showing that a redemption center meets the zoning requirements and other applicable local ordinances of the regulating local jurisdiction;

(9) The cap, if any, on the number of beverage containers per person per day that will be accepted at the redemption center;

(10) Payment method(s) for redeemed beverage containers;

(11) The projected volume of beverage container returns at the redemption center as compared to the actual returns at the dealers to be served by the redemption center;

(12) A description of how consumers will be notified of the redemption center's location, services, and service hours.

Stat. Auth.: ORS 459A, 459.992 & 471.730

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0620; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

845-020-0030

**Standards of 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 the law. 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, infestations of insects, and their harborages or breeding places.

Stat. Auth.: ORS 459A.735(1), (3) & (4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0625; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

**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) Occupies a total enclosed space of 5,000 or more square feet in a single location and has not offered the kind of beverage for sale within the past six months;

(b) Occupies a total enclosed space of less than 5,000 square feet in a single location and has not offered the kind, size, and brand of beverage for sale within the past six months;

(c) Has reasonable grounds to believe the container was sold at retail outside Oregon;

(d) 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; or

(e) Has reasonable grounds to believe that container has already been redeemed, such as through a reverse vending process.

(2) Dealers must not use this rule to frustrate the requirement of the Beverage Container Act that dealers accept return of:

(a) Up to 144 beverage containers sold in Oregon from any person in any one day, if the dealer occupies a total enclosed space of 5,000 or more square feet in a single location; or

(b) Up to 50 beverage containers sold in Oregon from any person in any one day, if the dealer occupies a total enclosed space of less than 5,000 square feet in a single location.

Stat. Auth.: ORS 459A, 459.992, 471.030 & 471.730

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; OLCC 17-2007(Temp), f. & cert. ef. 9-17-07 thru 3-15-08; OLCC 2-2008, f. 1-16-08, cert. ef. 3-16-08; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09