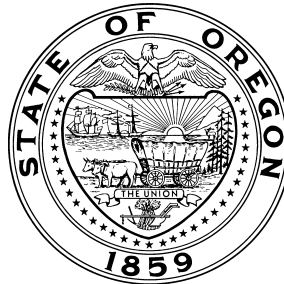


Liquor Control Laws and Administrative Rules

State of Oregon



2008

Compiled by
Oregon Liquor Control Commission

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About this book:

Oregon liquor control statutes and related laws are contained in ORS chapters 471, 473, 474 and 183 and the Miscellaneous Provisions section of this law book. Liquor control statutes are enacted by the Oregon Legislative Assembly and are designated by the abbreviation **ORS** (Oregon Revised Statutes).

Chapter 845 of Oregon Administrative Rules (designated by the abbreviation **OAR**) is divided into divisions. Administrative rules are adopted by the Oregon Liquor Control Commission. Related rules in Chapters 137 and 471 of Oregon Administrative Rules are included following Chapter 845, Division 3, in this publication.

2008 Special Session

**Chapter 34, Oregon Laws 2008
(amending ORS 471.186 and 471.282)**

CHAPTER 34

AN ACT

HB 3636

[2008 Special Session]

Relating to Oregon Liquor Control Commission; amending ORS 471.186 and 471.282; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 471.186 is amended to read:

471.186. (1) The holder of an off-premises sales license may sell factory-sealed containers of wine, malt beverages and cider. Containers of malt beverages sold under the license may not hold more than two and one-quarter gallons.

(2) The holder of an off-premises sales license may provide sample tasting of alcoholic beverages on the licensed premises if the licensee makes written application to the Oregon Liquor Control Commission and receives approval from the commission to conduct tastings on the premises. Tastings must be limited to the alcoholic beverages that may be sold under the privileges of the license.

(3) An off-premises sales license may not be issued for use at a premises that is mobile.

(4) Except as provided in ORS 471.402, a manufacturer or wholesaler may not provide or pay for sample tastings of alcoholic beverages for the public on premises licensed under an off-premises sales license.

(5) The holder of an off-premises sales license may deliver wine or cider that is sold under the privileges of the license to retail customers in this state without a direct shipper permit issued under ORS 471.282. Any deliveries by the holder of an off-premises sales license are subject to any rules adopted by the commission relating to deliveries made under this subsection. Deliveries under this subsection:

(a) May be made only to a person who is at least 21 years of age;

(b) May be made only for personal use and not for the purpose of resale; and

(c) Must be made in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(6) The holder of an off-premises sales license that makes deliveries of wine or cider under subsection (5) of this section must take all actions necessary to ensure that a carrier used by the licensee does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery.

(7) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

(8) If a court determines that deliveries of wine or cider under subsection (5) of this section cannot be restricted to holders of off-premises sales licenses, and the decision is a final judgment that is no longer subject to appeal, the holder of an off-premises sales license may not make deliveries of wine or cider under the provisions of subsection (5) of this section after entry of the final judgment.

SECTION 2. ORS 471.282 is amended to read:

471.282. (1) Notwithstanding any other provision of this chapter[,] **and except as provided by ORS 471.186 (5),** a person may sell and ship wine or cider directly to a resident of Oregon only if the person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue a direct shipper permit only to:

(a) A person that holds a license issued by this state or another state that authorizes the manufacture of wine or cider;

(b) A person that holds a license issued by this state or another state that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the person;

(c) A person that holds a license authorizing the sale of wine or cider at retail; or

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

(2) A person may apply for a direct shipper permit by filing an application with the commission. The application must be made in such form as may be prescribed by the commission. The person must include in the application the number of the license issued to the person by the commission, or a true copy of the license issued to the person by another state. If the application is based on a license issued by another state, or the application is by a nonprofit trade association described in subsection (1)(d) of this section, the person or association must pay a \$50 registration fee and maintain a bond or other security described in ORS 471.155 in the minimum amount of \$1,000.

(3) Sales and shipments under a direct shipper permit:

(a) May be made only to a person who is at least 21 years of age;

(b) May be made only for personal use and not for the purpose of resale; and

(c) May not exceed two cases, containing not more than nine liters per case, to any resident per month.

(4) Sales and shipments under a direct shipper permit must be made directly to a resident of this state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(5) A person holding a direct shipper permit must take all actions necessary to ensure that a carrier used by the permit holder does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery.

(6)(a) A person holding a direct shipper permit must report to the commission all shipments of wine or cider made to Oregon residents under the permit as required by ORS chapter 473. The report must be made in a form prescribed by the commission.

(b) A person holding a direct shipper permit must allow the commission to audit the permit holder's records upon request and shall make those records available to the commission in this state.

(c) A person holding a direct shipper permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this section and any related laws or rules.

(7)(a) A person holding a direct shipper permit must timely pay to the commission all taxes imposed under ORS chapter 473 on wine and cider sold and shipped 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.

(b) A person holding a direct shipper permit based on a license issued by another state must timely pay to the commission all taxes imposed under ORS chapter 473 on all wine or cider sold and shipped directly to Oregon residents under the per-

mit. The permit holder, not the purchaser, is responsible for the tax.

(8) A direct shipper permit must be renewed annually. If the person holds the permit based on an annual license issued by another state, the permit may be renewed by paying a \$50 renewal fee and providing the commission with a true copy of a current license issued to the person by the other state. 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.

(9) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the permit holder fails to comply with the provisions of this section. A person may sell and ship wine or cider under a direct shipper permit only for as long as the person has the license issued by this state or another state that authorizes the person to hold a direct shipper permit.

(10) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

(11) A person may not make sales and shipments of wine or cider directly to Oregon residents unless the person holds a direct shipper permit issued under this section. Any person who knowingly makes, participates in, transports, imports or receives a shipment of wine or cider that is in violation of this section commits a misdemeanor as provided in ORS 471.990 (1).

SECTION 3. This 2008 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect on its passage.

Approved by the Governor March 11, 2008

Filed in the office of Secretary of State March 11, 2008

Effective date March 11, 2008

Oregon Revised Statutes

Chapter 471

Alcoholic Liquors Generally

TITLE 37

ALCOHOLIC LIQUORS; CONTROLLED SUBSTANCES; DRUGS

- Chapter 471. Alcoholic Liquors Generally
473. Wine, Cider and Malt Beverage Privilege Tax
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475. Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors
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Chapter 471

2007 EDITION

Alcoholic Liquors Generally

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GENERAL PROVISIONS

471.001 Definitions for ORS chapters 471 and 473. As used in this chapter and ORS chapter 473:

(1) "Alcoholic beverage" and "alcoholic liquor" mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(2) "Commercial establishment" means a place of business where food is cooked and served and having adequate kitchen facilities for the preparation and serving of meals and having for that purpose proper dining space. "Commercial establishment" includes athletic clubs and golf clubs operated for profit. A commercial establishment must serve meals to the general public or, if the commercial establishment is an athletic club or golf club, must serve meals to the club's members and guests.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Distilled liquor" means any alcoholic beverage other than a wine, cider or malt beverage. "Distilled liquor" includes distilled spirits.

(5) "Licensee" means any person holding a license issued under this chapter.

(6)(a) "Malt beverage" means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume.

(b) "Malt beverage" includes:

(A) Beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume;

(B) Malt beverages containing six percent or less alcohol by volume and that contain at least 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more than 49 percent of the beverage's overall alcohol content is obtained from flavors and other added nonbeverage ingredients containing alcohol; and

(C) Malt beverages containing more than six percent alcohol by volume that derive not more than 1.5 percent of the beverage's overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(c) "Malt beverage" does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

(7) "Manufacturer" means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage within this state or who imports or causes to be imported into this state an alcoholic beverage for sale or distribution within the state.

(8) "Permittee" means a person holding a permit issued under ORS 471.360 to 471.390.

(9) "Premises" or "licensed premises" means a location licensed under this chapter and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Premises" or "licensed premises" includes areas outside of a building that the commission has specifically designated as approved for alcoholic beverage service or consumption.

(10) "Wine" means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume. "Wine" includes fortified wine. "Wine" does not include cider. [1995 c.301 §2; 1999 c.351 §42; 2005 c.100 §1]

471.005 [Amended by 1965 c.280 §1; repealed by 1995 c.301 §33]

471.010 [Amended by 1979 c.236 §5; repealed by 1995 c.301 §33]

471.015 [Amended by 1975 c.207 §1; 1979 c.236 §6; repealed by 1995 c.301 §33]

471.017 [1975 c.207 §4; 1995 c.301 §53; repealed by 1999 c.351 §13 (471.159 enacted in lieu of 471.017)]

471.020 [Repealed by 1979 c.264 §14]

471.022 [1979 c.264 §3; 1995 c.301 §13; repealed by 1999 c.351 §41]

471.023 "Cider" defined. For the purposes of this chapter, "cider" means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than seven percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. [1999 c.351 §66; 2007 c.45 §1]

471.025 [Repealed by 1995 c.301 §7 (471.406 enacted in lieu of 471.025)]

471.027 Short title. This chapter and ORS 474.105 and 474.115 shall be known and may be cited as the "Liquor Control Act." [Amended by 1965 c.165 §1]

471.030 Purpose of Liquor Control Act.

(1) The Liquor Control Act shall be liberally construed so as:

(a) To prevent the recurrence of abuses associated with saloons or resorts for the consumption of alcoholic beverages.

(b) To eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of such beverages and to promote temperance in the use and consumption of alcoholic beverages.

(c) To protect the safety, welfare, health, peace and morals of the people of the state.

(2) Consistent with subsection (1) of this section, it is the policy of this state to encourage the development of all Oregon industry.

471.035 Certain products excepted from liquor laws. No provision of the Liquor Control Act shall, by reason only that such product contains alcoholic liquor, prevent the sale of any perfume, lotion, tincture, varnish, dressing fluid, extracts, acid vinegar, or of any official medicinal or pharmaceutical preparations, or of any patent or proprietary medicine intended solely for medicinal purposes.

471.038 Nonbeverage food products. (1) Nonbeverage food products described in subsection (6) of this section may be sold at retail by any holder of a license issued by the Oregon Liquor Control Commission that authorizes the sale of alcoholic liquor at retail, or in any store operated by the commission under the provisions of ORS 471.750. Any nonbeverage food product containing more than one-half of one percent of alcohol by volume must be clearly labeled to reflect the alcohol content of the product and clearly labeled on the front of the package to indicate that the product may not be sold to persons under 21 years of age.

(2) Except as provided by this section, sales of nonbeverage food products described in subsection (6) of this section are subject to all provisions of this chapter, including the prohibitions on sales to persons under 21 years of age and the prohibitions on sales to persons who are visibly intoxicated.

(3) Nonbeverage food products described in subsection (6) of this section may be imported, stored and distributed in this state without a license issued by the commission. Nonbeverage food products described in subsection (6) of this section are not subject to the privilege taxes imposed by ORS chapter 473.

(4) Manufacturers of nonbeverage food products described in subsection (6) of this section are not subject to the provisions of ORS 471.392 to 471.400, 471.485, 471.490 or 471.495 or any other provision of this chapter relating to manufacturers of alcoholic liquor. A manufacturer of nonbeverage food products described in subsection (6) of this section may sell and deliver the product directly to a licensee authorized under this section to sell the product at retail.

(5) The holder of a distillery license issued under ORS 471.230 who is also a manufacturer of nonbeverage food products described in subsection (6) of this section may purchase distilled liquor directly from other distilleries.

(6) The provisions of this section apply only to nonbeverage food products that contain not more than five percent alcohol by weight or 10 percent alcohol by volume, whichever is greater. [1995 c.250 §2; 1997 c.249 §169; 1997 c.258 §1; 1999 c.351 §43]

471.039 Certain cruise ships exempt from liquor laws. (1) Notwithstanding any provision of this chapter, the Oregon Liquor Control Commission may not require the owners, operators and employees of a cruise ship to have a license or permit issued under the provisions of this chapter for the purpose of possessing, transporting, storing, selling or serving alcoholic beverages that are described in subsection (3) of this section.

(2) The provisions of ORS 471.740 do not apply to alcoholic beverages that are described in subsection (3) of this section.

(3) The provisions of this section apply only to alcoholic beverages that are served aboard a cruise ship and that are served solely for the purpose of onboard consumption by a cruise ship's passengers, guests, officers and employees.

(4) For the purposes of this section, "cruise ship" means a marine vessel used primarily for nonfishing purposes that is licensed to carry at least 500 passengers, provides overnight accommodations for those passengers and operates on the rivers or waterways within the boundaries of the State of Oregon, including docking and dry docking, fewer than 45 days during a calendar year. [1997 c.256 §2; 1999 c.351 §44]

471.040 General powers and duties of the commission; rules; delegation. (1) The Oregon Liquor Control Commission has the powers and duties specified in this chapter and ORS 474.105 and 474.115, and also the powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter and ORS 474.105 and 474.115. It shall make such rules and regulations pertaining to natural and fortified wines as will prevent the importation and sale in Oregon of blended, rectified, adulterated or low-quality wines. The jurisdiction, supervision, powers and duties of the commission extend to any person who buys, sells, manufactures, imports or transports any alcoholic liquor within this state. The commission may sue and be sued.

(2) Except for the power to adopt rules, the commission may delegate any of the commission's powers or duties to the administrator appointed under ORS 471.720. [Amended by 2001 c.785 §10]

471.045 Liquor laws supersede and repeal inconsistent charters and ordinances. The Liquor Control Act, designed to operate uniformly throughout the state, shall

be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed.

PURCHASER'S QUALIFICATIONS AND IDENTIFICATION

471.105 Purchaser's qualifications. Before being qualified to purchase alcoholic liquor from the Oregon Liquor Control Commission, a person must be at least 21 years of age. [Amended by 1961 c.687 §5; 1967 c.577 §1; 1971 c.159 §1; 2005 c.22 §343]

471.110 [Amended by 1961 c.259 §3; repealed by 1967 c.577 §10]

471.115 Limitations on purchasing may be imposed. The Oregon Liquor Control Commission may limit the quantity of alcoholic liquor purchased at any one time by any person. It may limit the amount of purchases within any length of time so as effectually to prevent the resale of such liquors.

471.120 [Repealed by 1967 c.577 §10]

471.125 [Amended by 1967 c.577 §2; repealed by 1971 c.159 §9]

471.130 Requiring statement of age or identification from certain purchasers. (1) All licensees and permittees of the Oregon Liquor Control Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce one of the following pieces of identification:

(a) The person's passport.

(b) The person's motor vehicle operator's license, whether issued in this state or by any other state, so long as the license has a picture of the person.

(c) An identification card issued under ORS 807.400.

(d) A United States military identification card.

(e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

(2) If a person does not have identification as described in subsection (1) of this section, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. The written statement of age shall be on a form furnished or approved by the commission, including but not limited to the following information:

_____ Date _____
I am 21 years of age or over.

_____ Signature
Description of evidence in support of age and identity:

_____ Identification No. (if any) _____

_____ Identification No. (if any) _____

(Fill in information pertaining to any two or more pieces of evidence submitted by the person.)

I hereby certify that I have accurately recorded identification of the evidence submitted to complete this form.

_____ Signature of permittee or licensee
ORS 165.805 provides as follows:

165.805. (1) A person commits the crime of misrepresentation of age by a minor if:

(a) Being less than a certain, specified age, the person knowingly purports to be of any age other than the person's true age with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or

(b) (Not applicable.)

(2) Misrepresentation of age by a minor is a Class C misdemeanor.

[Amended by 1955 c.525 §1; 1961 c.687 §4; 1967 c.171 §1; 1967 c.577 §7; 1979 c.313 §1; 1983 c.338 §939; 1995 c.44 §1; 1999 c.526 §1; 2001 c.785 §6; 2003 c.225 §1]

471.135 False statement of age; statement of age as defense. (1) No person shall make a written statement of age under ORS 471.130 that is false in whole or in part, or produce any evidence that would falsely indicate the person's age.

(2) If a written statement of age and the information pertaining to the evidence which was exhibited to the permittee or licensee at the time the statement was made that is entered in writing on the statement, are offered as evidence in any administrative or criminal prosecution for sale or service of alcoholic liquor to a person not having reached 21 years of age, the permittee or licensee shall be found to have committed no crime or other wrong unless it is demonstrated that a reasonable person would have determined that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served. [Amended by 1955 c.525 §2; 1967 c.53 §1; 1979 c.313 §2]

471.140 [1961 c.687 §2; 1963 c.93 §3; 1971 c.433 §1; repealed by 1979 c.313 §10]

471.143 [1963 c.93 §2; 1967 c.569 §1; 1971 c.159 §2; 1979 c.313 §4; repealed by 1979 c.313 §11]

471.145 [1961 c.687 §§3,6; 1963 c.93 §4; repealed by 1979 c.313 §11]

471.150 [1961 c.687 §7; 1963 c.93 §5; 1967 c.569 §2; 1971 c.159 §3; repealed by 1979 c.313 §11]

LIQUOR LICENSES**(Generally)**

471.155 Commission's licensing duties; bonds. (1) The Oregon Liquor Control Commission shall provide for the licensing of persons and cities within the state to manufacture, distribute, take orders for and sell spirits, wines, beer and other alcoholic liquors. Except as provided in subsection (2) of this section, the holder of a brewery, winery, wholesale, warehouse, grower sales privilege or brewery-public house license or the holder of a wine self-distribution permit shall give, and at all times maintain on file with the commission, a bond with a corporate surety authorized to transact business in this state. The bond shall be in form and amount acceptable to the commission, shall be payable to the commission and conditioned that the licensee or permittee will pay any fine imposed for any violation of any provision of the Liquor Control Act and that the licensee or permittee will pay all license fees, privilege taxes, taxes imposed under ORS 473.045 and other taxes on alcoholic liquors, together with penalties and interest thereon, levied or assessed against the licensee or permittee under statutes relating to the importation, manufacture, distribution, sale or taxation of alcoholic liquors in the State of Oregon.

(2) Under such conditions as the commission may prescribe, the holder of a brewery, winery, wholesale, warehouse, grower sales privilege or brewery-public house license or the holder of a wine self-distribution permit may deposit, in lieu of the bond required by subsection (1) of this section, the equivalent value in cash, bank letters of credit recognized by the State Treasurer or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the commission. Interest on deposited funds or securities shall accrue to the depositor. [Formerly 471.210; 2007 c.637 §1; 2007 c.651 §5a]

471.157 Licenses issuable. The licenses described in this chapter may be issued by the Oregon Liquor Control Commission, subject to its regulations and restrictions and the provisions of the Liquor Control Act and the Oregon Distilled Liquor Control Act. [Formerly 471.215]

471.159 Enclosure of licensed premises. (1) The Oregon Liquor Control Commission may not license a location that does not have defined boundaries.

(2) A licensed premises need not be enclosed by a wall, fence or other structure, but the commission may require that any licensed premises be enclosed as a condition of issuing or renewing a license.

(3) Except as provided in ORS 471.182, the commission may not license premises that are mobile. [1999 c.351 §14 (enacted in lieu of 471.017)]

471.162 Persons exempted from license requirement. (1) Hospitals, sanitariums, convalescent homes, rest homes, retirement homes and facilities for the care of the elderly that have been licensed or registered by the state may sell and serve alcoholic beverages to patients, inmates and residents, and to bona fide visitors and guests of patients, inmates and residents, without a license issued under this chapter. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection may not sell or serve alcoholic beverages after 10 p.m. except upon a physician's prescription.

(2) A person who operates a private residence that is not a boarding house but that accommodates transient guests for a limited duration may sell and serve wine, malt beverages and cider to registered overnight guests without a license. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection must have six or fewer guest units.

(3) A person who is an employee or agent of the holder of a license issued under this chapter that authorizes wholesale distribution of alcoholic beverages may, on behalf of the licensee, sell alcoholic beverages in factory-sealed containers to retail licensees and wholesalers.

(4) A pharmacist licensed under the laws of this state may sell alcoholic beverages without a license. Pharmacists may only sell alcoholic beverages under the provisions of this section if the alcoholic beverages are drugs as defined in ORS 689.005. A pharmacist may sell alcoholic beverages under the provisions of this subsection pursuant to a prescription, in containers of not more than one quart capacity.

(5) A wine collector, or the agent of a wine collector, may sell wine in factory-sealed containers at auction without a license. Any wine sold under this subsection must have been held by the collector for at least a six-month period. A wine collector must receive written approval from the Oregon Liquor Control Commission before conducting a sale under this subsection. No more than one sale in a 12-month period may be conducted by a wine collector under the provisions of this subsection.

(6) A nonprofit or charitable organization registered with the state may sell wine and malt beverages in factory-sealed containers at auction without a license. The organization must receive written approval from the commission before conducting a sale under

this subsection. No more than one sale in a 12-month period may be conducted by an organization under the provisions of this subsection.

(7) A manufacturer may sell proprietary or patent medicines, perfumes, lotions, flavoring extracts, medicinal tinctures and other preparations unfit for beverage purposes without a license. [1999 c.351 §10]

(Authority of Cities and Counties)

471.164 Authority of cities and counties over establishments that offer entertainment or serve alcoholic beverages. (1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that offer entertainment or serve alcoholic beverages if the city or county makes specific findings that the establishment would cause adverse effects to occur.

(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state. [Formerly 471.213]

471.166 Local government recommendations on license issuance and renewal; rules; fees. (1) The Oregon Liquor Control Commission may require that every applicant for issuance or renewal of a license under this chapter acquire a written recommendation from the governing body of the county if the place of business of the applicant is outside an incorporated city, and from the city council if the place of business of the applicant is within an incorporated city. The commission may take such written recommendation into consideration before granting or refusing the license.

(2) If the commission requires that an applicant for issuance of a new license acquire the written recommendation of a local government, the applicant must give notice to the local government when an application is made for issuance of the license. If the local government files a favorable recommendation with the commission within 45 days after the notice is given, the commission shall proceed with consideration of the application. The commission shall proceed with consideration of the application as though the local government had made a favorable recommendation unless, within 45 days after notice is given to the local government:

(a) The local government files an unfavorable recommendation with the commission with a statement of the grounds for the unfavorable recommendation; or

(b) The local government files a request for additional time with the commission that sets forth the reason additional time is needed by the local government, a statement that the local government is considering making an unfavorable recommendation on the application, and the specific grounds on which the local government is considering making an unfavorable recommendation.

(3) If the commission requires that an applicant for renewal of a license acquire the written recommendation of a local government under this section, the commission shall give notice to the local government when an application is due for renewal of the license. If the local government files a favorable recommendation with the commission within 60 days after the notice is given, the commission shall proceed with consideration of the application. The commission shall proceed with consideration of the application as though the local government had made a favorable recommendation unless within 60 days after notice is given to the local government:

(a) The local government files an unfavorable recommendation with the commission with a statement of the grounds for the unfavorable recommendation; or

(b) The local government files a request for additional time with the commission that sets forth the reason additional time is needed by the local government, a statement that the local government is considering making an unfavorable recommendation on the application, and the specific grounds on which the local government is considering making an unfavorable recommendation.

(4) The commission shall suspend consideration of an application subject to this section for a reasonable period of time if a local government requests additional time under subsection (2)(b) or (3)(b) of this section and the grounds given by the local government are valid grounds for an unfavorable determination under this chapter or rules adopted by the commission. The commission shall by rule establish the period of time that shall be granted to a local government pursuant to a request under subsections (2)(b) and (3)(b) of this section.

(5) The commission shall by rule establish valid grounds for unfavorable recommendations by local governments under this section. Valid grounds established by the commission under this section for an unfavorable recommendation by a local government must be limited to those grounds considered by the commission in making an unfavorable determination on a license application.

(6) A person filing an application for issuance or renewal of a license that is subject to this section must remit to the local government the fees established under subsections (7) and (8) of this section. The commission shall give notice to the applicant for license renewal of the amount of the fees and the name of the local government collecting the fees. The commission is not responsible for collecting the fees charged by the local government or for ensuring that the fees have been paid. An applicant for a license renewal shall certify in the application form filed with the commission that the applicant has paid any fees required under this section.

(7) An applicant required to seek a written recommendation from a local government must pay an application fee to the local government, in an amount determined by the governing body of the city or county, for each application for a license. The application fee established by a local government under this subsection may not exceed \$25.

(8) After public notice and hearing, the governing body of a city or county may adopt an ordinance, rule or resolution prescribing licensing guidelines to be followed in making recommendations on license applications under this chapter and in allowing opportunity for public comment on applications. If the guidelines are approved by the commission as consistent with commission rules, after public notice and hearing the governing body may adopt an ordinance, rule or regulation establishing a system of fees that is reasonable and necessary to pay expenses of processing the written recommendation. Processing fees under this subsection are in lieu of fees under subsection (7) of this section. In no case shall the processing fee under this subsection be greater than \$100 for an original application, \$75 for a change in ownership, change in location or change in privilege application, and \$35 for a renewal or temporary application. [1999 c.351 §20; 2003 c.337 §1]

(Mandatory Liability Insurance)

471.168 Certain licensees required to maintain liquor liability insurance or bond. (1) For the purpose of providing coverage for injuries suffered by persons by reason of the conduct of intoxicated persons who were served alcoholic beverages on licensed premises while visibly intoxicated, all persons holding a license described in this section must either:

(a) Maintain liquor liability insurance of not less than \$300,000; or

(b) Maintain a bond with a corporate surety authorized to transact business in this state in the amount of not less than \$300,000.

(2) The Oregon Liquor Control Commission may by rule require liquor liability insurance or bond in an amount larger than the minimum amount provided for in subsection (1) of this section.

(3) The requirements of this section apply to full on-premises sales licenses, limited on-premises sales licenses and brewery-public house licenses. The requirements of this section apply to temporary sales licenses, special events winery licenses and special events grower sales privilege licenses if the event that is licensed is open to the public and attendance at the event is anticipated to exceed 300 individuals per day.

(4) The requirements of this section apply to winery licenses, brewery licenses and grower sales privilege licenses unless an applicant for issuance of the license or renewal of the license submits with the application for issuance or renewal of the license an affidavit that states that the licensee will not allow consumption of alcoholic beverages on the premises.

(5) All licensees subject to the requirements of this section must supply proof of compliance at the time the license is issued or renewed. The commission by rule shall determine the manner in which proof of compliance may be made under the provisions of this subsection. [Formerly 471.218]

(Retail Licenses)

471.175 Full on-premises sales license.

(1) The holder of a full on-premises sales license may sell by the drink at retail wine, malt beverages, cider and distilled liquor. Except as provided in this section, all alcoholic beverages sold under a full on-premises sales license must be consumed on the licensed premises.

(2) A full on-premises sales license may be issued only to:

(a) Private clubs as described in subsection (8) of this section.

(b) Public passenger carriers as provided in ORS 471.182.

(c) Commercial establishments as defined in ORS 471.001 (2).

(d) Public locations, other than those described in paragraphs (a) to (c) of this subsection, where food is cooked and served, and other food service amenities are provided, as prescribed by rules of the Oregon Liquor Control Commission.

(e) A caterer, subject to the requirements of ORS 471.184.

(3) The holder of a full on-premises sales license shall allow a patron to remove a partially consumed bottle of wine from the

licensed premises if the wine is served in conjunction with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

(4) The holder of a full on-premises sales license is entitled to purchase any distilled liquor from an agent of the commission appointed pursuant to ORS 471.750 at a discount of not more than five percent off the regular listed price fixed by the commission, together with all taxes, in a manner prescribed by commission rule. For purposes of compensation by the commission, the appointed agent shall be credited with such sales at full retail cost.

(5) The holder of a full on-premises sales license may purchase distilled liquor only from a retail sales agent of the commission or from another person licensed under this section who has purchased the distilled liquor from a retail sales agent of the commission.

(6) The holder of a full on-premises sales license may sell factory-sealed containers of wine to a person who organizes a private gathering on the licensee's premises if the wine was acquired as part of a larger purchase of wine by the licensee for the purpose of the gathering and only part of the larger purchase was consumed at the gathering. Wine sold under this subsection may be sold only for an amount adequate to compensate the licensee for the amounts paid by the licensee for the wine.

(7) The holder of a full on-premises sales license may sell malt beverages for consumption off the licensed premises in securely covered containers provided by the purchaser. Containers that hold beverages sold under this subsection may not hold more than two gallons.

(8) A private club, including fraternal and veterans organizations, may qualify for a full on-premises sales license under this section only if the club meets minimum membership, charter time and food service requirements set by commission rule and the club is an association of persons, whether incorporated or unincorporated, for the promotion of some common object, not including associations organized for any commercial or business purpose the object of which is money profit, owning, hiring or leasing a building or space in a building, of such extent and character as in the judgment of the commission may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests and provided with suitable and adequate space and equipment, implements and facilities, and employing a sufficient number of servants or employees for serving food and meals for its members and their guests; pro-

vided that no member or any officer, agent or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation, any profits from the disposition or sale of alcoholic liquor to the club or to the members of the club or its guests introduced by members, beyond the amount of such salary as may be fixed and voted on at annual meetings by the members, directors or other governing body of the club, and that, in the judgment of the commission, shall be reasonable and proper compensation for the services of such member, officer, agent or employee. [1999 c.351 §2; 2001 c.104 §213; 2001 c.154 §1]

471.178 Limited on-premises sales license. (1) The holder of a limited on-premises sales license may sell by the drink at retail wine, malt beverages and cider. Except as provided in this section, all alcoholic beverages sold under a limited on-premises sales license must be consumed on the licensed premises.

(2) The holder of a limited on-premises sales license may sell malt beverages in factory-sealed containers for consumption off the licensed premises. Containers sold under this subsection may not hold less than seven gallons per container.

(3) The holder of a limited on-premises sales license may sell malt beverages for consumption off the licensed premises in securely covered containers provided by the purchaser. Containers that hold beverages sold under this subsection may not hold more than two gallons.

(4) The holder of a limited on-premises sales license shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the wine is served in conjunction with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

(5) Sales of alcoholic beverages under a limited on-premises sales license must consist principally of sales by the drink for consumption on the licensed premises. [1999 c.351 §3; 2001 c.154 §2]

471.180 In-room supply of alcoholic beverages by hotel or arena. A full or limited on-premises sales license issued to a hotel or arena under the provisions of this chapter authorizes the person to whom the license is issued to provide for in-room supplies of the alcoholic beverages otherwise authorized to be sold under the license. Any in-room supply of alcoholic beverages that are available for purchase by patrons of the hotel or arena shall be kept in a locked cabinet, and shall conform with any rules that the Oregon Liquor Control Commission may promulgate to ensure the enforcement of

other provisions of this chapter. [Formerly 471.307]

471.182 Issuance of full or limited on-premises sales license to public passenger carrier. (1) The Oregon Liquor Control Commission may grant a full or limited on-premises sales license to the owner or operator of a licensed public passenger carrier only as specified in this section. A public passenger carrier licensed by the commission under this section must serve food as required by rules of the commission.

(2) The commission may issue a full on-premises sales license to:

(a) An airline for use in operating aircraft that are licensed to carry at least 40 passengers and that arrive at or depart from an airport in this state.

(b) A railroad corporation for use in operating passenger trains in this state.

(c) The owner or operator of one or more tour boats that are licensed to carry at least 40 passengers to or from any port of this state and that are primarily used for non-fishing purposes.

(3) The commission may issue a limited on-premises sales license to any of the persons specified in subsection (2) of this section. In addition, the commission may issue a limited on-premises sales license to the owner or operator of a licensed public passenger carrier not described in subsection (2) of this section if the carrier is a mobile vehicle that is licensed to carry at least 40 passengers. [1999 c.351 §4]

471.184 Catering and other temporary off-premises service under full or limited on-premises sales license. (1) The holder of a full or limited on-premises sales license may cater a temporary event at a location other than the licensed premises if the event is not open to the general public. Catering of an event under this subsection must be pursuant to a contract with a client. The contract must provide that the licensee will furnish food and beverage services for no more than 100 patrons. The licensee must serve food as required by rules of the commission. The licensee may cater events under this subsection without giving advance notice to the Oregon Liquor Control Commission if, before the event occurs, the commission gives written approval to the licensee authorizing catering pursuant to this subsection. Events catered under the provisions of this subsection must meet all requirements for enclosure of premises that may be imposed by the commission for the purposes of this section. Notwithstanding ORS 471.175 (3) and (7) and 471.178 (2) to (4), the licensee may not permit patrons of the

event to remove any alcoholic beverages from the premises of the event.

(2) In addition to catered events under subsection (1) of this section, the commission may by rule allow the exercise of the privileges of a full or limited on-premises sales license at temporary events held at locations other than the licensed premises. The commission may:

(a) Require notice to the commission before the exercise of license privileges at temporary events under this subsection;

(b) Require that written approval by the commission be obtained before the exercise of license privileges at temporary events under this subsection;

(c) Establish eligibility criteria for the exercise of license privileges at temporary events under this subsection; and

(d) Establish fees reasonably calculated to cover administrative expenses incurred by the commission in administering this subsection. [1999 c.351 §5; 2001 c.154 §3]

471.186 Off-premises sales license. (1) The holder of an off-premises sales license may sell factory-sealed containers of wine, malt beverages and cider. Containers of malt beverages sold under the license may not hold more than two and one-quarter gallons.

(2) The holder of an off-premises sales license may provide sample tasting of alcoholic beverages on the licensed premises if the licensee makes written application to the Oregon Liquor Control Commission and receives approval from the commission to conduct tastings on the premises. Tastings must be limited to the alcoholic beverages that may be sold under the privileges of the license.

(3) An off-premises sales license may not be issued for use at a premises that is mobile.

(4) Except as provided in ORS 471.402, a manufacturer or wholesaler may not provide or pay for sample tastings of alcoholic beverages for the public on premises licensed under an off-premises sales license. [1999 c.351 §6]

471.190 Temporary sales license; rules. (1) The holder of a temporary sales license may sell at retail by the drink wine, malt beverages, cider and distilled liquor. Distilled liquor served by the holder of a temporary sales license must be purchased from a retail sales agent of the Oregon Liquor Control Commission. The holder of a temporary sales license must provide food service as required by commission rule.

(2) A temporary sales license may be issued only to:

(a) Nonprofit or charitable organizations that are registered with the state.

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

(c) State agencies.

(d) Local governments, and agencies and departments of local governments.

(e) Persons not otherwise described in this subsection, as long as the applicant submits a plan that is approved by the commission detailing how minors will be prevented from gaining access to alcoholic beverages and how minors will be prevented from gaining access to any portion of the licensed premises prohibited to minors under ORS 471.430 (3) or any rule adopted by the commission.

(3) The holder of a temporary sales license may sell wine, malt beverages or cider in factory-sealed containers for consumption off the licensed premises.

(4) The commission may by rule establish additional eligibility requirements for temporary sales licenses.

(5) Subject to such qualifications as the commission may establish by rule, persons who hold a full or limited on-premises sales license are eligible for temporary sales licenses.

(6) A person holding a temporary sales license is not required to obtain a temporary restaurant license or mobile unit license under ORS chapter 624 if only wine, malt beverages and cider in single-service containers are served and only nonperishable food items that are exempted from licensure by the Department of Human Services are served.

(7) Employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization licensed under this section are not required to have server permits nor to complete an alcohol server education program and examination under ORS 471.542. The commission by rule may establish education requirements for servers described in this subsection.

(8) Notwithstanding ORS 471.392 to 471.400, a temporary sales license may be issued to a nonprofit trade association that has a membership primarily comprised of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227. [1999 c.351 §7; 2001 c.263 §1; 2007 c.443 §2]

(Brewery-Public House License)

471.200 Brewery-public house license.

(1) A brewery-public house license allows the licensee:

(a) To manufacture on the licensed premises, store, transport, sell to wholesale malt beverage and wine licensees of the Oregon Liquor Control Commission and export malt beverages;

(b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises;

(c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption off the premises;

(d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption off the premises, delivery of which may be made in a securely covered container supplied by the consumer;

(e) To sell wine and cider at retail for consumption on or off the premises; and

(f) To conduct the activities described in paragraphs (b) to (e) of this subsection at one location other than the premises where the manufacturing occurs.

(2) In addition to the privileges specified in subsection (1) of this section, in any calendar year a brewery-public house licensee may sell at wholesale to licensees of the commission malt beverages produced by the brewery-public house licensee if the brewery-public house licensee produced 1,000 barrels or less of malt beverages in the immediately preceding calendar year.

(3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

(4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house li-

censee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or indirectly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail businesses licensed to the same person under the provisions of this section.

(5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a winery license authorized by ORS 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may also hold a warehouse license authorized by ORS 471.242.

(6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is eligible for limited on-premises sales licenses and temporary sales licenses.

(7)(a) Notwithstanding subsection (3) of this section, and except as provided in this subsection, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a brewery-public house license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and malt beverages manufactured under the brewery-public house license.

(b) The commission may not issue a full on-premises sales license to a brewery-public house licensee under the provisions of this subsection if the brewery-public house licensee, or any person having an interest in the licensee or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine annually.

(8) Notwithstanding any other provision of this chapter, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a distillery license. No provision of this chapter prevents a brewery-public house licensee from becoming a retail sales agent of the commission for the purpose of selling distilled liquors.

(9) Notwithstanding subsection (3) of this section, the commission by rule may authorize a brewery-public house licensee to coproduce special events with other manufacturers.

(10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee may hold, directly or indirectly, an interest

in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer's or wholesaler's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a brewery-public house licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(11) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to be a manufacturer. [Formerly 471.253; 2003 c.15 §1; 2005 c.22 §344; 2007 c.134 §4]

471.205 [Amended by 1999 c.351 §15; renumbered 471.403 in 1999]

471.210 [Amended by 1967 c.359 §693; 1977 c.518 §3; 1979 c.45 §1; 1979 c.264 §5a; 1983 c.691 §1; 1983 c.740 §187; 1985 c.591 §1; 1987 c.511 §1; 1989 c.48 §1; 1995 c.301 §54; 1999 c.351 §21; renumbered 471.155 in 1999]

471.213 [1989 c.846 §16; renumbered 471.164 in 1999]

471.215 [Amended by 1957 c.223 §1; 1995 c.301 §55; 1999 c.351 §45; renumbered 471.157 in 1999]

471.217 [1967 c.173 §2; 1974 c.4 §1; 1977 c.332 §3; repealed by 1979 c.264 §14]

471.218 [1997 c.841 §4; 1999 c.351 §22; renumbered 471.168 in 1999]

(Manufacturing and Wholesale Licenses)

471.220 Brewery license. (1) A brewery license shall allow the manufacture, importation, storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control Commission, and the export of malt beverages. Except as specifically provided in this section, no brewery licensee shall sell any malt beverages to be consumed on the licensed premises. No brewery licensee shall sell within the State of Oregon any beer containing more than six percent alcohol by volume.

(2) A brewery licensee may:

(a) Sell malt beverages brewed on the licensed premises for consumption on the licensed premises; and

(b) Sell malt beverages brewed on the licensed premises and containing not more than eight percent alcohol by volume, in quantities of not less than five gallons, to an unlicensed organization, lodge, picnic party or private gathering. Such malt beverages shall not be sold by any such unlicensed group. [Amended by 1955 c.657 §1; 1977 c.332 §4; 1979

c.264 §4; 1987 c.608 §5; 1989 c.785 §11; 1991 c.545 §1; 1993 c.663 §1; 1995 c.301 §14; 1997 c.257 §1; 1999 c.351 §15b]

471.223 Winery license. (1) A winery license shall allow the licensee:

(a) To import, bottle, produce, blend, store, transport or export wines or cider.

(b) To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to licensees of the commission.

(c) To sell wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

(d) To sell malt beverages at retail for consumption on or off the licensed premises.

(e) To conduct the activities allowed under paragraph (a), (b), (c) or (d), or all, of this subsection at a second or third premises as may be designated by the commission.

(f) To purchase from or through the commission brandy or other distilled liquors for fortifying wines.

(g) To obtain a special events winery license that shall entitle the holder to conduct the activities allowed under paragraphs (c) and (d) of this subsection at a designated location other than the one set forth in the winery license for a period not to exceed five days.

(2) In order to hold a winery license the licensee shall principally produce wine or cider in this state.

(3) On and after July 1, 1990, a winery licensee is not authorized to import wine or cider in bottles unless the brand of wine or cider is owned by the licensee.

(4) A winery licensee may sell and ship wine or cider directly to a resident of this state only if the licensee has a direct shipper permit issued under ORS 471.282.

(5)(a) Except as provided in paragraph (b) of this subsection, a winery licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery license.

(b) The commission may not issue a full on-premises sales license to a winery licensee under the provisions of this subsection if the winery licensee, or any person having an interest in the licensee or exercising control over the licensee, is a distillery, a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine or cider annually.

(6) More than one winery licensee may exercise the privileges of a winery license at a single location. The commission may not refuse to issue a winery license to a person for the production of wine or cider on specified premises based on the fact that other winery licensees also produce wine or cider on those premises. [1979 c.264 §2; 1981 c.201 §1; 1989 c.511 §5; 1993 c.202 §1; 1993 c.663 §3; 1995 c.34 §1; 1995 c.188 §1; 1995 c.301 §15; 1999 c.431 §§1,3; 2003 c.44 §1; 2007 c.25 §1; 2007 c.854 §2]

471.225 [Amended by 1977 c.332 §5; repealed by 1979 c.264 §14]

471.227 Grower sales privilege license.

(1) A grower sales privilege license shall allow the licensee to perform the following activities only for fruit or grape wine or cider where all of the fruit or grapes used to make the wine or cider are grown in Oregon under the control of the licensee:

(a) To import, store, transport or export such wines or cider.

(b) To sell such wines or cider at wholesale to the Oregon Liquor Control Commission or licensees of the commission.

(c) To sell such wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

(d) To conduct the activities allowed under paragraph (a), (b) or (c), or all, of this subsection at a second or third premises as may be designated by the commission.

(e) To obtain a special events grower sales privilege license which shall entitle the holder to conduct the activities allowed under paragraph (c) of this subsection at a designated location other than the one set forth in the grower sales privilege license for a period not to exceed five days.

(2) For purposes of ORS 471.392 to 471.400, a grower sales privilege licensee shall be considered a manufacturer.

(3) A person holding a winery license in another state is not eligible for a license under this section.

(4) A person licensed under this section is not eligible for a limited on-premises sales license or an off-premises sales license.

(5) As used in this section, "control" means the grower either owns the land upon which the fruit or grapes are grown or has a legal right to perform or does perform all of the acts common to fruit farming or viticulture under terms of a lease or similar agreement of at least three years' duration.

(6) For the purposes of tax reporting, payment and record keeping, the provisions of law that shall apply to a manufacturer under ORS chapter 473 shall apply to a grower sales privilege licensee, but such a licensee is not a manufacturer for purposes

of ORS 473.050 (5). [1989 c.740 §2; 1995 c.58 §2; 1995 c.301 §82; 1999 c.351 §23a]

471.229 [1989 c.511 §2; 1995 c.188 §3; 1999 c.351 §24; 2003 c.44 §3; 2007 c.854 §1; renumbered 471.282 in 2007]

471.230 Distillery license. (1) A distillery license shall allow the holder thereof to import, manufacture, distill, rectify, blend, denature and store spirits of an alcoholic content greater than 17 percent alcohol by weight, to sell the same to the Oregon Liquor Control Commission and to transport the same out of this state for sale outside this state. Distillery licensees shall be permitted to purchase from and through the commission alcoholic beverages for blending and manufacturing purposes upon such terms and conditions as the commission may provide. No such licensee shall sell any alcoholic beverage within this state except to the commission or as provided in this section. However, any agricultural producer or association of agricultural producers or legal agents thereof who manufacture and convert agricultural surpluses, by-products and wastes into denatured ethyl and industrial alcohol for use in the arts and industry shall not be required to obtain a license from the commission.

(2) A distillery licensee may:

(a) Permit tastings of the distilled liquor manufactured by the distillery. The tastings may be conducted on the premises and on at least one other premises owned or leased by the licensee. The licensee must purchase the distilled liquor from the commission.

(b) Apply for appointment as a retail sales agent of the commission for purposes of retailing only distilled liquor that the licensee distilled in Oregon at the two locations at which tastings are permitted pursuant to paragraph (a) of this subsection.

(3) Notwithstanding ORS 471.392 to 471.400, a distillery licensee may also hold a full on-premises sales license for a location at the licensed premises of the distillery and a full on-premises sales license for one other location. All distilled spirits sold under the full on-premises sales license must be purchased from the commission. [Amended by 1987 c.558 §1; 1995 c.301 §16; 1997 c.803 §1; 2007 c.134 §1]

471.235 Wholesale malt beverage and wine license. (1) A wholesale malt beverage and wine license shall allow the importation, storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control Commission, and the export of wine, cider and malt beverages, and the importation and sale to the commission and the export of wine of alcoholic content in excess of 21 percent alcohol by volume. No such licensee shall sell any alcoholic liquor for consumption upon the licensed premises. However, a wholesale malt beverage and

wine licensee may sell naturally fermented wine or cider in quantities of not less than four gallons nor more than 55 gallons at any one time to consumers for consumption not on the licensed premises. Wholesale malt beverage and wine licensees may sell malt beverages containing not more than eight percent alcohol by volume in quantities not less than five gallons to any unlicensed organization, lodge, picnic party or private gathering. Such malt beverages shall not be sold by such unlicensed group. A wholesale malt beverage and wine license shall permit the licensee also to sell malt beverages at wholesale only, to persons holding licenses authorizing them to resell such beverages at retail. Employees of wholesale malt beverage and wine licensees may serve sample tastings of malt beverages, cider and wine at alcoholic beverage industry trade shows, seminars and conventions and at alcoholic beverage industry sample tastings for employees of retail licensees.

(2) Nothing in subsection (1) of this section shall be considered to prohibit the transportation or wholesale sale or distribution of malt beverage or wine by a wholesale malt beverage and wine licensee to any alcoholic treatment center licensed by the Department of Human Services.

(3) A wholesale malt beverage and wine licensee may impose an additional handling fee on any wine sold to any retailer in this state if the quantity of wine sold to the retailer is less than the smallest multiple-package case available to be sold and the handling fee is uniform for all licensees. [Amended by 1955 c.657 §2; 1973 c.395 §1; 1974 c.4 §2; 1975 c.123 §1; 1985 c.378 §1; 1987 c.608 §4; 1989 c.178 §8; 1995 c.301 §17; 1999 c.351 §25]

471.240 [Amended by 1955 c.657 §3; 1957 c.223 §2; repealed by 1973 c.395 §10]

471.242 Warehouse license. (1) A warehouse license shall allow the licensee to store, import, bottle, produce, blend, transport and export nontax paid, bonded wine or wine on which the tax is paid and to store, import and export nontax paid malt beverages and cider, or malt beverages and cider on which the tax is paid. Wine, cider and malt beverages may be removed from the licensed premises only for:

(a) Sale for export;

(b) Sale or shipment to a wholesale malt beverage and wine licensee;

(c) Sale or shipment to another warehouse licensee;

(d) Sale or shipment to a winery licensee;

(e) Shipment of wine or cider produced by a winery licensee to a licensee of the Oregon Liquor Control Commission authorized to sell wine or cider at retail if the shipment

is made pursuant to a sale to the retail licensee by the holder of a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227 or a wholesale malt beverage and wine license issued under ORS 471.235; or

(f) Shipment of wine or cider to a person for personal use, as described in subsection (7) of this section.

(2) A license applicant must hold an approved registration for a bonded wine cellar or winery under federal law.

(3) For the purposes of tax reporting, payment and record keeping, the provisions that shall apply to a manufacturer under ORS chapter 473 shall apply to a warehouse licensee.

(4) A warehouse must be physically secure in an area zoned for the intended use and be physically separated from any other use.

(5) For purposes of ORS 471.392 to 471.400, a warehouse licensee shall be considered a manufacturer.

(6) For purposes of ORS 473.045, a warehouse licensee shall be considered a winery licensee.

(7) Wine or cider may be removed from the premises licensed under this section for shipment pursuant to a sale under ORS 471.282. The warehouse licensee shall take reasonable steps to ensure that shipments are made in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY." In addition, the warehouse licensee shall take reasonable steps to ensure that any carrier used by the licensee does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery. [1985 c.628 §2; 1989 c.553 §1; 1995 c.35 §1; 1995 c.301 §83; 1999 c.351 §67; 2007 c.638 §1]

(Certificates of Approval)

471.244 Certificates of approval; special certificates of approval. (1) No licensee of the Oregon Liquor Control Commission shall manufacture, import into, or purchase in the State of Oregon for resale therein any malt beverages, cider or wine unless the manufacturer of such malt beverages, cider or wine has first obtained from the commission a certificate of approval, ex-

cept that with respect to malt beverages, cider or wine manufactured outside the United States, the certificate of approval may be obtained by the person importing same into the United States. Such certificate of approval shall be granted only to manufacturers or importers who shall have entered into an agreement with the commission to furnish a report to the commission, on or before the 20th day of each month, showing the quantity of malt beverages, cider or wine delivered to each licensee of the commission during the preceding calendar month, and to faithfully comply with all laws of the State of Oregon pertaining to traffic in malt beverages, cider or wine. If any holder of such certificate, or any officer, agent or employee of such holder, shall violate any term or provision of such agreement, or submit any false or fictitious report, the commission may, in its discretion, suspend or revoke such certificate.

(2) The commission may grant special certificates of approval to manufacturers and importers of malt beverages, cider or wine. A special certificate of approval has the effect of a certificate of approval granted under subsection (1) of this section, but is valid only for a period of 30 days. [Formerly 471.289]

471.245 [Amended by 1979 c.236 §7; 1981 c.199 §1; repealed by 1999 c.351 §11]

471.250 [Amended by 1965 c.280 §2; 1973 c.395 §2; 1977 c.332 §6; 1981 c.328 §1; 1987 c.608 §6; 1995 c.301 §17a; repealed by 1999 c.351 §8]

471.253 [1985 c.649 §4; 1987 c.608 §1; 1989 c.785 §10; 1991 c.545 §2; 1993 c.418 §1; 1993 c.663 §2; 1995 c.35 §2; 1995 c.301 §84; 1995 c.598 §1; 1995 c.599 §3; 1997 c.803 §2; 1999 c.59 §142; 1999 c.351 §26; renumbered 471.200 in 1999]

471.255 [Repealed by 1965 c.280 §5]

471.257 [1975 c.494 §2; 1987 c.608 §7; 1995 c.301 §17b; repealed by 1999 c.351 §11]

471.259 [1985 c.649 §1; 1987 c.608 §8; 1989 c.171 §65; 1995 c.301 §17c; repealed by 1999 c.351 §11]

471.260 [Amended by 1973 c.395 §3; 1974 c.4 §3; 1985 c.546 §1; 1987 c.608 §9; 1989 c.178 §1; 1993 c.663 §4; 1995 c.58 §1; 1995 c.103 §4; 1995 c.301 §18; 1995 c.791 §1; 1996 c.18 §1; repealed by 1999 c.351 §8]

471.262 [1979 c.172 §2; 1995 c.301 §56; 1999 c.351 §27; renumbered 471.302 in 1999]

471.264 [1981 c.200 §1; 1995 c.301 §38; repealed by 1999 c.351 §8]

471.265 [Amended by 1967 c.580 §1; 1967 c.614 §§1,2; 1971 c.324 §1; 1973 c.103 §1; 1973 c.395 §4; 1985 c.546 §2; 1987 c.558 §2; 1987 c.608 §2; 1995 c.301 §18a; 1997 c.803 §5; repealed by 1999 c.351 §8]

471.267 [1995 c.599 §2; repealed by 1999 c.351 §8]

471.270 [Repealed by 1999 c.351 §11]

SHIPMENT AND DISTRIBUTION OF WINE AND CIDER

(Distribution to Retail Licensees)

471.272 Manner of shipping or transporting wine or cider. (1) Wine or cider may be shipped or transported by a licensee or permit holder described in subsection (2)

of this section only by employees of the licensee or permit holder, or by a common carrier using a commission-approved delivery plan. The holder of a wine self-distribution permit that uses a common carrier to ship or transport wine or cider shall take reasonable steps to ensure that the wine or cider is sold and transported only to licensees that are authorized to receive the wine or cider under ORS 471.274.

(2) The provisions of this section apply to persons holding wine self-distribution permits and the holders of winery licenses, grower sales privilege licenses, wholesale malt beverage and wine licenses and warehouse licenses issued by the commission. [2007 c.651 §2b]

471.274 Wine self-distribution permit.

(1) The Oregon Liquor Control Commission may issue a wine self-distribution permit to a United States manufacturer of wine or cider. The commission may issue a wine self-distribution permit only to a manufacturer of wine or cider that:

(a) Holds a license issued by another state that authorizes the manufacture of wine or cider; and

(b) Holds a certificate of approval issued under ORS 471.244.

(2) The holder of a wine self-distribution permit may sell at wholesale and transport wine or cider that the manufacturer produces directly to the commission, or to retail licensees in the manner provided by this section. A wine self-distribution permit allows the holder to sell wine or cider that the holder produces only to retail licensees who hold a valid endorsement issued by the commission authorizing receipt of wine or cider from the holder of a wine self-distribution permit.

(3) In addition to the information required by ORS 471.311 for licenses, an applicant for a wine self-distribution permit shall provide the commission with a copy of the license held by the applicant and any information required by the commission to establish that the license held by the applicant authorizes the manufacture of wine or cider.

(4) A person holding a wine self-distribution permit is responsible for paying all taxes imposed under ORS chapter 473, and for complying with all reporting requirements imposed by ORS chapter 473, for all wine and cider sold and transported to retail licensees in this state. The commission may revoke, or refuse to issue, a wine self-distribution permit if the holder of a permit fails to pay taxes or make reports as required by ORS chapter 473.

(5) A retail licensee may receive wine or cider from the holder of a wine self-

distribution permit only if the licensee has received prior authorization from the commission. Prior authorization under this subsection must be made by an endorsement to the license for the premises where the wine or cider will be received. The commission may not charge or collect a fee for an endorsement under this subsection.

(6)(a) Except as provided in paragraph (b) of this subsection, a retail licensee that receives wine or cider from holders of wine self-distribution permits must make a monthly report to the commission, using a form prescribed by the commission, listing the amount of all wine or cider received from permit holders in the previous month, and the names of the permit holders from whom the wine or cider was received. Retail licensees shall retain such purchase records for products received from permit holders as may be required by the commission.

(b) The holder of a full or limited on-premises sales license is not required to file a report under this subsection for any month in which the licensee receives two or fewer cases of wine from holders of wine self-distribution permits.

(7) A manufacturer that is not licensed by the commission may sell and transport wine or cider directly to a retail licensee, and a retail licensee may receive wine or cider directly from a manufacturer that is not licensed by the commission, only if the manufacturer holds a wine self-distribution permit issued under this section.

(8) The holder of a wine self-distribution permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this chapter, ORS chapter 473 and any related laws or rules.

(9) The holder of a wine self-distribution permit must post a bond or other security, as described in ORS 471.155.

(10) The commission may revoke, or refuse to issue, a wine self-distribution permit if the holder of a permit fails to comply with any provision of this section. [2007 c.651 §2]

471.275 [Amended by 1987 c.608 §10; 1995 c.301 §18b; repealed by 1999 c.351 §8]

471.280 [Repealed by 1999 c.351 §11]

(Direct Shipment of Wine and Cider to Consumer)

471.282 Direct shipper permit; fees. (1) Notwithstanding any other provision of this chapter, a person may sell and ship wine or cider directly to a resident of Oregon only if the person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue a direct shipper permit only to:

(a) A person that holds a license issued by this state or another state that authorizes the manufacture of wine or cider;

(b) A person that holds a license issued by this state or another state that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the person;

(c) A person that holds a license authorizing the sale of wine or cider at retail; or

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

(2) A person may apply for a direct shipper permit by filing an application with the commission. The application must be made in such form as may be prescribed by the commission. The person must include in the application the number of the license issued to the person by the commission, or a true copy of the license issued to the person by another state. If the application is based on a license issued by another state, or the application is by a nonprofit trade association described in subsection (1)(d) of this section, the person or association must pay a \$50 registration fee and maintain a bond or other security described in ORS 471.155 in the minimum amount of \$1,000.

(3) Sales and shipments under a direct shipper permit:

(a) May be made only to a person who is at least 21 years of age;

(b) May be made only for personal use and not for the purpose of resale; and

(c) May not exceed two cases, containing not more than nine liters per case, to any resident per month.

(4) Sales and shipments under a direct shipper permit must be made directly to a resident of this state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(5) A person holding a direct shipper permit must take all actions necessary to ensure that a carrier used by the permit holder does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery.

(6)(a) A person holding a direct shipper permit must report to the commission all shipments of wine or cider made to Oregon residents under the permit as required by ORS chapter 473. The report must be made in a form prescribed by the commission.

(b) A person holding a direct shipper permit must allow the commission to audit the permit holder's records upon request and shall make those records available to the commission in this state.

(c) A person holding a direct shipper permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this section and any related laws or rules.

(7)(a) A person holding a direct shipper permit must timely pay to the commission all taxes imposed under ORS chapter 473 on wine and cider sold and shipped 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.

(b) A person holding a direct shipper permit based on a license issued by another state must timely pay to the commission all taxes imposed under ORS chapter 473 on all wine or cider sold and shipped directly to Oregon residents under the permit. The permit holder, not the purchaser, is responsible for the tax.

(8) A direct shipper permit must be renewed annually. If the person holds the permit based on an annual license issued by another state, the permit may be renewed by paying a \$50 renewal fee and providing the commission with a true copy of a current license issued to the person by the other state. 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.

(9) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the permit holder fails to comply with the provisions of this section. A person may sell and ship wine or cider under a direct shipper permit only for as long as the person has the license issued by this state or another state that authorizes the person to hold a direct shipper permit.

(10) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

(11) A person may not make sales and shipments of wine or cider directly to Oregon residents unless the person holds a direct

shipper permit issued under this section. Any person who knowingly makes, participates in, transports, imports or receives a shipment of wine or cider that is in violation of this section commits a misdemeanor as provided in ORS 471.990 (1). [Formerly 471.229]

471.285 [Amended by 1955 c.657 §4; 1957 c.221 §1; 1989 c.178 §2; 1997 c.249 §170; repealed by 1999 c.351 §11]

471.287 [1955 c.657 §8; 1957 c.221 §2; 1975 c.470 §1; 1983 c.228 §1; 1987 c.511 §2; 1989 c.178 §3; 1995 c.301 §86; 1997 c.79 §1; repealed by 1999 c.351 §11]

471.289 [1955 c.657 §6; 1957 c.111 §1; 1973 c.131 §1; 1979 c.264 §6; 1995 c.103 §1; 1999 c.351 §68; renumbered 471.244 in 2007]

471.290 [Amended by 1955 c.657 §9; 1957 c.111 §2; 1965 c.280 §3; 1967 c.28 §1; 1967 c.448 §1; 1971 c.470 §1; 1973 c.313 §1; 1973 c.395 §5; 1975 c.494 §3; 1979 c.264 §7; 1981 c.598 §1; 1985 c.360 §1; 1985 c.591 §2; 1985 c.628 §3; 1985 c.649 §2; 1989 c.178 §4; 1989 c.553 §2; 1989 c.740 §3; 1995 c.58 §3; 1995 c.103 §2; 1995 c.301 §57; 1995 c.363 §3; 1997 c.249 §171; 1997 c.284 §3; 1999 c.351 §18; renumbered 471.311 in 1999]

LICENSING PROCEDURES

(Generally)

471.292 Characteristics of license. (1) A license granted under the Liquor Control Act or the Oregon Distilled Liquor Control Act shall:

- (a) Be a purely personal privilege.
- (b) Be valid for the period stated in the license.
- (c) Be renewable in the manner provided in ORS 471.311, except for a cause which would be grounds for refusal to issue such license under ORS 471.313.
- (d) Be revocable or suspendible as provided in ORS 471.315.
- (e) Be transferable from the place for which the license was originally issued to another location subject to the provisions of the Liquor Control Act, the Oregon Distilled Liquor Control Act, any rules of the Oregon Liquor Control Commission and any municipal ordinance or local regulation.
- (f) Cease upon the death of the licensee, except as provided in subsection (2) of this section.
- (g) Not constitute property.
- (h) Not be alienable.
- (i) Not be subject to attachment or execution.
- (j) Not descend by the laws of testate or intestate devolution.

(2) The commission may, by order, provide for the manner and conditions under which:

(a) Alcoholic liquors left by any deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be fore-

closed, sold under execution or otherwise disposed of.

(b) The business of any deceased, insolvent or bankrupt licensee may be operated for a reasonable period following the death, insolvency or bankruptcy.

(c) A business licensed pursuant to this chapter subject to a security interest may be continued in business by a secured party as defined in ORS 79.0102 for a reasonable period after default on the indebtedness by the debtor.

(d) A license granted under this chapter may be transferred from the place for which the license was originally issued to another location. [Formerly 471.301; 2001 c.445 §175]

471.294 License terms; licenses issued for less than year; determination of fees.

(1) Except as otherwise provided in this section, all licenses under this chapter and renewals thereof shall be issued for a period of one year which shall expire at 12 midnight on March 31, June 30, September 30 or December 31 of each year.

(2) Notwithstanding subsection (1) of this section, a license issued for the first time to an applicant may be issued for less than a year. The fee for a license issued for less than a year under this subsection is the annual license fee prescribed by ORS 471.311.

(3) The term of a temporary letter of authority or license issued under ORS 471.302 or any temporary sales license is the period fixed by the Oregon Liquor Control Commission when the letter or license is issued. [Formerly 471.355; 2007 c.269 §1]

471.295 [Amended by 1953 c.14 §2; 1979 c.744 §33a; 1979 c.881 §3; 1989 c.785 §8; 1995 c.301 §58; 1997 c.841 §5; 1999 c.351 §46; renumbered 471.313 in 1999]

471.297 Temporary letter of authority on change of ownership; fee; revocation.

(1) The Oregon Liquor Control Commission may grant a temporary letter of authority for a period not to exceed 90 days on change of ownership applications for licenses granted under this chapter if the applicant pays the fee prescribed by the commission for a temporary letter of authority. The administrator appointed by the commission under ORS 471.720 may extend a temporary letter of authority granted under the provisions of this section 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. A temporary letter of authority issued under this section does not constitute a license for the purposes of ORS chapter 183.

(2) The commission summarily and without prior administrative proceedings may revoke a temporary letter of authority any time if the commission finds that any of the grounds for refusing a license under ORS

471.313 or canceling or suspending a license under ORS 471.315 exist.

(3) A person subject to subsection (2) of this section shall be given an interview under the direction of the commission if the person requests an interview prior to revocation of a temporary letter of authority. However, the proceedings are not a contested case under ORS chapter 183. [1987 c.511 §5; 1995 c.301 §59; 1999 c.351 §47; 2003 c.337 §3]

471.300 [Amended by 1953 c.130 §2; repealed by 1957 c.220 §1 (471.301 enacted in lieu of 471.300)]

471.301 [1957 c.220 §2 (enacted in lieu of 471.300); 1971 c.470 §2; 1973 c.311 §1; 1977 c.332 §1; 1977 c.360 §2; 1979 c.264 §9; 1995 c.301 §60; 1999 c.351 §48; renumbered 471.292 in 1999]

471.302 Temporary letter of authority for off-premises sales license applicant; revocation. (1) Upon receiving an application for an off-premises sales license, the Oregon Liquor Control Commission may grant a temporary letter of authority for a period not exceeding 90 days, if it finds:

(a) The applicant is located in an area presently zoned for commercial use and presents documentation of such zoning to the commission.

(b) The applicant pays the fee prescribed by the commission for a temporary letter of authority.

(2) The administrator appointed by the commission under ORS 471.720 may extend a temporary letter of authority granted under the provisions of this section 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 provided for in subsection (1) of this section.

(3) A temporary letter of authority issued under this section does not constitute a license for the purposes of ORS chapter 183. The commission summarily and without prior administrative proceedings may revoke a temporary letter of authority at any time if:

(a) The commission finds that any of the grounds for refusing a license under ORS 471.313 exist; or

(b) The city or county in which the applicant is located provides evidence of reasonable grounds to the commission:

(A) That the temporary letter of authority should be revoked; or

(B) That an off-premises sales license should not be issued. [Formerly 471.262; 2003 c.337 §4]

471.305 Delivery of alcoholic beverages. A brewery or a wholesale malt beverage and wine licensee shall deliver malt beverages only to or on a licensed premises. The sale of alcoholic liquors under any license issued by the Oregon Liquor Control Commission authorizing retail sales by a li-

censee shall be restricted to the premises described in the license, but deliveries may be made by the licensee to customers pursuant to bona fide orders received on the licensed premises prior to delivery. [Amended by 1981 c.199 §2]

471.307 [1991 c.273 §2; 1993 c.663 §5; 1999 c.351 §28; renumbered 471.180 in 1999]

471.310 Cities as licensees. Any city may, without further charter authority, become a licensee under this chapter. [Amended by 1995 c.301 §61; 1999 c.351 §49]

(Application for License)

471.311 Application for license; rules; fees. (1) Any person desiring a license or renewal of a license under this chapter shall make application to the Oregon Liquor Control Commission upon forms to be furnished by the commission showing the name and address of the applicant, location of the place of business that is to be operated under the license, and such other pertinent information as the commission may require. No license shall be granted or renewed until the applicant has complied with the provisions of this chapter and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an 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 chapter 183.

(3) Subject to subsection (4) of this section, the commission shall assess a nonrefundable fee for processing a renewal application for any license authorized by this chapter only if the renewal application is received by the commission less than 20 days before expiration of the license. If the renewal application is received prior to expiration of the license but less than 20 days prior to expiration, this fee shall be 25 percent of the annual license fee. If a renewal application is received by the commission after expiration of the license but no more than 30 days after expiration, this fee shall be 40 percent of the annual license fee. This subsection does not apply to a certificate of approval, a brewery-public house license or any license that is issued for a period of less than 30 days.

(4) The commission may waive the fee imposed under subsection (3) of this section if it finds that failure to submit a timely application was due to unforeseen circumstances or to a delay in processing the application by the local governing authority that is no fault of the licensee.

(5) The license fee is nonrefundable and shall be paid by each applicant upon the

granting or committing of a license. Subject to ORS 471.155 and 473.065, the annual or daily license fee and the minimum bond required of each class of license under this chapter are as follows:

License	Fee	Minimum Bond
Brewery, including Certificate of Approval	\$ 500	\$ 1,000
Winery	250	1,000
Distillery	100	None
Wholesale Malt Beverage and Wine	275	1,000
Warehouse	100	1,000
Special events winery license may be issued to a winery licensee at	\$ 10 per day	
Brewery-Public House, including Certificate of Approval	\$ 250	\$ 1,000
Limited On-Premises Sales	\$ 200	None
Off-Premises Sales	\$ 100	None
Temporary Sales	\$ 50 per day	
Grower sales privilege license	\$ 250	\$ 1,000
Special events grower sales privilege license	\$ 10 per day	

(6) The fee for a certificate of approval or special certificate of approval granted under ORS 471.244 is nonrefundable and must be paid by each applicant upon the granting or committing of a certificate of approval or special certificate of approval. No bond is required for the granting of a certificate of approval or special certificate of approval. Certificates of approval are valid for a period commencing on the date of issuance and ending on December 31 of the fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is \$175. Special certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval is \$10.

(7) Except as provided in subsection (8) of this section, the annual license fee for a full on-premises sales license is \$400. No bond is required for any full on-premises sales license.

(8) The annual license fee for a full on-premises sales license held by a private club as described in ORS 471.175 (8), or held by a nonprofit or charitable organization that is registered with the state, is \$200.

(9) The annual fee for a wine self-distribution permit is \$100, and the minimum bond is \$1,000. [Formerly 471.290; 2001 c.785 §2; 2005 c.22 §345; 2005 c.632 §3; 2007 c.443 §1; 2007 c.651 §3]

471.312 [1989 c.785 §§6,7; 1991 c.734 §39; 1995 c.301 §62; 1999 c.351 §50; renumbered 471.331 in 1999]

471.313 Grounds for refusing to issue license. The Oregon Liquor Control Commission may refuse to license any applicant under the provisions of this chapter if the commission has reasonable ground to believe any of the following to be true:

(1) That there are sufficient licensed premises in the locality set out in the application, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience. In determining whether there are sufficient licensed premises in the locality, the commission shall consider seasonal fluctuations in the population of the locality and shall ensure that there are adequate licensed premises to serve the needs of the locality during the peak seasons.

(2) That the applicant has not furnished an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168.

(3) That, except as allowed by ORS 471.392 to 471.400, any applicant to sell at retail for consumption on the premises has been financed or furnished with money or property by, or has any connection with, or is a manufacturer of, or wholesale dealer in, alcoholic liquor.

(4) That the applicant:

(a) Is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.

(b) Has made false statements to the commission.

(c) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(d) Has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

(e) Has maintained an insanitary establishment.

(f) Is not of good repute and moral character.

(g) Did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the commission when previously licensed.

(h) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed.

(i) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(j) Is unable to read or write the English language or to understand the laws of Ore-

gon relating to alcoholic liquor or the rules of the commission.

(5) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for refusal of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Histories from premises currently or previously operated by the applicant may be considered when reasonable inference may be made that similar activities will occur as to the premises proposed to be licensed. The applicant may overcome the history by showing that the problems are not serious or persistent or that the applicant demonstrates a willingness and ability to control adequately the premises proposed to be licensed and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege. [Formerly 471.295; 2001 c.785 §1]

**(Suspension or Cancellation of License;
Civil Penalties)**

471.315 Grounds for cancellation or suspension of license or imposition of civil penalty. (1) The Oregon Liquor Control Commission may cancel or suspend any license issued under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe any of the following to be true:

(a) That the licensee:

(A) Has violated any provision of this chapter or ORS 474.115 or any rule of the commission adopted pursuant thereto.

(B) Has made any false representation or statement to the commission in order to induce or prevent action by the commission.

(C) Is not maintaining an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168.

(D) Has maintained an insanitary establishment.

(E) Is insolvent or incompetent or physically unable to carry on the management of the establishment of the licensee.

(F) Is in the habit of using alcoholic liquor, habit-forming drugs or controlled substances to excess.

(G) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale or has knowingly allowed the consumption of alcoholic liquor on the licensed premises by a person who is visibly intoxicated at the time of consumption.

(H) Has misrepresented to a customer or the public any alcoholic liquor sold by the licensee.

(I) Since the granting of the license, has been convicted of a felony, of violating any of the liquor laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(b) That any person licensed to sell at retail for consumption on the premises is acting as an agent of, or is a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or property, or has accepted gratuities or rebates, or has obtained the use of equipment from any manufacturer or wholesaler of alcoholic liquor or any agent thereof.

(c) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for cancellation or suspension of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating factors include a showing by the licensee that the problems are not serious or persistent or that the licensee has demonstrated a willingness and ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

(d) That there is any other reason which, in the opinion of the commission, based on public convenience or necessity, warrants canceling or suspending such license.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745. [Amended by 1953 c.107 §2; 1971 c.159 §4; 1979 c.744 §34; 1981 c.599 §1; 1989 c.785 §3; 1991 c.734 §40; 1995 c.301 §63; 1997 c.841 §6; 1999 c.351 §51]

471.316 Mandatory suspension if licensee fails to prevent certain unlawful drug use or sales on premises; civil penalty. (1) Notwithstanding any other provision of this chapter, the Oregon Liquor Control Commission shall suspend the license of a licensed premises listed in subsection (4) of this section if the commission determines that:

(a) Unlawful drug use or sales are occurring on the licensed premises;

(b) The licensee is aware of the unlawful drug use or sales because of arrests for unlawful drug sales on the licensed premises or seizures of unlawful drugs on the licensed premises, or because the licensee or employees of the licensee have personally witnessed unlawful drug use or sales on the licensed premises; and

(c) The licensee fails to take immediate and effective action to prevent unlawful drug use or sales on the licensed premises.

(2) In addition to any suspension imposed under this section, the commission may impose a civil penalty under the circumstances described in subsection (1) of this section not to exceed the maximum amount established under ORS 471.322 (2). Notwithstanding ORS 471.322 (1), the commission shall not allow payment of a civil penalty under this subsection in lieu of the suspension provided for in subsection (1) of this section. A civil penalty under this section shall be imposed in the manner provided by ORS 183.745.

(3) The commission may cancel a license listed in subsection (4) of this section if the license is suspended under the provisions of this section two or more times within a two-year period.

(4) This section applies only to premises licensed under:

(a) A full on-premises sales license.

(b) A limited on-premises sales license.

(c) A brewery-public house license. [1997 c.815 §2; 1999 c.351 §29]

471.317 [1975 c.373 §2; 1979 c.236 §8; 1995 c.301 §64; renumbered 471.333 in 1999]

471.320 [Amended by 1957 c.220 §3; repealed by 1971 c.734 §21]

471.322 Civil penalty in lieu of or in addition to short-term suspension of certain licenses and permits; limits on amount. (1) If a license issued under this chapter or a service permit issued under ORS 471.360 is suspended for a period of 30 days or less, the Oregon Liquor Control Commission may impose against the affected

licensee or permittee in lieu of or in addition to the suspension a civil penalty fixed by the commission in accordance with subsection (2) of this section if the commission is satisfied that such a penalty in lieu of or in addition to suspension is consistent with the purposes of the Liquor Control Act and the Oregon Distilled Liquor Control Act. Upon payment of the penalty in lieu of suspension, the commission shall cancel the suspension.

(2) Except as provided in ORS 471.327, the penalty which the commission may impose pursuant to subsection (1) of this section against a licensee shall not be less than \$100 nor more than \$5,000. The penalty which the commission may impose pursuant to subsection (1) of this section against a service permittee shall not be less than \$25 nor more than \$500.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1969 c.67 §§2,3; 1973 c.144 §1; 1975 c.735 §1; 1979 c.264 §10; 1981 c.599 §2; 1991 c.61 §1; 1991 c.734 §41; 1995 c.301 §65; 1999 c.351 §52; 1999 c.1062 §1]

471.325 [Amended by 1953 c.19 §2; 1957 c.220 §4; 1969 c.205 §1; repealed by 1971 c.734 §21]

471.326 Refund of civil penalty if suspension not sustained on judicial review. If the action of the Oregon Liquor Control Commission in suspending a license or permit issued under this chapter is not sustained upon judicial review under ORS chapter 183, the commission shall promptly refund the amount paid pursuant to ORS 471.322 (1) by check or order drawn on the State Treasurer from the Oregon Liquor Control Commission Account. [1969 c.67 §4; 1973 c.144 §2; 1975 c.735 §2; 1979 c.264 §11; 1991 c.61 §2; 1995 c.301 §66; 1999 c.351 §53]

471.327 Civil penalty in addition to or in lieu of suspending certain other licenses or certificates. (1) The Oregon Liquor Control Commission, in suspending any brewery license, wholesale wine license, wholesale malt beverage license, or certificate of approval, may further impose against the licensee or the holder of the certificate of approval a civil penalty not to exceed \$5,000, or, in its discretion, may impose such civil penalty without suspending the license or the certificate of approval.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1955 c.657 §7; 1973 c.311 §3; 1991 c.734 §42]

(Miscellaneous Provisions Relating to Denial, Suspension or Cancellation of License)

471.329 Serious and persistent problems involving noise as grounds for discipline of licensee or applicant. (1) For the purpose of determining whether there is a history of serious and persistent problems

involving noise under the provisions of ORS 471.313 (5) and 471.315 (1)(c), or whether the licensee maintains a noisy establishment in violation of the provisions of ORS 471.425:

(a) Noise from the inside of a licensed premises located within the boundaries of a city or county that has an ordinance regulating excessive noise may be considered obtrusive or excessive only if the noise violates the ordinance;

(b) Noise caused by patrons outside a licensed premises located within the boundaries of a city or county that has an ordinance regulating excessive noise may be considered obtrusive or excessive only if the noise violates the ordinance or if the noise is of a type that a reasonable person would not expect to hear outside a premises licensed for the sale of alcoholic beverages; and

(c) Noise caused by patrons inside or outside a licensed premises located within the boundaries of a city or county that does not have an ordinance regulating excessive noise may be considered obtrusive or excessive only if the noise is of the type that a reasonable person would not expect to hear inside or outside a premises licensed for the sale of alcoholic beverages.

(2) For the purpose of determining whether noise is obtrusive under the provisions of ORS 471.313 (5) and 471.315 (1)(c), or whether the licensee maintains a noisy establishment in violation of the provisions of ORS 471.425, the Oregon Liquor Control Commission shall consider whether persons complaining about the noise have taken any action to mitigate the disturbance alleged to have been caused by the noise. [1999 c.646 §10; 2001 c.785 §4]

471.330 [Amended by 1977 c.215 §1; 1995 c.301 §67; 1999 c.351 §54; renumbered 471.351 in 1999]

471.331 Notice to licensee when refusal to renew or suspension or cancellation of license based on adverse neighborhood impact; no stay of order. (1) Whenever the Oregon Liquor Control Commission proposes to refuse to renew or to suspend or cancel any license issued under this chapter because of adverse neighborhood impact of the licensee's operation, notwithstanding ORS 183.435, the commission shall grant the affected licensee 20 days from notification of the proposed commission action to request a hearing.

(2) Notwithstanding ORS 183.482 (3), the Oregon Liquor Control Commission shall not stay any order refusing a license or suspending or canceling any license if the order was entered on grounds stated in ORS 471.313 (5) or 471.315 (1)(c). [Formerly 471.312]

471.333 Effect of sanitation violations.

(1) Except as provided in subsections (2) and (3) of this section, the Oregon Liquor Control Commission shall not refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment.

(2) The commission may refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment in violation of a city ordinance relating to sanitation only if the licensee is convicted of violating the ordinance.

(3) The commission may refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment in violation of ORS 447.010 to 447.156 and 447.992 or the laws, orders or rules relating to public health of the Department of Human Services or the State Department of Agriculture only when the agency charged with enforcing those laws, orders or rules finds that the licensee is in violation of them and renders a final order adverse to the licensee. [Formerly 471.317; 2001 c.900 §204]

471.335 [Amended by 1953 c.120 §6; 1974 c.4 §4; 1985 c.592 §3; renumbered 471.404 in 1999]

471.340 [Amended by 1983 c.316 §1; 1999 c.351 §69; renumbered 471.442 in 1999]

(Sales of Alcoholic Beverages to Minors by Licensees)

471.341 Mandatory clerk training course for employees of off-premises sales licensees; rules; fees; civil penalty.

(1) An employee of an off-premises sales licensee who has been found by the Oregon Liquor Control Commission to have sold alcoholic beverages to a minor, or to have failed to properly verify identification of a person who purchased alcoholic beverages, must attend a clerk training course approved by the commission as a condition of making sales of alcoholic beverages to members of the public under an off-premises sales license.

(2) The commission shall by rule establish times for employees to complete a required clerk training course under this section. An employee required to complete a clerk training course under this section may continue to make sales of alcoholic beverages to members of the public until taking such training, but may not make any sales of alcoholic beverages after the expiration of the time allowed by commission rule if the employee has not completed the training before the expiration of that time.

(3) Except as provided in subsection (2) of this section, the holder of an off-premises sales license may not allow an employee who

has been found by the Oregon Liquor Control Commission to have sold alcoholic beverages to a minor, or to have failed to properly verify identification of a person who purchased alcoholic beverages, to sell alcoholic beverages under the license unless the employee completes a clerk training course as required by this section.

(4) The Oregon Liquor Control Commission, as part of the Alcohol Education Program established under ORS 471.541, shall approve all clerk training courses offered for the purpose of this section. The holder of an off-premises sales license may establish a clerk training course for employees of the licensee, but the course must be approved by the commission to meet the requirements of this section. Clerk training courses approved under this section must address at least the following topics:

(a) The importance of not selling alcoholic beverages to minors and visibly intoxicated persons.

(b) Guidelines for recognizing minors and visibly intoxicated persons.

(c) Guidelines for checking and verifying identification, and for recognizing false or altered identification.

(d) Recommended approaches for refusing sales of alcoholic beverages to minors and visibly intoxicated persons.

(5) If an employee of an off-premises sales licensee is found to have sold alcoholic beverages to a minor, or to have failed to properly verify identification of a person who purchased alcoholic beverages, the commission shall notify the licensee that the employee must complete a clerk training course approved under this section and may not sell alcoholic beverages to members of the public after the time established by the commission unless the employee completes the training within the time allowed. If the off-premises sales licensee offers a clerk training course to new employees, and the employee has previously completed that course, the requirements of this section may be met by re-taking the clerk training course if the course has been approved by the commission for the purposes of this section.

(6) Upon completion of a clerk training course by an employee of an off-premises sales licensee pursuant to the requirements of this section, the off-premises sales licensee that employs the person must notify the commission in writing that the employee has successfully completed the training. The notification must include the name and address of the employee, the name of the clerk training course attended by the employee, and the date or dates on which the course

was attended. The notification shall be kept by the commission in the licensee's file.

(7) The commission shall assess and collect a fee not to exceed \$13 from each person required to attend a clerk training course under this section. Amounts collected under this section shall be used for the administrative expenses incurred by the commission in the performance of the commission's duties under the Alcohol Education Program.

(8) In addition to any other penalty provided for by law, the commission may impose a civil penalty against any employee of an off-premises sales licensee who sells alcoholic beverages to members of the public and who is prohibited from making those sales under this section. A civil penalty under this subsection may not exceed \$500. Civil penalties under this subsection shall be imposed by the commission in the manner provided by ORS 183.745. [1999 c.1062 §§3,9; 2001 c.785 §15]

471.342 Acquisition and use of age verification equipment in lieu of other penalty. Upon finding that a retail licensee, as defined in ORS 471.392, or an employee of a retail licensee has sold alcoholic beverages to a minor, or has failed to properly verify identification of a person who purchased alcoholic beverages, the Oregon Liquor Control Commission may allow the licensee, in lieu of a civil penalty or denial, suspension or cancellation of the license, to acquire and use equipment designed to prevent sales of alcoholic beverages to minors. [1999 c.1062 §5]

471.344 Responsible vendor program; rules. (1) The Oregon Liquor Control Commission shall by rule establish a responsible vendor program. The program shall include a list of positive measures that a retail licensee, as defined in ORS 471.392, must take to avoid sales of alcoholic beverages to minors. Any retail licensee may participate in the program.

(2) If a retail licensee, as defined in ORS 471.392, participates in the responsible vendor program established under this section, and the licensee takes all measures specified by the program as necessary to prevent sales of alcoholic beverages to minors, the commission shall not cancel the license of the licensee, or deny issuance of a license to the person that holds the retail license, based on sales of alcoholic beverages to minors by employees of the licensee. [1999 c.1062 §7]

471.345 [Amended by 1999 c.351 §70; renumbered 471.446 in 1999]

471.346 Uniform standards for minor decoy operations; rules. (1) The Oregon Liquor Control Commission shall by rule develop uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the

commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages to minors. Uniform standards established by the commission under this section apply to all investigations conducted by the commission that use minor decoys. The commission shall encourage all law enforcement agencies of this state to use the uniform standards established under this section for minor decoy operations conducted by the law enforcement agencies.

(2) To the greatest extent possible, the uniform standards established by the commission under this section:

(a) Shall be the same for minor decoy operations conducted by the commission and for minor decoy operations conducted by law enforcement agencies of this state; and

(b) Shall provide for coordination between the commission and law enforcement agencies of this state in conducting minor decoy operations.

(3) The uniform standards established by the commission under this section shall provide that minor decoy operations must be conducted on either a random or a targeted basis in cities with populations of 20,000 or more. Random minor decoy operations shall cover a range of retail outlets. 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. For the purpose of implementing standards for random minor decoy operations under this subsection, the commission shall by rule adopt a methodology that produces, to the greatest extent possible, an equal chance that any licensee or agent will be subject to a minor decoy operation.

(4) Except as provided in subsection (5) of this section, the failure of the commission or of a law enforcement agency to follow uniform standards established by the commission under this section is not grounds for challenging any complaint, citation or conviction for violation of the laws prohibiting the sale of alcoholic beverages to minors.

(5) In determining whether to impose sanctions based on multiple violations of the laws of this state prohibiting sales of alcoholic beverages to minors, the commission may not consider any complaint filed against a licensee for selling alcoholic beverages to a minor, citation issued to a licensee for selling alcoholic beverages to a minor or conviction of a licensee for selling alcoholic beverages to a minor if the complaint, citation or conviction arose out of a minor decoy operation that was not conducted pursuant

to the uniform standards established by the commission under this section.

(6) Notwithstanding any other provision of this chapter, the commission may not consider any sale of alcoholic beverages to a minor that results from a minor decoy operation that is not conducted in compliance with the standards established under this section for the purpose of imposing any civil penalty against a licensee, making a decision on the renewal, suspension or cancellation of a license issued under this chapter or otherwise sanctioning a licensee for the sale of alcoholic beverages to a minor.

(7) The commission shall give notice of the uniform standards established under this section to all law enforcement agencies of this state that conduct minor decoy operations. [2001 c.791 §2]

471.350 [Repealed by 1967 c.577 §10]

(Examination of Books and Premises of Licensees)

471.351 Examination of books and premises of licensees. (1) The Oregon Liquor Control Commission has the right after 72 hours' notice to the owner or the agent of the owner to make an examination of the books and may at any time make an examination of the premises of any person licensed under this chapter, or to check the alcoholic content of liquors carried by the licensee, for the purpose of determining compliance with this chapter and the rules of the commission.

(2) The commission shall not require the books of any licensee to be maintained on the premises of the licensee. [Formerly 471.330]

471.355 [1971 c.470 §4; 1981 c.199 §3; 1989 c.178 §5; 1995 c.301 §68; 1997 c.79 §2; 1999 c.351 §30; renumbered 471.294 in 1999]

SERVICE PERMITS

471.360 Service permit required; waiver. (1) Except as otherwise provided in ORS 471.375:

(a) Any person employed by a licensee of the Oregon Liquor Control Commission who participates in any manner in the mixing, selling or service of alcoholic liquor for consumption on the premises where served or sold shall have a valid service permit issued by the commission.

(b) No licensee of the commission shall permit any person to mix, sell or serve any alcoholic liquor for consumption on licensed premises unless such person has a valid service permit issued by the commission.

(c) A permittee shall make the service permit available at any time while on duty for immediate inspection by any inspector or

investigator employed by the commission or by any other peace officer.

(2) The commission may waive the requirement for a service permit for an employee of a licensee whose primary function is not the sale of alcoholic liquor or food, including but not limited to public passenger carriers, hospitals, or convalescent, nursing or retirement homes. [1979 c.788 §2]

471.365 Characteristics of permit; verification of identity of permittee. (1) A service permit shall be a purely personal privilege, valid only upon licensed premises, for the period of time stated thereon, and may be suspended or revoked for any reason set forth in ORS 471.360 to 471.390.

(2) No service permit shall be used by any person other than the person to whom it is issued. Except as provided in ORS 471.375, the licensee shall verify the identification of the permittee and determine that the permittee has in possession a service permit before allowing the permittee to mix, sell or serve alcoholic liquor for consumption on the licensed premises. [1979 c.788 §3]

471.370 Expiration. Unless sooner suspended or revoked, a service permit issued after November 1, 1981, shall expire on the anniversary date of the permittee's birthday five years after the date of issuance of the permit. [1979 c.788 §3a; 1981 c.599 §3]

471.375 Application; requirements; fee. (1) Any person who has not had a permit refused or revoked or whose permit is not under suspension may mix, sell or serve alcoholic beverages for consumption on licensed premises if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic beverage for consumption on licensed premises and the application is indorsed as required under subsection (2) of this section. A copy of the indorsed application must be kept on the licensed premises by any licensee for whom the person mixes, sells or serves alcoholic beverages and must be made available for immediate inspection by any inspector or investigator employed by the Oregon Liquor Control Commission or by any other peace officer until the applicant receives the service permit.

(2) An application for a service permit under subsection (1) of this section must be indorsed by one of the following persons:

(a) The licensee under whose license the applicant will mix, sell or serve alcoholic beverages. If a licensee indorses an application, the licensee must immediately transmit the application to the commission with the fee required by subsection (4) of this section.

(b) An officer or employee of a company that provides servers to licensees on a tem-

porary basis. The commission must give a company written approval to indorse service permit applications before an application may be indorsed under this paragraph.

(c) An employee of the commission designated by the commission to accept and indorse applications under this section.

(d) An employee of an alcohol server education course provider that has been certified by the commission under ORS 471.542 (8). The employee must be specifically designated by the provider to indorse applications under this section.

(3) An application for a service permit may be indorsed by an employee of the commission under subsection (2)(c) of this section only if:

(a) The applicant is not employed by a licensee of the commission;

(b) The applicant completes the alcohol server education course required by ORS 471.542 before making the application; and

(c) The applicant personally appears before the employee of the commission and provides such identification as may be required by commission rule.

(4) An applicant for a service permit must be 18 years of age or over. Application for a service permit shall be made on a form supplied by the commission. The applicant shall truly answer all questions, provide any further information required, and pay a fee not to exceed \$10. The commission shall either set the fee to cover only the administrative costs of the service permit program, or apply any excess to the Alcohol Education Program established under ORS 471.541. [1979 c.788 §4; 1981 c.610 §5; 1987 c.511 §6; 1989 c.271 §2; 2001 c.785 §7]

471.380 Grounds for refusing to issue permit; request for hearing. (1) The Oregon Liquor Control Commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

(a) That the applicant is in the habit of using alcoholic beverages or controlled substances to excess.

(b) That the applicant has made false statements to the commission in the permit application.

(c) That the applicant is incompetent or physically incapable of performing the duties of a permittee.

(d) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

(e) That the application has not been indorsed as required by ORS 471.375.

(f) That the applicant has not completed the alcohol server education course and examination required by ORS 471.542.

(2) Notwithstanding ORS 183.435, an applicant who seeks review of the refusal of a service permit must request a hearing:

(a) Within 15 days after notification of the refusal, if the refusal is based on failure to complete the alcohol server education course and examination; or

(b) Within 30 days after notification of the refusal, if the refusal is based on any grounds other than failure to complete the alcohol server education course and examination. [1979 c.788 §5; 1997 c.79 §3; 2001 c.785 §8; 2005 c.12 §1]

471.385 Grounds for revoking or suspending permit or imposing civil penalty; responsibility of licensee. (1) The Oregon Liquor Control Commission may revoke or suspend a service permit, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable grounds to believe any of the following to be true:

(a) That the permittee has made any false statement in the application for the permit.

(b) That the permittee has been convicted of a felony, of violating any of the liquor laws of the state, general or local, or any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(c) That the permittee has performed or permitted any act which would constitute a violation of any provision of this chapter or any rule of the commission, if the act were performed or permitted by any licensee of the commission.

(2) The issuance, suspension or revocation of a permit under ORS 471.360 to 471.390 does not relieve a licensee from responsibility for any act of an employee on the licensee's premises.

(3) When there has been a violation of this chapter or any rule adopted thereunder upon any premises licensed by the commission, the commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(4) The commission may revoke or suspend any license issued by the commission if the licensee knowingly indorses a person's application for a permit when the person has been refused a permit or has had a permit suspended or revoked, or when the licensee fails to comply with any provision to be per-

formed by the licensee under ORS 471.360 to 471.390.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1979 c.788 §§6,8; 1981 c.599 §5; 1991 c.734 §43; 1995 c.301 §39; 1999 c.351 §55]

471.390 Duplicate or new permit; fee.

(1) If a service permit issued under ORS 471.360 to 471.390 is lost, mutilated or destroyed, the permittee shall apply immediately for a duplicate permit on a form to be supplied by the Oregon Liquor Control Commission and submit a fee of \$5.

(2) If a permittee changes name by marriage or otherwise, the permittee shall apply immediately for a new service permit by forwarding the permit and evidence of the change of name to the commission with an application and a fee of \$5. [1979 c.788 §7]

"TIED HOUSE" PROHIBITIONS

471.392 Definitions for ORS 471.392 to 471.400. For the purposes of ORS 471.392 to 471.400:

(1) "Manufacturer or wholesaler" means:

(a) A person holding a brewery license issued under ORS 471.220, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a distillery license issued under ORS 471.230, a wholesale malt beverage and wine license issued under ORS 471.235 or a warehouse license issued under ORS 471.242.

(b) Any manufacturer of alcoholic liquors whose products are sold in the State of Oregon.

(2) "Retail licensee" means the holder of a full or limited on-premises sales license, an off-premises sales license or a temporary sales license. "Retail licensee" does not include a bona fide trade association that represents retail licensees and that is open to all persons licensed under at least one type of retail license. [1995 c.301 §76; 1997 c.249 §172; 1999 c.351 §31]

471.394 Prohibition on sales at both wholesale and retail; prohibition on financial connection between retailer and wholesaler. (1) Except as provided in ORS 471.396, a person licensed under the provisions of this chapter may not sell alcoholic liquor at both retail and wholesale.

(2) Except as provided in ORS 471.396, a manufacturer or wholesaler may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of a retail licensee.

(3) Except as provided in ORS 471.396, a retail licensee may not acquire or hold any right, title, lien, claim or other interest, fi-

nancial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler. [1995 c.301 §77; 1999 c.351 §56]

471.396 Exceptions to prohibition on financial connection between wholesaler and retailer. (1) The prohibitions of ORS 471.394 (1) do not apply to persons holding winery licenses, grower sales privilege licenses, brewery-public house licenses, distillery licenses or brewery licenses, to the extent that retail sales are authorized by the statutes establishing the privileges of each license.

(2)(a) The prohibitions of ORS 471.394 (2) and (3) do not apply to a person who wholesales alcoholic liquor and who is not required to be licensed under the provisions of this chapter if the retail licensee does not sell any brand of alcoholic liquor sold or distributed by the person and does not sell any brand of alcoholic liquor produced by any manufacturer doing business with the person selling at wholesale.

(b) The prohibitions of ORS 471.394 (2) and (3) do not apply to a manufacturer of alcoholic liquor if the retail licensee does not sell any brand of alcoholic liquor sold, distributed or produced by the manufacturer and does not sell any brand of alcoholic liquor sold, distributed or produced by any subsidiary or other business entity that the manufacturer owns or manages, or that the manufacturer exercises control over.

(3) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of a spouse or family member to a manufacturer or wholesaler if:

(a) The manufacturer or wholesaler is licensed by the Oregon Liquor Control Commission to sell alcoholic liquor at wholesale;

(b) The license authorizing sale of alcoholic liquor at wholesale was first issued before January 1, 1965, and has been held continuously since that date;

(c) The spouse or family member holds or seeks a license that authorizes the retail sale of alcoholic liquor for off-premises consumption only; and

(d) The manufacturer or wholesaler does not directly or indirectly sell alcoholic liquor to the spouse or family member.

(4) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of a spouse or family member to the retail licensee if the manufacturer or wholesaler is licensed by the commission to sell alcoholic liquor at wholesale and does not directly or indirectly sell alcoholic liquor to the spouse or family member.

(5) Notwithstanding ORS 471.394, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a full or limited on-premises sales licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee's business or business decisions, and does not result in exclusion of any competitor's brand of alcoholic liquor.

(6) Notwithstanding ORS 471.394, a full or limited on-premises sales licensee, and any officer, director or substantial stockholder of any corporate full or limited on-premises sales licensee, may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer's or wholesaler's business or business decisions, and does not result in exclusion of any competitor's brand of alcoholic liquor.

(7) Notwithstanding ORS 471.394, an institutional investor with a financial interest in a wholesaler or manufacturer may hold, directly or indirectly, an interest in a retail licensee unless the institutional investor controls, is controlled by, or is under common control with, a wholesaler or manufacturer. Notwithstanding ORS 471.394, an institutional investor with a financial interest in a retail licensee may hold, directly or indirectly, an interest in a wholesaler or manufacturer unless the institutional investor controls, is controlled by, or is under common control with, a retail licensee. The provisions of this subsection apply only to an institutional investor that is a state or federally chartered bank, a state or federally chartered mutual savings bank, a mutual fund or pension fund, or a private investment firm. The principal business activity of the institutional investor must be the investment of capital provided by depositors, participants or investors. The institutional investor must maintain a diversified portfolio of investments. The majority of the institutional investor's investments may not be in businesses that manufacture, distribute or otherwise sell alcoholic beverages. The institutional investor, and the officers, directors, substantial shareholders, partners, employees and agents of the institutional investor, may not participate in management decisions relating to the sale or purchase of alcoholic beverages made by a licensee in which the institutional investor holds an interest.

(8) Notwithstanding ORS 471.394, a member of the board of directors of a parent company of a corporation that is a manufac-

turer may serve on the board of directors of a parent company of a corporation that is a retail licensee if:

(a) The manufacturer or parent company of a manufacturer is listed on a national security exchange;

(b) All purchases of alcoholic beverages by the retail licensee are made from holders of wholesale malt beverage and wine licenses, brewery licenses or winery licenses in this state;

(c) The interest of the member of the board of directors does not result in the exclusion of any competitor's brand of alcoholic beverages on the licensed premises of the retail licensee; and

(d) The sale of goods and services other than alcoholic beverages by the retail licensee exceeds 50 percent of the gross receipts of the business conducted by the retail licensee on the licensed premises. [1995 c.301 §78; 1997 c.257 §2; 1997 c.803 §4; 1999 c.351 §32; 1999 c.442 §1; 2007 c.134 §2]

471.398 Prohibition of financial assistance from wholesaler to retailer. Except as otherwise specifically provided by law, a person holding a retail license may not accept directly or indirectly from a manufacturer or wholesaler, and a manufacturer or wholesaler may not provide directly or indirectly to the retail licensee, any of the following:

(1) Any substantial gratuities;

(2) Any finances, money, credit, discounts or rebates;

(3) Any fixtures, furniture or furnishings;

(4) Any equipment other than advertising and point of sale material and other items of nominal value supplied to all retail licensees without discrimination; or

(5) Any services other than the inspection of equipment, the inspection and rotation of stock, the building of displays and other services of nominal value incidental to merchandising in the usual course of business furnished to all retail licensees without discrimination. [1995 c.301 §79; 1997 c.79 §4]

471.400 Exceptions to prohibition of financial assistance; rules. (1) Notwithstanding ORS 471.394 and 471.398, a manufacturer or wholesaler may lease or furnish picnic pumps, cold plates, tubs, refrigerated trailers, refrigerated vans and refrigerated draft systems to a retail licensee if the equipment is leased or furnished for a special event, if a reasonable rental or service fee is charged for the equipment and if the period that the equipment is leased or furnished does not exceed 10 days.

(2) Notwithstanding ORS 471.394 and 471.398, the Oregon Liquor Control Commis-

sion may specify by rule the manner and circumstances under which a manufacturer or wholesaler may provide products and services to a nonprofit special licensee.

(3)(a) Notwithstanding ORS 471.394 and 471.398, the commission shall allow the sale of nonalcoholic products in the manner in which the nonalcoholic product is sold by a manufacturer or wholesaler not licensed by the commission. The commission may limit merchandising practices involving nonalcoholic products if the commission finds that the limitations are necessary to prevent abuses of ORS 471.394 and 471.398 by the industry as a whole.

(b) Any fixtures, equipment or furnishings provided by a manufacturer or wholesaler in furtherance of the sale of nonalcoholic products may not be used by the retail licensee to store, service, display, advertise, furnish or sell, or aid in the sale of, alcoholic products regulated by the commission. All such fixtures, equipment or furnishings must be identified by the retail licensee as being furnished by a licensed manufacturer or wholesaler. [1995 c.301 §80]

471.401 Exception from tied house prohibition for sale of advertising to arena. (1) Notwithstanding any other provision of this chapter, a manufacturer or wholesaler of alcoholic liquor may purchase advertising space and time from a licensee authorized to sell alcoholic liquors at retail if:

(a) The retail licensee operates an arena with a fixed seating capacity of more than 10,000 seats;

(b) The advertising space or time is purchased only in connection with events to be held on the premises of the arena; and

(c) The retail licensee serves other brands of distilled liquors, malt beverages, cider or wine in addition to the brand manufactured or sold by the manufacturer or wholesaler purchasing advertising space or time.

(2) A purchase of advertising space or time under the provisions of this section must be made by written agreement. [1995 c.51 §2; 1999 c.351 §71]

471.402 Sample tastings authorized. The holder of a brewery license issued under ORS 471.220, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a brewery-public house license issued under ORS 471.200, a warehouse license issued under ORS 471.242 or a manufacturer certificate of approval issued under ORS 471.244 may provide or pay for sample tastings of wine, cider or malt beverages for the public on premises licensed under a full or limited on-premises sales li-

cense or under an off-premises sales license. [1995 c.58 §4; 1999 c.351 §33]

Note: 471.402 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PROHIBITIONS RELATING TO LIQUOR

471.403 License required to produce alcoholic liquor; exception. (1) No person shall brew, ferment, distill, blend or rectify any alcoholic liquor unless licensed so to do by the Oregon Liquor Control Commission. However, the Liquor Control Act does not apply to the making or keeping of naturally fermented wines and fruit juices or beer in the home, for home consumption and not for sale.

(2) Notwithstanding subsection (1) of this section, the holder of a brewery-public house license or a brewery license may allow patrons to brew malt beverages not to exceed 14 percent alcoholic content by volume if the brewing is conducted under the direct supervision of the licensee or employees of the licensee. Malt beverages produced under this subsection may not be sold by the patron or consumed on the licensed premises.

(3) Notwithstanding subsection (1) of this section, the holder of a winery license may allow patrons to make wine if the winemaking is conducted under the direct supervision of the licensee or employees of the licensee. Wine produced under this subsection may not be sold by the patron or consumed on the licensed premises. [Formerly 471.205; 2007 c.414 §1]

471.404 Importing liquor without license prohibited; exceptions; fee. (1) No alcoholic liquor shall be imported into this state by any person not holding a brewery, winery, distillery or wholesaler's license, except as follows:

(a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission.

(b) Wines for sacramental purposes according to rules adopted by the commission.

(c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.

(d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a licensed brewery, winery or wholesaler.

(e) Imported alcoholic liquor pursuant to a permit issued under subsection (2) of this section.

(f) Wine or cider that is sold and transported by the holder of a wine self-distribution permit to a retail licensee that

has the endorsement described in ORS 471.274 (5).

(g) Wine or cider shipped directly to a resident of this state under a direct shipper permit issued pursuant to ORS 471.282.

(2) The commission may require importers of alcoholic liquor to secure a permit for each importation and may charge a reasonable fee based on quantity and type for the permit. [Formerly 471.335; 2007 c.651 §6; 2007 c.854 §3]

471.405 Prohibited sales, purchases, possession, transportation, importation or solicitation in general; forfeiture upon conviction. (1) No person shall peddle or deliver alcoholic beverages to or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.

(2) No person shall purchase, possess, transport or import, except for sacramental purposes, an alcoholic beverage unless it is procured from or through the Oregon Liquor Control Commission, except as provided otherwise in the Liquor Control Act.

(3) No person not licensed under the Liquor Control Act shall sell, solicit, take orders for or peddle alcoholic beverages.

(4) Notwithstanding the provisions of subsection (2) of this section, an individual entering the state may have in possession an amount not to exceed four liters (135.2 fluid ounces) of distilled liquor, two cases of wine or cider (620 fluid ounces) and two cases of malt beverages (576 fluid ounces). These quantities of alcoholic beverages are exempt from fees collected by the commission.

(5) Upon conviction for unlawfully purchasing or importing alcoholic beverages into this state, the person convicted shall forfeit to the commission the alcoholic beverage so purchased or imported. The commission shall thereupon seize the forfeited beverage and it shall then become the commission's property. [Amended by 1953 c.120 §6; 1974 c.4 §5; 1981 c.600 §1; 1985 c.592 §2; 1987 c.608 §11; 1995 c.301 §19; 1999 c.351 §72]

471.406 Activities covered by prohibitions on sale of alcoholic beverages. Any prohibition on the sale of alcoholic beverages provided for in this chapter includes:

(1) Soliciting orders for alcoholic beverages or receiving orders for alcoholic beverages.

(2) Keeping alcoholic beverages for sale or exposing alcoholic beverages for sale.

(3) Delivering alcoholic beverages for value or in any way other than purely gratuitously.

(4) Peddling alcoholic beverages.

(5) Keeping alcoholic beverages with intent to sell.

(6) Trafficking in alcoholic beverages.

(7) For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, procuring alcoholic beverages, or allowing alcoholic beverages to be procured, for any other person. [1995 c.301 §8 (enacted in lieu of 471.025); 1999 c.351 §57]

471.407 Offer of alcoholic beverages as inducement to make purchases. Except as specifically provided in this chapter, a person who owns, operates or controls a business establishment that sells food or beverages for consumption at the establishment or that offers entertainment to the public for consideration may not provide alcoholic beverages to members of the public for consumption at the establishment, without regard to whether the beverages are offered on a purely gratuitous basis, if:

(1) The alcoholic beverages are offered for the purpose of inducing members of the public to purchase food or beverages or to pay for entertainment; and

(2) The person providing the alcoholic beverages does not hold a license issued under this chapter that authorizes the retail sale of alcoholic beverages. [1999 c.646 §8; 2001 c.104 §214]

471.408 Alcoholic liquor may not be given as prize; exception. (1) Except as otherwise provided in this section, alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(2) A charitable, nonprofit corporation may conduct raffles for wine and arrange for delivery of the wine to the residence of the person winning a raffle.

(3) A charitable, fraternal or religious organization may offer alcoholic liquor as a prize, premium or consideration in a contest of chance described in ORS 167.117 (7)(b) or conducted as part of a Monte Carlo event as defined in ORS 167.117. [1995 c.363 §2; 1997 c.191 §1; 1997 c.867 §25]

471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties. (1) No person shall sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian shall sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A person violates this subsection who sells, gives or

otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3) No person who exercises control over private real property may knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property. The prohibitions of this subsection apply only to a person who is present and in control of the location at the time the consumption occurs. The prohibitions of this subsection do not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides.

(4) A person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of \$350.

(b) Upon a second conviction, a fine of \$1,000.

(c) Upon a third or subsequent conviction, a fine of \$1,000 and not less than 30 days of imprisonment.

(5) The court shall not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (4) of this section. In addition to the mandatory sentence the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

(6) The mandatory minimum penalty provisions of subsection (4) of this section shall not apply to persons licensed or appointed under the provisions of this chapter.

(7) A person who violates subsection (3) of this section commits a violation. Upon violation of subsection (3) of this section, the court shall impose at least a mandatory minimum fine as follows:

(a) Upon a first conviction, a fine of \$350.

(b) Upon a second or subsequent conviction, a fine of \$1,000.

(8) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic

liquor. [Amended by 1963 c.243 §1; 1971 c.159 §5; 1977 c.458 §1; 1977 c.814 §1; 1983 cor. c.736 §1; 1995 c.301 §40; 1995 c.599 §5; 1995 c.756 §1; 1999 c.351 §58]

471.412 Allowing visibly intoxicated person to consume alcoholic beverages; good faith effort; effect on other liability; letters of reprimand. (1) No licensee or permittee shall knowingly allow a person to consume or to continue to consume alcoholic beverages on the licensed premises after observing that the person is visibly intoxicated.

(2) A licensee or permittee is not in violation of subsection (1) of this section if the licensee or permittee makes a good faith effort to remove any unconsumed alcoholic beverages from the person's possession when the licensee or permittee observes that the person is visibly intoxicated.

(3) Nothing in this section applies to determining liability under ORS 471.565.

(4) Notwithstanding any other provision of law, the Oregon Liquor Control Commission shall only impose letters of reprimand for the first three violations of this section within a two-year period. For license renewal purposes, the first three violations of this section in a two-year period shall not apply in determining the past record of compliance under ORS 471.313 (4)(g). [1989 c.785 §2; 1995 c.301 §69]

471.415 [Amended by 1955 c.657 §10; 1957 c.297 §1; repealed by 1995 c.301 §81]

471.417 [1985 c.306 §2; 1989 c.471 §1; repealed by 1995 c.301 §81]

471.420 [Amended by 1959 c.399 §1; 1971 c.680 §2; repealed by 1979 c.43 §1 and by 1979 c.190 §431]

471.425 Misrepresentations by licensee and others; maintenance of disorderly establishment. (1) No person shall make false representations or statements to the Oregon Liquor Control Commission in order to induce or prevent action by the commission.

(2) No licensee of the commission shall maintain a noisy, lewd, disorderly or insanitary establishment or supply impure or otherwise deleterious alcoholic beverages.

(3) No licensee of the commission shall misrepresent to a customer or to the public any alcoholic liquor sold by such licensee.

471.430 Purchase or possession of alcoholic beverages by person under 21; entry of licensed premises by person under 21; community service and suspension of driving privileges; assessment and treatment. (1) A person under the age of 21 years may not attempt to purchase, purchase or acquire alcoholic beverages. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, a person under the age of 21 years

may not have personal possession of alcoholic beverages.

(2) For the purposes of this section, personal possession of alcoholic beverages includes the acceptance or consumption of a bottle of such beverages, or any portion thereof or a drink of such beverages. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, a person under the age of 21 years may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(4)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (1) or (3) of this section commits a Class B violation.

(b) A person commits a Class A violation if the person violates subsection (1) of this section by reason of personal possession of alcoholic beverages while the person is operating a motor vehicle, as defined in ORS 801.360.

(5) In addition to and not in lieu of any other penalty established by law, a person under the age of 21 years who violates subsection (1) of this section through misrepresentation of age may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(6) In addition to and not in lieu of any penalty established by law, the court may order a person who violates this section to undergo assessment and treatment as provided in ORS 471.432. The court shall order a person to undergo assessment and treatment as provided in ORS 471.432 if the person has previously been found to have violated this section.

(7) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting

sales of alcoholic beverages to persons who are under the age of 21 years.

(8) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [Amended by 1963 c.243 §2; 1965 c.166 §1; 1971 c.159 §6; 1975 c.493 §1; 1979 c.313 §8; 1991 c.860 §2; 1999 c.646 §1; 1999 c.1051 §186; 2001 c.791 §4; 2007 c.41 §1; 2007 c.298 §1]

471.432 Examination for problem condition involving alcohol upon conviction; treatment program. When a person is ordered to undergo assessment and treatment as provided in ORS 471.430, the court shall require the person to do all of the following:

(1) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 471.430.

(2) Complete an examination by an agency or organization designated by the court to determine whether the person has a problem condition involving alcohol as described in ORS 813.040. The designated agencies or organizations must meet the standards set by the Director of Human Services to perform the diagnostic assessment and treatment of problem drinking and alcoholism and must be certified by the Director of Human Services.

(3) Complete a treatment program, paid at the expense of the person convicted, as follows:

(a) If the examination required under this section shows that the person has a problem condition involving alcohol, a program for rehabilitation for alcoholism approved by the Director of Human Services.

(b) If the examination required by this section shows that the person does not have a problem condition involving alcohol, an alcohol information program approved by the Director of Human Services. [1999 c.646 §2]

Note: 471.432 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.435 [Repealed by 1953 c.120 §6]

471.440 Manufacture, fermentation or possession of mash, wort or wash; establishment or operation of distillery without license; prima facie evidence. (1) No mash, wort or wash fit for distillation or for the manufacture of spirituous alcoholic liquors, shall be made, fermented or possessed within this state by any person who does not at the time own a distillery license under the Liquor Control Act. This section does not

prevent the possession of mash for the purpose of manufacturing wine, cider or beer for home consumption as provided for in ORS 471.403.

(2) No distillery shall be set up or operated in this state for the purpose of manufacturing alcoholic liquor for beverage purposes except by a person duly licensed under the Liquor Control Act to operate a distillery. Any device or process which separates alcoholic spirits from any fermented substance shall be regarded as a distillery. A distillery is set up when the still is in position over a furnace, or is connected with a boiler, so that heat may be applied, although the worm or worm tank is not in position.

(3) The finding of any mash, wort, wash or distillery in any house, on any premises or within any enclosure, is prima facie evidence that it was made and fermented by, or set up by, and the property of, the person who is in possession of such house, premises or enclosure. [Amended by 1999 c.351 §73]

471.442 Wine compliance with standards. (1) No wine or cider shall be sold or offered for sale within this state unless it complies with the minimum standards fixed pursuant to law.

(2) The Oregon Liquor Control Commission may require a manufacturer, importer or wholesaler to provide samples of a particular wine or cider, and to provide a laboratory analysis demonstrating to the satisfaction of the commission that the particular wine or cider complies with the minimum standards in this state.

(3) No wine or cider offered for sale within this state may be altered or tampered with in any way by any person not licensed to do so by the commission.

(4) The commission may prohibit the sale of any wine or cider for a reasonable period of time while it is determining whether the wine or cider complies with minimum standards in this state. [Formerly 471.340]

471.445 Use of misleading mark or label on container; mixing liquors. (1) No licensee shall use or allow the use of any mark or label on the container of alcoholic liquor which is kept for sale, if the container does not precisely and clearly indicate the nature of its contents or in any way might deceive any customer as to the nature, composition, quantity, age or quality of such liquor.

(2) No licensee other than a winery licensee may mix or permit the mixing of any alcoholic liquor which the licensee is authorized to sell with any other alcoholic liquor which the licensee is not authorized by license to sell.

471.446 Seals on wine and cider containers; improper labeling; injurious or adulterated ingredients. (1) No retail licensee shall purchase any wine or cider for resale except in sealed containers, the seals of which shall remain unbroken when it is sold for consumption off the premises.

(2) The Oregon Liquor Control Commission may refuse to sell, or may prohibit any licensee from selling, any brand of alcoholic liquor which in its judgment is deceptively labeled or branded as to content, or contains injurious or adulterated ingredients. [Formerly 471.345]

471.448 Sale of malt beverage as beer. Malt beverages may not be labeled or otherwise designated as beer for purposes of retail sale in this state unless the malt beverage contains six percent or less alcohol by volume. [1995 c.301 §12; 1999 c.351 §15a]

471.450 [Repealed by 1971 c.116 §1]

471.452 [Amended by 1979 c.264 §8; 1989 c.178 §6; 1989 c.740 §4; 1989 c.785 §12; repealed by 1995 c.301 §81]

471.455 [Amended by 1957 c.297 §2; 1979 c.881 §4; 1981 c.80 §1; repealed by 1995 c.301 §81]

471.456 [1979 c.881 §7; 1987 c.511 §3; repealed by 1995 c.301 §81]

471.457 [1965 c.277 §1; repealed by 1995 c.301 §81]

471.460 [Amended by 1981 c.80 §2; repealed by 1995 c.301 §81]

471.463 [1965 c.277 §2; repealed by 1995 c.301 §81]

471.465 [Amended by 1955 c.657 §11; 1957 c.297 §3; 1981 c.435 §1; 1987 c.501 §1; repealed by 1995 c.301 §81]

471.470 [Amended by 1957 c.297 §4; repealed by 1995 c.301 §81]

471.475 Mixing, storing or serving of liquor without license. No person who owns, operates or conducts a private or public club or place and who is not in possession of a license issued by the Oregon Liquor Control Commission permitting the mixing, storing and serving of alcoholic liquor at said premises, and no agent, servant or employee of such person, for a financial consideration by way of a charge for service, membership fee, admission fee, initiation fee, club dues, contributions, or other fee or charge, shall serve or permit to be served, or use or permit to be used, any room, place, bar, glasses, mixers, locker, storage place, chairs, tables, cash registers, music devices, furniture, furnishings, equipment or facilities, for the mixing, storing, serving or drinking of alcoholic liquor.

471.478 Sale of kegs of malt beverages; rules; penalty. On and after January 1, 1978:

(1) The Oregon Liquor Control Commission by rule shall require the identification of kegs of malt beverages sold directly to consumers who are not licensees of the commission and the signing of a receipt therefor by the purchaser in order to allow the kegs

to be traced if the contents are consumed in violation of the Liquor Control Act. The keg identification shall be in the form of a numbered label prescribed and supplied by the commission which identifies the seller and which is removable or obliterated when the keg is processed for refilling. The receipt shall be on a form prescribed and supplied by the commission and shall include the name and address of the purchaser; motor vehicle operator's license number, if any; the automobile registration of the motor vehicle in which the keg was removed from the seller's premises, if any; and such other identification as the commission by rule may require. The receipt shall contain a statement that must be signed by the purchaser that, under penalty of false swearing, the purchaser will not allow consumption of any malt beverage in the keg in violation of ORS 471.410. A copy of the receipt shall be given to the purchaser and the seller shall retain the original receipt for such period as the commission by rule may require.

(2) Possession of a keg containing malt beverages which is not identified as required by subsection (1) of this section is a Class A misdemeanor.

(3) A person who signs a receipt described in subsection (1) of this section in order to obtain a keg, knowing the receipt to be false, or who falsifies any information required on the receipt, is guilty of false swearing as prescribed by ORS 162.075.

(4) As used in this section, "keg" means any brewery-sealed, individual container of malt beverage having a liquid capacity of more than seven gallons. [1977 c.551 §2; 1997 c.249 §173]

471.480 Sale of liquor by certain employees 18 years of age or older. (1) Any employee 18 years of age or older of a person who holds an off-premises sales license from the Oregon Liquor Control Commission may sell any alcoholic liquor authorized by such license on the licensed premises.

(2) Any employee 18 years of age or older of a person who holds a wholesale malt beverage and wine license from the Oregon Liquor Control Commission may assist the licensee in the delivery of any alcoholic liquor authorized by such license. [1971 c.490 §1; 1985 c.378 §2; 1999 c.351 §34]

471.482 Sale or service of liquor by employees 18 years of age or older generally; rules. (1) The holder of a license issued under this chapter may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the Oregon Liquor Control Commission as being

prohibited to the use of minors. However, no person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

(2) A person who is 18, 19 or 20 years of age may enter areas classified by the commission as being prohibited to the use of minors only for the purpose of ordering and picking up alcoholic liquor for service in other parts of the premises. However, the person shall not remain in the areas longer than is necessary to perform those duties.

(3) The commission by rule may permit access to prohibited areas by any minor for nonalcoholic liquor employment purposes as long as the minor does not remain longer than is necessary to perform the duties. [1981 c.610 §2; 1993 c.128 §2; 1995 c.301 §70; 1999 c.351 §59]

471.485 Payment required on or before delivery of liquor. No wholesale licensee or agent or employee thereof shall sell or deliver, nor shall any retail licensee purchase or receive any malt beverages, cider or wine for currency on delivery, but such malt beverages, cider or wine shall be paid for prior to delivery thereof, by electronic fund transfer initiated on or before the date of delivery, or by valid check, order, negotiable instrument or voucher payable on the date of delivery. The wholesale licensee may accept cash at the time of delivery if such acceptance does not create or increase the licensee's, or the agents' or employees' of the licensee, exposure to or risk of being victimized by criminal activity. [1971 c.694 §2; 1995 c.525 §1; 1999 c.351 §74]

471.490 Delivery or acceptance of instrument drawn upon insufficient funds or not payable according to terms; use of credit. No retail licensee shall deliver any check, order, negotiable instrument or voucher in payment for malt beverages, cider or wine, knowing at the time of such delivery that the maker or drawer has not sufficient funds in the bank or depository to pay the instrument on presentation, nor shall any wholesale licensee accept any such instrument knowing that said instrument is not payable according to its terms, or that there are not sufficient funds to pay such instrument on presentation. Any extension or acceptance of credit under this section shall constitute a violation of ORS 471.398. [1971 c.694 §3; 1995 c.301 §85; 1999 c.351 §75]

471.495 Report by wholesaler of instruments not paid on presentment required. Any wholesale licensee who receives a check, order, negotiable instrument or voucher in payment for malt beverages, cider

or wine, who receives an instrument from a retail licensee which, upon presentation, is not paid by the party on whom it is drawn, shall report such fact forthwith to the Oregon Liquor Control Commission. [1971 c.694 §4; 1999 c.351 §76]

471.500 Application of ORS 471.485 to 471.495. The provisions of ORS 471.485, 471.490 and 471.495 shall not apply to any common carrier licensed by the Oregon Liquor Control Commission. [1971 c.694 §5; 1995 c.301 §41]

471.501 Brewery or brewery-public house authorized to pay bottle refund in excess of five cents. Nothing in this chapter prevents a brewery licensed under ORS 471.220 or a brewery-public house licensed under ORS 471.200 from establishing a refund value for malt beverage containers under the provisions of ORS 459A.705 that is in excess of five cents per container for the purpose of encouraging purchasers to return the containers directly to the brewery or brewery-public house. A refund value in excess of five cents per container may be paid under this section only to persons who are not licensed under this chapter and who return the containers directly to the brewery or brewery-public house. [1997 c.803 §10; 1999 c.351 §60]

471.502 [1981 c.917 §2; renumbered 474.105 in 1989]

471.503 [1981 c.917 §3; renumbered 474.115 in 1989]

471.505 [Repealed by 1983 c.350 §276 (471.506 enacted in lieu of 471.505)]

LOCAL OPTION

471.506 Petition and election for local option. (1) The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the sale, for beverage purposes, of alcoholic liquors of any of the classes described in this section shall be prohibited in the city or county. The classes of alcoholic liquor to which this section applies are:

- (a) Alcoholic liquors containing more than five percent alcohol by volume;
- (b) Alcoholic liquors containing more than 14 percent alcohol by volume; and
- (c) All alcoholic liquors.

(2) Except as provided in subsections (3), (4) and (5) of this section, the requirements for preparing, circulating and filing a petition under this section:

(a) In the case of a city, shall be as provided for an initiative petition under ORS 250.265 to 250.346.

(b) In the case of a county, shall be as provided for an initiative petition under ORS 250.165 to 250.235.

(3) A petition under subsection (2) of this section:

(a) Must be filed not less than 60 days before the day of the election;

(b) Must specify whether the prohibition would apply to the sale of all alcoholic liquors or only to alcoholic liquors containing more than five percent alcohol by volume or more than 14 percent alcohol by volume; and

(c) Must be signed by not less than 10 percent of the electors registered in the city or county.

(4) If ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a county or if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the county or city charter or an ordinance adopted under the county or city charter.

(5) No signature is valid unless signed within 180 days before the petition is filed.

(6) An election under this section shall be held at the time of the next statewide general election.

(7) An election under this section shall be conducted under ORS chapters 246 to 260. [1983 c.350 §277 (471.506 enacted in lieu of 471.505); 1995 c.301 §87]

471.510 Sales not affected by local option laws. ORS 471.506 shall not prohibit the sale of pure alcohol for scientific or manufacturing purposes, or of wines to church officials for sacramental purposes, nor shall it prevent any person residing in the county or city from ordering and having delivered to the home of the person, for the personal use of self and family, alcoholic liquors purchased from the Oregon Liquor Control Commission or from persons duly licensed to sell them under the Liquor Control Act. [Amended by 1999 c.351 §35]

471.515 Effective date of local option. In each county or city that returns a majority vote for or against prohibition, as to any classes of alcoholic liquor, the law shall take effect on January 1 following the day of election. [Amended by 1983 c.350 §278]

471.520 [Amended by 1979 c.190 §422; repealed by 1983 c.350 §331a]

471.525 [Repealed by 1983 c.350 §331a]

471.530 [Amended by 1957 c.231 §1; repealed by 1983 c.350 §331a]

471.535 [Repealed by 1983 c.350 §331a]

471.540 [Amended by 1983 c.83 §93; repealed by 1983 c.350 §331a]

ALCOHOL EDUCATION PROGRAM

471.541 Alcohol Education Program. The Oregon Liquor Control Commission shall establish an Alcohol Education Program. The Alcohol Education Program shall consist of all the duties of the commission in administering clerk training courses under ORS 471.341 and alcohol server education courses under ORS 471.542. [2001 c.785 §14]

471.542 Alcohol server education course required; content; fees; how course provided; rules. (1) Except as provided in subsection (2) of this section, the Oregon Liquor Control Commission shall require a person applying for issuance or renewal of a server permit or any license that authorizes the sale or service of alcoholic beverages for consumption on the premises to complete an approved alcohol server education course and examination as a condition of the issuance or renewal of the permit or license.

(2) A person applying for issuance or renewal of a license that authorizes the sale or service of alcoholic beverages for consumption on the premises need not complete an approved alcohol server education course and examination as a condition of the issuance or renewal of the license if:

(a) The license has been restricted by the commission to prohibit sale or service of alcoholic beverages for consumption on the premises; or

(b) The person applying for issuance or renewal of the license submits a sworn statement to the commission stating that the person will not engage in sale or service of alcoholic beverages for consumption on the premises, will not directly supervise or manage persons who sell or serve alcoholic beverages on the premises, and will not participate in establishing policies governing the sale or service of alcoholic beverages on the premises.

(3) The commission by rule shall establish requirements that licensees and permittees must comply with as a condition of requalifying for a license or permit. The licensee or permittee must comply with those requirements once every five years after completing the initial alcohol server education course and examination. The requirements established by the commission may include retaking the alcohol server education course and examination.

(4) The commission may extend the time periods established by this section upon a showing of hardship. The commission by rule may exempt a licensee from the requirements of this section if the licensee does not participate in the management of the business.

(5) The standards and curriculum of alcohol server education courses shall include but not be limited to the following:

(a) Alcohol as a drug and its effects on the body and behavior, especially driving ability.

(b) Effects of alcohol in combination with commonly used legal, prescription or nonprescription, drugs and illegal drugs.

(c) Recognizing the problem drinker and community treatment programs and agencies.

(d) State alcohol beverage laws such as prohibition of sale to minors and sale to intoxicated persons, sale for on-premises or off-premises consumption, hours of operation and penalties for violation of the laws.

(e) Drunk driving laws and liquor liability statutes.

(f) Intervention with the problem customer including ways to cut off service, ways to deal with the belligerent customer and alternative means of transportation to get the customer safely home.

(g) Advertising and marketing for safe and responsible drinking patterns and standard operating procedures for dealing with customers.

(6) The commission shall impose a fee not to exceed \$2.60 a year for each license subject to the alcohol server education requirement, and a fee not to exceed \$13 for each service permit application. These fees shall be used for administrative costs of the Alcohol Education Program established under ORS 471.541 and shall be in addition to any other license or permit fees required by law or rule.

(7) The commission shall adopt rules to impose reasonable fees for administrative costs on alcohol server education course instructors and providers.

(8) The commission shall provide alcohol server education courses and examinations through independent contractors, private persons or private or public schools certified by the commission. The commission shall adopt rules governing the manner in which alcohol server education courses and examinations are made available to persons required to take the course. In adopting rules under this subsection, the commission shall consider alternative means of providing courses, including but not limited to providing courses through audiotapes, videotapes, the Internet and other electronic media. [1985 c.658 §§2,3; 1987 c.851 §3; 1989 c.120 §6; 1989 c.178 §7; 1989 c.271 §1; 1997 c.803 §7; 1999 c.351 §36; 1999 c.1062 §8; 2001 c.785 §16]

471.545 [Repealed by 1983 c.350 §331a]

471.547 Alcohol Server Education Advisory Committee; members; duties. The Oregon Liquor Control Commission shall establish an Alcohol Server Education Advisory Committee consisting of persons representing the commission, the Oregon State Police, the Oregon District Attorneys Association, the Department of Human Services, the Department of Transportation, at least one person who is a service permittee under ORS 471.360, a nonprofit organization the purpose of which is to reduce the incidence of drunk driving, and not more than three associations representing retail licensees and two associations representing insurance companies to assist in:

(1) The development of the standards, curriculum and materials for the alcohol server education courses required under ORS 471.542;

(2) The examination required by ORS 471.542, and procedures for administering that examination;

(3) The certification procedures, enforcement policies and penalties for alcohol server education course instructors and providers; and

(4) The development of time requirements for completion of an alcohol server education course and examination and conditions for probationary extension. [1985 c.658 §1; 1987 c.679 §1; 1991 c.67 §143; 1991 c.453 §3; 2001 c.785 §17]

471.549 Civil penalty. In addition to such other sanctions as may be authorized by law, the Oregon Liquor Control Commission may impose a civil penalty not to exceed \$1,000 against any alcohol server education course instructor or provider who violates a rule promulgated by the commission pursuant to ORS 471.542. The civil penalty may be in addition to or in lieu of any suspension, revocation or cancellation of the certification of an alcohol server education course instructor or provider. [1991 c.61 §4; 2001 c.785 §18]

471.550 [Repealed by 1983 c.350 §331a]

WARNING SIGNS RELATED TO ALCOHOL AND PREGNANCY

471.551 Warning signs required; contents; size; display. (1) Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign informing the public of the effects of alcohol consumption during pregnancy.

(2) The sign shall:

(a) Contain the message: "Pregnancy and alcohol do not mix. Drinking alcoholic beverages, including wine, coolers and beer, during pregnancy can cause birth defects."

(b) Be either:

(A) A large sign, no smaller than eight and one-half inches by 11 inches in size with lettering no smaller than five-eighths of an inch in height; or

(B) A reduced sign, five by seven inches in size with lettering of the same proportion as the large sign described in paragraph (a) of this subsection.

(c) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

(d) Be in English unless a significant number of the patrons of the retail premises use a language other than English as a primary language. In such cases, the sign shall be worded in both English and the primary language or languages of the patrons.

(e) Be displayed on the premises of all licensed retail liquor premises as either a large sign at the point of entry, or a reduced sized sign at points of sale.

(3) The person described in subsection (1) of this section shall be encouraged to also post signs of any size at places where alcoholic beverages are displayed.

(4) Notwithstanding ORS 471.561, the holder of a retail liquor license may produce the sign required by this section insofar as the sign is consistent with the standards established pursuant to this section, ORS 616.286 and 624.060 and the Oregon Liquor Control Commission, and is displayed in accordance with subsection (2)(e) of this section. [1991 c.324 §2; 1995 c.301 §42]

471.553 Consultation with certain groups on production and posting of signs. The Oregon Liquor Control Commission shall consult with representatives of business and industry as well as interested citizens groups, including the March of Dimes and the Junior League, to determine the most cost-effective, convenient method to produce and post the sign described in ORS 471.551, which shall be distributed by the commission. [1991 c.324 §3]

471.555 [Repealed by 1957 c.231 §2 (471.556 enacted in lieu of 471.555)]

471.556 [1957 c.231 §3 (enacted in lieu of 471.555); 1979 c.190 §423; repealed by 1983 c.350 §331a]

471.557 Solicitation of private funds. The Oregon Liquor Control Commission may solicit private funds, if necessary, to produce and distribute the signs. [1991 c.324 §4]

471.559 Violations; penalty. (1) If no warning sign is posted:

(a) The Oregon Liquor Control Commission shall furnish a warning sign.

(b) The retailer shall have five days from the receipt of the warning sign to post it appropriately.

(2) If there is a violation of this section or of ORS 471.551, the violator shall be subject to:

(a) A written warning from the commission for the first violation accompanied by a copy of the sign.

(b) A fine of not to exceed \$25 payable to the commission for a second violation.

(c) A fine of not to exceed \$25 for the third and subsequent violations for each day the sign is not posted.

(3) The fine imposed under subsection (2) of this section shall be separate from any other sanction or penalty imposed by the commission and shall not be used in any progressive violation schedule.

(4) The penalty provided by this section shall be the sole penalty for violation of this section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991.

(5) Violation of this section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991, shall not be grounds for refusal to issue a license, cancellation of a license or suspension of a license issued under this chapter.

(6) Nothing in this section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991, creates any new cause of action or any private right of any person. [1991 c.324 §5]

471.560 [Repealed by 1983 c.350 §331a]

471.561 Production and distribution of signs. By June 30, 1992, the Oregon Liquor Control Commission shall produce and complete distribution of the warning signs, free of charge, to all holders of retail liquor licenses. The commission shall produce and distribute additional signs as liquor licenses are granted. [1991 c.324 §9]

LIABILITY FOR PROVIDING OR SERVING ALCOHOLIC BEVERAGES TO INTOXICATED PERSON OR MINOR

471.565 Liability for providing or serving alcoholic beverages to intoxicated person; notice of claim. (1) A patron or guest who voluntarily consumes alcoholic beverages served by a person licensed by the Oregon Liquor Control Commission, a person holding a permit issued by the commission or a social host does not have a cause of action, based on statute or common law, against the person serving the alcoholic beverages, even though the alcoholic beverages are served to the patron or guest while the patron or guest is visibly intoxicated. The

provisions of this subsection apply only to claims for relief based on injury, death or damages caused by intoxication and do not apply to claims for relief based on injury, death or damages caused by negligent or intentional acts other than the service of alcoholic beverages to a visibly intoxicated patron or guest.

(2) A person licensed by the Oregon Liquor Control Commission, person holding a permit issued by the commission or social host is not liable for damages caused by intoxicated patrons or guests unless the plaintiff proves by clear and convincing evidence that:

(a) The licensee, permittee or social host served or provided alcoholic beverages to the patron or guest while the patron or guest was visibly intoxicated; and

(b) The plaintiff did not substantially contribute to the intoxication of the patron or guest by:

(A) Providing or furnishing alcoholic beverages to the patron or guest;

(B) Encouraging the patron or guest to consume or purchase alcoholic beverages or in any other manner; or

(C) Facilitating the consumption of alcoholic beverages by the patron or guest in any manner.

(3) Except as provided in subsection (4) of this section, an action for damages caused by intoxicated patrons or guests off the premises of a person licensed by the Oregon Liquor Control Commission, a person holding a permit issued by the commission or a social host may be brought only if the person asserting the claim has given the licensee, permittee or social host the notice required by subsection (5) of this section within the following time periods:

(a) If a claim is made for damages arising out of wrongful death, notice must be given within one year after the date of death, or within one year after the date that the person asserting the claim discovers or reasonably should have discovered the existence of a claim under this section, whichever is later.

(b) If a claim is made for damages for injuries other than wrongful death, notice must be given within 180 days after the injury occurs, or within 180 days after the person asserting the claim discovers or reasonably should have discovered the existence of a claim under this section, whichever is later.

(4) The time provided for the giving of notice under subsection (3) of this section does not include any period during which:

(a) The claimant is under 18 years of age;

(b) The claimant is unable to give notice by reason of the injury or by reason of being financially incapable, as defined in ORS 125.005, or is incapacitated, as defined in ORS 125.005; or

(c) The claimant is unable to determine that the licensee, permittee or social host is liable because the patron or guest who caused the damages asserts a right against self-incrimination and cannot be compelled to reveal the identity of the licensee, permittee or social host, or cannot be compelled to reveal facts that would establish the liability of the licensee, permittee or social host.

(5) A licensee, permittee or social host shall be considered to have been given notice for the purposes of this section if:

(a) The licensee, permittee or social host is given formal notice in the manner specified in subsection (6) of this section;

(b) The licensee, permittee or social host receives actual notice as described in subsection (7) of this section;

(c) An action is commenced by or on behalf of the claimant within the period of time specified by subsections (3) and (4) of this section; or

(d) Any payment on the claim is made to the claimant by or on behalf of the licensee, permittee or social host.

(6) Formal notice of a claim subject to this section must be in writing, must be mailed to the licensee, permittee or social host, or personally served on the licensee, permittee or social host, and must contain all of the following:

(a) A statement that a claim for damages is made against the licensee, permittee or social host.

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant.

(c) The name of the claimant and mailing address for the claimant to which correspondence regarding the claim may be mailed.

(7) For the purposes of this section, "actual notice" means any communication to a licensee, permittee or social host that gives the licensee, permittee or social host actual knowledge of the time, place and circumstances of the claim, if the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the licensee, permittee or social host. [Formerly 30.950]

Note: 471.565 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.567 Liability for providing alcoholic beverages to minor; liability of minor for misrepresentation of age. (1) Notwithstanding ORS 471.130 and 471.565, no licensee, permittee or social host shall be liable to third persons injured by or through persons under the age of 21 years who obtained alcoholic beverages from the licensee, permittee or social host unless it is demonstrated that a reasonable person would have determined that identification should have been requested or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served.

(2) A person who is under 21 but at least 18 years of age and who through misrepresentation of age causes an Oregon Liquor Control Commission licensee to be fined or have a license suspended or revoked shall be civilly liable for damages sustained by the licensee. The court may award reasonable attorney fees to the prevailing party in an action under this subsection.

(3) Subsection (2) of this section does not apply to a person under the age of 21 years who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

(4) Subsection (2) of this section does not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [Formerly 30.960]

Note: 471.567 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ENFORCEMENT OF LIQUOR LAWS

471.605 Duty of officers to enforce and to inform district attorney. The state police, sheriffs, constables and all police officers within the State of Oregon shall enforce all provisions of the Liquor Control Act and assist the Oregon Liquor Control Commission in detecting violations of that statute and apprehending offenders. Each such enforcing officer having notice, knowledge or reasonable ground of suspicion of any violation of that statute shall immediately notify the district attorney, and furnish the district attorney with names and addresses of any witnesses, or other information within the officer's knowledge, of such violation.

471.610 Confiscation of liquor and property by commission. Whenever any officer arrests any person for violation of the Liquor Control Act, the officer may take into possession all alcoholic liquor and other property which the person so arrested has in possession, or on the premises, which is apparently being used in violation of that statute. If the person so arrested is convicted, and it is found that the liquor and other property has been used in violation of the law, the same shall be forfeited to the Oregon Liquor Control Commission, and shall be delivered by the court or officer to the commission. The commission is authorized to destroy or make such other disposition thereof as it considers to be in the public interest. In any such case, all alcoholic liquor purchased or acquired from any source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, furniture, furnishings, equipment and facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be confiscated and forfeited to the state, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund in the manner provided in this section. [Amended by 1981 c.601 §1; 1987 c.858 §5]

471.615 Duty to notify commission of conviction of licensee. The county courts, district attorneys and municipal authorities, immediately upon the conviction of any licensee of the Oregon Liquor Control Commission of a violation of any provision of the Liquor Control Act or the violation of any other law of this state or ordinance of any municipality therein, in which violation alcoholic liquor had any part, shall notify the commission thereof. Such officials shall notify the commission of any acts, practices or other conduct of any such licensee which may be subversive of the general welfare or contrary to the spirit of the Liquor Control Act and shall recommend such action on the part of the commission as will remove the evil.

471.620 Property and places as common nuisances. Any room, house, building, boat, structure or place of any kind where alcoholic liquor is sold, manufactured, bartered or given away in violation of the law, or where persons are permitted to resort for the purpose of drinking alcoholic beverages in violation of the law, or any place where such beverages are kept for sale, barter or gift in violation of the law, and all liquor or property subject to confiscation under ORS 471.610 kept and used in such place is a common nuisance. Any person who maintains or assists in maintaining such common nuisance or knowingly suffers or permits such nuisance to exist in any place

of which the person is the owner, manager or lessor, shall be guilty of a violation of the Liquor Control Act.

471.625 Lien on place used to unlawfully handle liquor. If it is proved that the owner of any building or premises knowingly has suffered the same to be used or occupied for the manufacture, sale or possession of alcoholic beverages, contrary to the provisions of the Liquor Control Act, such building or premises are subject to a lien for, and may be sold to pay all fines and costs assessed against their occupants for any violation of that statute. The lien shall be enforced immediately by civil action in any court having jurisdiction, by the district attorney of the county wherein the building or premises are located.

471.630 Authority to abate nuisance. The Attorney General, the Oregon Liquor Control Commission or its administrators, or the district attorney of the county wherein a nuisance as defined in ORS 471.620 exists, or where it has existed but has temporarily ceased and there is good and sufficient cause to believe that it will be maintained in the future, may institute an action in the circuit court for such county in the name of the state to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The plaintiff shall not be required to give bond in such action. [Amended by 1979 c.284 §155]

471.635 Issuance of restraining order. (1) After a suit is commenced under ORS 471.630, application for a temporary injunction may be made to the court, which shall grant a hearing thereon within 10 days. Where such application has been made, the court, on application of the plaintiff, may issue an ex parte order restraining the defendants and all other persons from removing or in any manner interfering with the personal property and the contents of the room, house, building, boat, structure or place of any kind where the nuisance is alleged to exist, until the decision of the court granting or refusing such temporary injunction and until the further order of the court.

(2) This section and ORS 471.640 to 471.655 shall not interfere with the duties of officers as provided in ORS 471.605 and 471.610.

471.640 Service of restraining order. The restraining order may be served by delivering a copy to any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place. The officer serving

the order may enter such place and forthwith shall make and return to the court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance. Any violation, of the order or mutilation or removal of the order so posted shall be a contempt of court, if the posted order contains a notice to that effect.

471.645 Temporary injunction. If a temporary injunction is granted, the court may issue further restraining orders as described in ORS 471.635; and forthwith may issue an order closing such place against its use for any purpose until the final decision, or the court may allow such place to be occupied or used during the pendency of the injunction proceedings by requiring the defendants to furnish an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or a bond with sufficient surety, to be approved by the court, in the penal sum of not less than \$2,500, payable to the state. The bond or letter of credit shall be conditioned that alcoholic liquor will not be manufactured, possessed, sold, served, bartered, or given away, or furnished, or otherwise disposed of thereon or therein, or kept thereon or therein with the intent to sell, barter, serve, or give away, or otherwise dispose of alcoholic liquor contrary to law, and that the defendants will pay all fines, costs and damages assessed against them for any violation of such conditions. The State of Oregon in an action brought by the Attorney General, the Oregon Liquor Control Commission or its administrators, or the district attorney, may take whatever steps necessary to recover the whole amount as a penalty for the use of the county wherein the premises are situated. [Amended by 1991 c.331 §69; 1997 c.631 §481]

471.650 Nature of permanent injunction. If a judgment against the defendants is granted, the court shall order that the place constituting the nuisance be closed for a period not exceeding two years, or closed for a part of said time, and until the owner, lessee, tenant or occupant thereof gives a bond or letter of credit identical to the bond or letter of credit required under ORS 471.645. If any condition of the bond or letter of credit is violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated. In any such suit process to nonresident defendants may be served by publication in a newspaper of general circulation in the county having jurisdiction of the injunction proceedings. Notice shall be published once each week for two consecutive weeks or for such time as the court, by order, may prescribe. [Amended by 1991 c.331 §70; 2003 c.576 §462]

471.655 Owner may defend; evidence concerning nuisance. (1) The owner of any property closed or restrained, or to be closed or restrained, may appear at any time between the filing of the complaint and the trial and show cause why the court should cancel or refrain from issuing any judgment orders as against the owner. In order to obtain such relief, the owner must prove to the satisfaction of the court that the owner is the lawful owner of the property and, further, that with reasonable care and diligence the owner could not have known of the illegal use of the owner's property.

(2) Evidence of the general reputation of the premises upon which a nuisance is alleged to exist is admissible in evidence for the purpose of proving the existence of the nuisance, and of knowledge of, and of acquiescence and participation therein, on the part of persons charged with maintaining or assisting in the maintenance of a nuisance. [Amended by 2003 c.576 §463]

471.657 Confiscation and forfeiture for violation of ORS 471.475. Upon conviction for violation of ORS 471.475, the premises upon which the violation has occurred shall be declared to be a common nuisance and subject to abatement proceedings as provided by ORS 471.605 to 471.655. Any person who knowingly suffers or permits such nuisance to exist or be kept or maintained in a private or public club or place of which the person is the owner, manager or lessor, may be a party defendant to such abatement proceedings. In any such case, upon conviction, all alcoholic liquor, whether purchased or acquired from any other source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, and all facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be declared to be a common nuisance and shall be subject to confiscation and forfeiture as provided for by ORS 471.610. No claim of ownership or of any right, title, or interest in or to any of the personal property enumerated in this section or ORS 471.475 shall be held valid unless claimant shows to the satisfaction of the court that claimant is in good faith the owner of the claim and had no knowledge that the personal property was used in violation of ORS 471.475.

471.660 Seizure of conveyance transporting liquor and liquor therein; notice to owner; return of conveyance; costs. (1) When any peace officer discovers any person in the act of transporting alcoholic liquors in violation of law, in or upon any vehicle, boat or aircraft, or conveyance of any kind, the officer may seize any alcoholic liquor found therein, take possession of the vehicle or

conveyance and arrest any person in charge thereof.

(2) The officer shall at once proceed against the person arrested, under the Liquor Control Act, in any court having competent jurisdiction, and shall deliver the vehicle or conveyance to the sheriff of the county in which such seizure was made.

(3) If the person arrested is the owner of the vehicle or conveyance seized, it shall be returned to the owner upon execution by the owner of a good and valid bond, with sufficient sureties in a sum double the value of the property, approved by the court and conditioned to return the property to the custody of the sheriff at a time to be specified by the court.

(4) If the person arrested is not the owner of the vehicle or conveyance seized, the sheriff shall make reasonable effort to determine the name and address of the owner. If the sheriff is able to determine the name and address of the owner, the sheriff shall immediately notify the owner by registered or certified mail of the seizure and of the owner's rights and duties under this section and ORS 471.666.

(5) A person notified under subsection (4) of this section, or any other person asserting a claim to rightful possession of the vehicle or conveyance seized, except the defendant, may move the court having ultimate trial jurisdiction over any crime charged in connection with the seizure to return the vehicle or conveyance to the movant.

(6) The movant shall serve a copy of the motion upon the district attorney of the county in which the vehicle or conveyance is in custody. The court shall order the vehicle or conveyance returned to the movant, unless the court is satisfied by clear and convincing evidence that the movant knowingly consented to the unlawful use that resulted in the seizure. If the court does not order the return of the vehicle or conveyance, the movant shall obtain the return only as provided in subsection (3) of this section.

(7) If the court orders the return of the vehicle or conveyance to the movant, the movant shall not be liable for any towing or storage costs incurred as a result of the seizure.

(8) If the court does not order the return of the vehicle or conveyance under subsection (6) of this section, and the arrested person is convicted for any offense in connection with the seizure, the vehicle or conveyance shall be subject to forfeiture as provided in ORS 471.666. [Amended by 1973 c.836 §351; 1981 c.601 §2]

471.665 [Amended by 1971 c.743 §374a; 1973 c.836 §352; 1977 c.745 §40; 1993 c.741 §66; repealed by 1997 c.592 §6 (471.666 enacted in lieu of 471.665)]

471.666 Disposal of seized liquor and of vehicle or other conveyance. (1) The court, upon conviction of the person arrested under ORS 471.660, shall order the alcoholic liquor delivered to the Oregon Liquor Control Commission, and shall, subject to the ownership rights of innocent third parties, order a sale at public auction by the sheriff of the county of the property seized. The sheriff, after deducting the expense of keeping the property and the cost of sale, shall pay all the liens, according to their priorities, which are established by intervention or otherwise at such hearing or in other proceedings brought for that purpose, and shall pay the balance of the proceeds into the general fund of the county. No claim of ownership or of any right, title or interest in or to such vehicle that is otherwise valid shall be held invalid unless the state shows to the satisfaction of the court, by clear and convincing evidence, that the claimant had knowledge that the vehicle was used or to be used in violation of law. All liens against property sold under this section shall be transferred from the property to the proceeds of the sale.

(2) If no person claims the vehicle or conveyance, the taking of the same and the description thereof shall be advertised in some daily newspaper published in the city or county where taken, or if no daily newspaper is published in such city or county, in a newspaper having weekly circulation in the city or county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and shall likewise notify by mail the legal owner, in the case of an automobile, if licensed by the State of Oregon, as shown by the name and address in the vehicle registration records of the Department of Transportation. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county. [1989 c.791 §18; 1993 c.741 §67; enacted in lieu of 471.665 in 1997]

471.670 Disposal of funds collected in enforcement of liquor laws; payment of enforcement expenses. (1) Except as provided in subsection (2) of this section, all fines imposed by any judge, magistrate or court in the enforcement of the Liquor Control Act or the Oregon Distilled Liquor Control Act shall be forwarded immediately to the county treasurer of the county in which such conviction is had. The county treasurer shall keep the same in a separate fund designated as an enforcement fund. All warrants for any expenditures in the enforcement of that statute, which have been approved by

the district attorney of said county, shall be drawn on this fund. All claims shall be verified by the claimants or persons having knowledge or supervision of the expenditures and shall be audited by the county court in the usual manner before presentation for payment thereof. When the enforcement fund exceeds the amount paid to satisfy the total of all claims made against it during the preceding calendar year, the excess amount shall be paid to the general fund of such county by the county treasurer on June 30 and December 31 of each year.

(2) Any fine imposed or collected by a municipal judge may be retained by the municipality and shall be paid over and become a part of the city's general fund. [Amended by 1995 c.301 §71; 1999 c.788 §57]

471.675 Resisting arrest or interfering with enforcement. No person shall forcibly resist lawful arrest, or by physical contact recklessly interfere with an investigation of any infringement of the Liquor Control Act or the Oregon Distilled Liquor Control Act or with any lawful search or seizure being made by an officer or inspector of the Oregon Liquor Control Commission, when such person knows or should know that such acts are being performed by an officer or inspector of the commission. [Amended by 1981 c.370 §1; 1997 c.249 §174]

471.680 Allegation and proof in prosecutions. In any prosecution for the sale of alcoholic liquor it is not necessary to prove the exact variety, or to mention the quantity of alcoholic liquor sold, except in the case where the variety or quantity is essential to establish the offense. As regards quantity it is sufficient to allege the sale of a quantity, the sale of which quantity is unlawful. The description of any offense, alleged to be a violation of the Liquor Control Act, in the words of that statute or in any words of like effect, is sufficient in law. Any exceptions, exemptions, provisions, excuse or qualification may be proved by the defendant, but need not be specified or negated in the complaint, information or indictment. If it is so specified or negated, no proof in relation to the matter so specified or negated is required on the part of the plaintiff, informant or complainant.

471.685 Governor authorized to suspend license. In case of invasion, disaster, insurrection, riot, or imminent danger thereof, the Governor may, for the duration of such invasion, disaster, insurrection, riot, or imminent danger thereof, immediately suspend without notice any license in the area involved granted under the provisions of this chapter. [1963 c.91 §2; 1995 c.301 §43; 1999 c.351 §61]

471.695 Fingerprinting of license applicants and certain commission employees; criminal records check. (1) The Oregon Liquor Control Commission may require each applicant for a full or limited on-premises sales license to submit to fingerprinting. If the applicant is a corporation, the fingerprints of each officer, director and major stockholder of the corporation may be required by the commission. Prior to approving any change in officers, directors or major stockholders, the commission may require the fingerprints of the new officials.

(2) The commission shall require that all employees of the commission who work in the licensing or enforcement divisions or who have access to criminal background information be fingerprinted.

(3) Fingerprints acquired under this section may be used for the purpose of requesting state or nationwide criminal records checks under ORS 181.534.

(4) As used in this section, "major stockholder" means any person who owns, directly or indirectly, more than 10 percent of any class of any equity security of the corporation. [1979 c.634 §2; 1999 c.351 §37; 2003 c.166 §3; 2005 c.730 §27]

471.700 Revocation of license on gambling conviction. In carrying out its duties under ORS 471.315, the Oregon Liquor Control Commission shall not suspend or cancel a license on grounds of any violation of ORS 167.108 to 167.164 until:

(1) The licensee has been convicted thereof in a court of competent jurisdiction; or

(2) An employee of the licensee has been convicted thereof in a court of competent jurisdiction and the violation occurred on the licensed premises. [1979 c.171 §2; 1995 c.301 §72]

471.703 Police notice to commission or social host when certain persons involved in motor vehicle accidents; content; commission duty. (1) The police shall notify the Oregon Liquor Control Commission of the name of the alleged provider of alcoholic liquor when:

(a) The police investigate any motor vehicle accident where someone other than the operator is injured or incurs property damage;

(b) The operator appears to have consumed alcoholic liquor;

(c) A citation is issued against the operator that is related to the consumption of alcoholic liquor or could have been issued if the operator had survived; and

(d) The provider of the alcoholic liquor is alleged to be a licensee or permittee of the commission.

(2) The notice shall include the name and address of the operator involved and the name and address of the person who named the alleged provider, if the person is other than the operator.

(3) Upon receipt of the notice described in subsection (1) of this section, the commission shall cause the licensee or permittee named as the alleged provider to be notified of receipt of the notice and of its content. A copy of the notice shall be retained in the files of the commission and shall be open to inspection by the person injured or damaged by the motor vehicle operator or a representative of the person.

(4) The police shall notify the alleged social host when the circumstances described in subsection (1) of this section occur and the alleged social host is named as the provider of the alcoholic liquor. The notice shall include the information described in subsection (2) of this section. [1987 c.774 §15]

ORGANIZATION, POWERS AND DUTIES OF LIQUOR COMMISSION

471.705 Oregon Liquor Control Commission; qualifications; compensation; term; confirmation. (1) There is created the Oregon Liquor Control Commission, consisting of five persons appointed by the Governor. One member shall be from among the bona fide residents of each congressional district of the state. One member shall be from the food and alcoholic beverage retail industry. Not more than three commissioners shall be of the same political party and one shall be designated by the Governor to be chairperson of the commission. The commissioners are entitled to compensation and expenses as provided in ORS 292.495. Each commissioner at the time of appointment and qualification shall be a resident of this state and shall have resided in this state for at least five years next preceding appointment and qualification. The commissioner shall be an elector therein and not less than 30 years of age. A commissioner shall cease to hold office if the commissioner ceases to possess the residency or industry qualification for appointment and the Governor shall appoint a qualified individual to complete the unexpired term.

(2) The term of office of a commissioner shall be four years from the time of appointment and qualification and until a successor qualifies. The terms of the commissioners shall commence April 1. In case any commissioner is allowed to hold over after the expiration of the term, the successor shall be appointed for the balance of the unexpired term. Vacancies in the commission shall be filled by the Governor for the unexpired term. Each commissioner is eligible for reap-

pointment but no person shall be eligible to serve for more than two full terms.

(3) All appointments of commissioners by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution. [Amended by 1967 c.577 §11; 1969 c.314 §50; 1973 c.792 §17; 1979 c.251 §1; 1981 c.545 §9]

471.710 Removal; prohibited interests of commissioner and employee. (1) The Governor may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving to the commissioner a copy of the charges made and an opportunity of being publicly heard in person or by counsel, in the commissioner's own defense, upon not less than 10 days' notice. If such commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner, the findings thereon, and a complete record of the proceedings.

(2) No person, other than the member appointed in accordance with ORS 471.705 who is designated from the food and alcoholic beverage retail industry, is eligible to hold the office of commissioner, or to be employed by the Oregon Liquor Control Commission if:

(a) The person has any financial interest in any business licensed by the commission or in any business which manufactures alcoholic beverages sold in Oregon;

(b) Anyone in the person's household or immediate family has a financial interest described in paragraph (a) of this subsection;

(c) Anyone in the person's household or immediate family is employed by a business licensed by the commission, unless the person is not in a position to take action or make decisions which could affect the licensed business; or

(d) The person or anyone in the person's household or immediate family has a business connection with any business licensed by the commission, unless the person is not in a position to take action or make decisions which could affect the licensed business.

(3) No liquor store agent appointed by the commission and no person in the household or immediate family of a liquor store agent shall have any financial interest in or business connection with any person or business licensed as a distillery, dispenser or agent licensed by the commission, or with any distillery whose products are sold in Oregon.

(4) Nothing in this section prohibits a person from having a financial interest resulting from investments made by the Public Employees Retirement System or through

mutual funds, blind trusts or similar investments where the person does not exercise control over the nature, amount or timing of the investment.

(5) The commission by rule may establish additional restrictions to prohibit potential conflicts of interest. The commission by rule shall define "immediate family" and "business connection" as used in this section. [Amended by 1979 c.251 §2; 1983 c.168 §1; 1987 c.511 §7]

471.715 Chairperson; meetings; quorum. (1) The member from the food and alcoholic beverage retail industry shall not serve as chairperson. The chairperson shall preside at all meetings of the Oregon Liquor Control Commission or, in the chairperson's absence, some other member may serve as chairperson.

(2) The commission shall meet at such times and places within this state as it determines. A majority of the commissioners constitutes a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission. [Amended by 1979 c.251 §3; 1983 c.168 §2]

471.720 Administrator; other personnel. The Oregon Liquor Control Commission shall appoint an administrator who shall serve at its discretion. The administrator shall be subject to policy direction by the commissioners, and shall be the secretary of the commission and custodian of commission records. The administrator shall manage the commission, administer the laws, and appoint, assign and coordinate personnel of the commission within budget limitations and the State Personnel Relations Law. [Amended by 1967 c.630 §4; 1975 c.605 §24; 1985 c.592 §1]

471.725 Buying, leasing, contracting and borrowing powers of commission. The function, duties and powers of the Oregon Liquor Control Commission include the following:

(1) To buy, have in its possession, bottle, blend, rectify, transport and sell, for present or future delivery, in its own name, alcoholic liquor in the manner set forth in this chapter.

(2) To purchase, acquire, rent, lease or occupy any building, rooms, stores or land and acquire, own, lease and sell equipment and fixtures required for its operations.

(3) To lease or sublet to others property which it acquires or owns and which is not immediately required for its operations. However, no real property shall be purchased without the consent and approval of the Governor.

(4) To borrow money, guarantee the payment thereof and of the interest thereon, by

the transfer or pledge of goods or in any other manner required or permitted by law.

(5) To issue, sign, indorse and accept checks, promissory notes, bills of exchange and other negotiable instruments.

(6) In the event the United States Government provides any plan or method whereby the taxes upon alcoholic liquors are collected at the source, to enter into any and all contracts and comply with all regulations, even to the extent of partially or wholly abrogating any statutory provisions which might be in conflict with federal law or regulations, to the end that the commission receives the portion thereof allocated to this state, to be distributed as provided by statute.

(7) To secure and pay for such policies of insurance as may be necessary to adequately protect it from loss by fire, theft or other casualty. [Amended by 1995 c.301 §44]

471.730 Regulatory powers of commission. The function, duties and powers of the Oregon Liquor Control Commission include the following:

(1) To control the manufacture, possession, sale, purchase, transportation, importation and delivery of alcoholic liquor in accordance with the provisions of this chapter and ORS 474.105 and 474.115.

(2) To grant, refuse, suspend or cancel licenses and permits for the sale or manufacture of alcoholic liquor, or other licenses and permits in regard thereto, and to permit, in its discretion, the transfer of a license of any person.

(3) To collect the taxes and duties imposed by statutes relating to alcoholic liquors, and to issue, and provide for cancellation, stamps and other devices as evidence of payment of such taxes or duties.

(4) To investigate and aid in the prosecution of every violation of statutes relating to alcoholic liquors, to seize alcoholic liquor manufactured, sold, kept, imported or transported in contravention of this chapter and ORS 474.105 and 474.115, and apply for the confiscation thereof, whenever required by statute, and cooperate in the prosecution of offenders before any court of competent jurisdiction.

(5) To adopt such regulations as are necessary and feasible for carrying out the provisions of this chapter and ORS 474.105 and 474.115 and to amend or repeal such regulations. When such regulations are adopted they shall have the full force and effect of law.

(6) To exercise all powers incidental, convenient or necessary to enable it to ad-

minister or carry out any of the provisions of this chapter and ORS 474.105 and 474.115.

(7) To control, regulate and prohibit any advertising by manufacturers, wholesalers or retailers of alcoholic liquor by the medium of newspapers, letters, billboards, radio or otherwise.

(8) To sell, license, regulate and control the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical, industrial and other purposes, and to provide by regulation for the sale thereof for such uses.

471.732 Policy relating to sanitation in licensed premises. (1) The Legislative Assembly finds and declares that the regulation of health and sanitation matters in premises licensed by the Oregon Liquor Control Commission under this chapter can best be performed by the Department of Human Services and the State Department of Agriculture.

(2) It is the policy of the Legislative Assembly and the intent of ORS 471.333 and 624.010 and this section that premises licensed by the Oregon Liquor Control Commission under this chapter shall be subject to the laws governing health and sanitation matters, including any applicable licensing requirements, and to the rules adopted thereunder by the Department of Human Services and the State Department of Agriculture. [1979 c.236 §2; 1995 c.301 §20; 1999 c.351 §62]

471.735 Testing and seizure of wines. The Oregon Liquor Control Commission shall have the power to investigate by sample or chemical analysis, the quality of all wines manufactured, imported, sold or offered for sale within this state, and to seize, confiscate and destroy all wines sold or offered for sale within this state which do not conform in all respects to the minimum standards provided for by the laws of this state.

471.740 Exclusive right of commission to handle certain liquors. Except as provided in this chapter, the Oregon Liquor Control Commission is vested with the exclusive right to purchase, sell, have in possession for sale, import or transport alcoholic beverages. [Amended by 1953 c.120 §6; 1974 c.4 §6; 1999 c.351 §77]

471.745 Fixing prices and selling liquor. The Oregon Liquor Control Commission shall fix the prices at which alcoholic liquors containing over five percent alcohol by volume may be purchased from it, and has power to bottle, blend, rectify, manufacture or sell alcoholic liquors for itself, or for or to any person or commission within or without this state. [Amended by 1995 c.301 §88]

471.750 Liquor stores and warehouses; operation; sales; advertising; rules. (1) The Oregon Liquor Control Commission shall establish such stores and warehouses in such places in the state as in its judgment are required by public convenience or necessity, for the sale of spirituous liquors, wines and other alcoholic liquors containing over five percent alcohol by volume, in sealed containers for consumption off the premises. It shall keep on hand in such stores or warehouses such quantities and kinds of alcoholic liquors as are reasonably required to supply the public demand. Any person qualified to purchase such liquors from the commission has the right to present to the commission, or at any of its stores, an application for any kind or brand of alcoholic liquor which the person may desire and which may be manufactured or obtainable in any place in the United States, and the commission shall obtain such liquor and sell it to the applicant. No such store shall be established in any county or incorporated city of this state where a local prohibitory law is in effect. The commission shall adopt rules governing advertising by stores operated by the commission. The commission may appoint agents in the sale of said liquor under such agreement as the commission may negotiate with said agents or their representative.

(2) Rules relating to advertising adopted by the commission under subsection (1) of this section shall allow signs and displays within its stores for the purpose of supplying consumer information to customers, including but not limited to discounts, sales and other specials. Commission discretion with respect to those signs and displays shall be limited to regulation of the content, size, number per brand, type and duration of the sign or display. Signs and displays may be supplied by manufacturers, wholesalers or distributors, and may bear the name of a particular distillery, supplier or brand of liquor. The use of signs and displays shall be optional with the agent appointed by the commission. In no event shall signs or displays authorized by the commission be placed in positions within the store where the sign or display would be readily visible from outside of the store. [Amended by 1977 c.321 §3; 1977 c.608 §2; 1991 c.379 §1; 1995 c.301 §89; 2001 c.785 §11; amendments by 2002 s.s.1 c.11 §1 repealed by 2002 s.s.2 c.1 §3; 2002 s.s.2 c.1 §1]

471.752 Agent participation in programs for state employees; preference of spouse or child of deceased agent or agent with disability. (1) An agent appointed under ORS 471.750 may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the agent and may participate in the state deferred compensa-

tion plan established under ORS 243.401 to 243.507. For such purposes, agents shall be considered eligible state employees.

(2) A person who is the surviving spouse or child of a deceased agent or the spouse or child of an agent of the Oregon Liquor Control Commission who has a disability shall be given preference in the appointment of a successor agent, if otherwise qualified, the spouse having greater preference. The experience of such applicant in the business operation of the deceased agent or the agent who has a disability shall be the primary consideration in determining the qualifications of the applicant. [1979 c.203 §3; 1983 c.624 §1; 1985 c.645 §4; 1997 c.179 §30; 1997 c.222 §53; 2007 c.70 §270]

471.754 Commission to develop recycling education materials. The Oregon Liquor Control Commission shall develop recycling education materials for distribution through stores established by the commission under ORS 471.750 that encourage the patrons of the store to recycle bottles sold through the stores. [1997 c.552 §34]

471.755 [Amended by 1971 c.734 §67; repealed by 1973 c.311 §6]

471.757 Statement of financial interest in business of licensee. (1) At such times as the Oregon Liquor Control Commission may prescribe and upon forms furnished by the commission, any license applicant or licensee of the commission may be required to submit a sworn statement to the commission showing the name, address and the nature and extent of the financial interest of each person, individual and corporate, having a financial interest in the business operated under the license.

(2) The commission shall review the statement and may refuse to issue a license to any license applicant, or may suspend, cancel or refuse to renew the license of any licensee, when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for cancellation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business and any manager of the business shall be considered persons having a financial interest within the meaning of this subsection. [1963 c.369 §1; 1995 c.301 §45; 1999 c.351 §63; 2001 c.785 §9]

471.760 Subpoena; oaths; depositions. Each member of the Oregon Liquor Control Commission, or any of its authorized agents, shall, for the purposes contemplated by this

chapter and ORS 474.105 and 474.115, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without this state, as provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. [Amended by 1953 c.101 §2]

471.765 Procedure when person refuses to testify or produce books. If a person in attendance before the Oregon Liquor Control Commission or a commissioner refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper when ordered so to do by the commission, the commission may apply to the judge of the circuit court of any county where such person is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two nor more than five days, directing such person to show cause before the judge who made the order, or any other judge of such county, why the person should not be punished for contempt. Upon the return of such order, the judge shall examine such person under oath and the person shall be given an opportunity to be heard. If the judge determines that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which the person was ordered to bring or produce, the judge may forthwith punish the offender for contempt of court.

471.770 Self-incrimination as a basis for refusing to testify or produce books. No person shall be excused from testifying or from producing any books, papers or documents in any investigation or inquiry by or upon any hearing before the Oregon Liquor Control Commission or any commissioner when ordered so to do by the commission or any of its authorized agents, upon the ground that the testimony, evidence, books, papers or documents required of the person may tend to incriminate the person or subject the person to penalty or forfeiture. No person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which the person shall, under oath, have, by order of the commission, or a commissioner, or any of its authorized agents, testified to or produced documentary evidence of; but no person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in testimony. [Amended by 1953 c.101 §2]

471.775 Service of subpoenas; authority of inspectors. (1) The provisions of ORS 183.440 shall apply to subpoenas issued by each member of the Oregon Liquor Control Commission or any of its authorized agents.

(2) Inspectors and investigators employed by the commission shall have all the authority given by statute to peace officers of this state, including authority to serve and execute warrants of arrest and warrants of search and seizure. [Amended by 1953 c.101 §2; 1971 c.734 §68]

471.780 [Amended by 1953 c.13 §2; 1969 c.145 §1; repealed by 2001 c.785 §12]

471.785 [Amended by 1961 c.160 §23; 1967 c.577 §3; repealed by 1973 c.794 §34]

471.790 Commissioners not liable for official acts; commission funds entitled to priority. No member of the Oregon Liquor Control Commission may be sued for doing or omitting to do any act in the performance of duties as prescribed in the Liquor Control Act. No member of the commission personally shall be liable for any loss caused by the default or failure of the depository of funds of the commission. All funds of the commission deposited in any bank or trust company are entitled to priority of payment as public funds of the state, if the commission funds are only kept in depositories designated by the State Treasurer and under security of the same character required by law for depositories of state funds.

471.795 Purchase and use of liquor by member or employee of commission. No provision of the Liquor Control Act prevents any member or employee of the Oregon Liquor Control Commission from purchasing and keeping in possession, for the personal use of self or members of the family of the member or employee, any alcoholic liquor in the same manner as it may be purchased or kept by any other person under that statute.

471.800 Restrictions on out-of-state wine; imposition. If by the laws of another state or by the rules and regulations of any administrative body or authorized agency thereof or therein, market restrictions are imposed that prevent or tend to prevent the sale of wine manufactured in Oregon in free and unrestricted competition with like kinds of wine manufactured in such other state, the Oregon Liquor Control Commission is authorized and directed to impose similar restrictions in Oregon upon such wine manufactured in such other state and offered for sale in Oregon.

471.805 Disposition of moneys; revolving fund. (1) Except as otherwise provided in ORS 471.810 (2), all money collected by the Oregon Liquor Control Commission under this chapter and ORS chapter 473 and

privilege taxes shall be remitted to the State Treasurer who shall credit it to a suspense account of the commission. Whenever the commission determines that moneys have been received by it in excess of the amount legally due and payable to the commission or that it has received money to which it has no legal interest, or that any license fee or deposit is properly refundable, the commission is authorized and directed to refund such money by check drawn upon the State Treasurer and charged to the suspense account of the commission. After withholding refundable license fees and such sum, not to exceed \$250,000, as it considers necessary as a revolving fund for a working cash balance for the purpose of paying travel expenses, advances, other miscellaneous bills and extraordinary items which are payable in cash immediately upon presentation, the commission shall direct the State Treasurer to transfer the money remaining in the suspense account to the Oregon Liquor Control Commission Account in the General Fund. Moneys in the Oregon Liquor Control Commission Account are continuously appropriated to the commission to be distributed and used as required or allowed by law.

(2) All necessary expenditures of the commission incurred in carrying out the purposes required of the commission by law, including the salaries of its employees, purchases made by the commission and such sums necessary to reimburse the \$250,000 revolving fund, shall be audited and paid from the Oregon Liquor Control Commission Account in the General Fund, upon warrants drawn by the Oregon Department of Administrative Services, pursuant to claims duly approved by the commission. [Amended by 1955 c.26 §1; 1967 c.577 §4; 1975 c.424 §2; 1979 c.367 §3; 1995 c.301 §46; 1999 c.351 §64; 2005 c.755 §45]

471.810 Distribution of available moneys in Oregon Liquor Control Commission Account. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Liquor Control Commission Account and, after withholding such moneys as it may deem necessary to pay its outstanding obligations, shall within 35 days of the month for which a distribution is made direct the State Treasurer to pay the amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as follows:

(a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this section, credited to the General Fund available for general governmental purposes wherein it shall be considered as revenue during the quarter immediately preceding receipt;

(b) Twenty percent to the cities of the state in such shares as the population of each city bears to the population of the cities of the state, as determined by the State Board of Higher Education last preceding such apportionment, under ORS 190.510 to 190.610;

(c) Ten percent to counties in such shares as their respective populations bear to the total population of the state, as estimated from time to time by the State Board of Higher Education; and

(d) Fourteen percent to the cities of the state to be distributed as provided in ORS 221.770 and this section.

(2) The commission shall direct the Oregon Department of Administrative Services to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030 and 473.035 to the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly as provided in ORS 430.380.

(3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding month was reduced as a result of credits claimed under ORS 473.047, the commission shall compute the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d) and (2) of this section and the amounts that would have been paid or transferred under subsections (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct the Oregon Department of Administrative Services to pay or transfer amounts equal to the differences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

(4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal year an amount less than the amount distributed to the city or county in accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census. If the population declined, the per capita distribution to the city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to maintain the level of distribution under this subsection shall be paid from funds credited under subsection (1)(a) of this section. [Amended by 1955 c.475 §11; 1957 c.222 §1; 1957 c.445 §1; 1961 c.78 §1; 1961 c.635 §1; 1967 c.577 §5; 1969 c.499 §1; 1975 c.424 §4; 1975 c.527 §4a; 1977 c.831 §3a; 1977 c.856 §18; 1987 c.406 §2; 1997 c.348 §15; 2001 c.971 §4; 2007 c.71 §153; 2007 c.854 §4]

471.815 [Repealed by 1961 c.706 §45]

471.817 Alternative transportation organization to report annually. Each non-profit organization formed by licensees to provide alternative transportation for patrons of the licensees shall report annually to the Oregon Liquor Control Commission. The commission may acknowledge receipt of the notice and shall keep a list of such organizations that have given notice. The commission shall provide information to the Department of Revenue on request for purposes of sections 2 and 4, chapter 700, Oregon Laws 1985. [1985 c.700 §6]

471.820 [Repealed by 1961 c.706 §45]

471.825 [Repealed by 1961 c.706 §45]

471.830 [Repealed by 1961 c.706 §45]

PENALTIES

471.990 Penalties. (1) Except where other punishment is specifically provided for, violation of any provision of this chapter and ORS 474.105 and 474.115 is a misdemeanor.

(2) Except as otherwise specifically provided, municipal, justice and circuit courts have concurrent jurisdiction of all violations of this chapter and ORS 474.105 and 474.115 committed within their respective jurisdictions.

(3) A second or subsequent violation of ORS 471.440 is punishable upon conviction by imprisonment in the custody of the Department of Corrections for not more than three years and by a fine of not more than \$3,000.

(4) Subject to ORS 153.022, violation of any regulation promulgated under ORS 471.730 (5) is a Class C violation. [Amended by 1953 c.120 §6; 1963 c.93 §6; 1987 c.320 §236; 1999 c.1051 §187]

Oregon Revised Statutes

Chapter 473

Wine, Cider and Malt Beverage Privilege Tax

Chapter 473

2007 EDITION

Wine, Cider and Malt Beverage Privilege Tax

473.005	Definitions for chapter	473.100	Seizure of property; notice of sale
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473.090	Lien created by the tax		

LIQUOR; DRUGS

473.005 Definitions for chapter. The definitions provided by ORS 471.001 apply to this chapter. [1995 c.301 §6]

473.010 [Amended by 1953 c.120 §6; 1974 c.4 §8; repealed by 1995 c.301 §33]

473.015 Definition of "cider." For the purposes of this chapter, "cider" means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not less than one-half of one percent and not more than seven percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. [1995 c.301 §10; 1997 c.348 §1; 1999 c.351 §78]

473.020 Administration of chapter by commission. The Oregon Liquor Control Commission shall administer this chapter, and shall prescribe forms and make such rules and regulations as it deems necessary to enforce its provisions.

473.030 Tax on wines and malt beverages. (1) A tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of malt beverages at the rate of \$2.60 per barrel of 31 gallons on all such beverages.

(2) A tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of wines at the rate of 65 cents per gallon on all such beverages.

(3) In addition to the tax imposed by subsection (2) of this section, a manufacturer or an importing distributor of wines containing more than 14 percent alcohol by volume shall be taxed at the rate of 10 cents per gallon.

(4) In addition to the taxes imposed by subsections (2) and (3) of this section, a manufacturer or an importing distributor of wines shall be taxed at the rate of two cents per gallon. Notwithstanding any other provision of law, all moneys collected by the Oregon Liquor Control Commission pursuant to this subsection shall be paid into the account established by the Oregon Wine Board under ORS 182.470.

(5) The rates of tax imposed by this section upon malt beverages apply proportionately to quantities in containers of less capacity than those quantities specified in this section.

(6) The taxes imposed by this section shall be measured by the volume of wine or malt beverages produced, purchased or received by any manufacturer. If the wine or malt beverage remains unsold and in the possession of the producer at the plant where it was produced, no tax imposed or levied by this section is required to be paid until the wine or malt beverage has become sufficiently aged for marketing at retail, but this

subsection shall not be construed so as to alter or affect any provision of this chapter relating to tax liens or the filing of statements. [Amended by 1974 c.4 §9; 1975 c.424 §3; 1977 c.856 §19; 1983 c.651 §9; 1987 c.608 §3; 1995 c.301 §23; 1997 c.249 §176; 1999 c.351 §79; 2003 c.797 §22]

473.035 Tax on cider. (1) A tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of cider at the rate of \$2.60 per barrel of 31 gallons on all such beverages.

(2) Notwithstanding subsection (1) of this section or any other provision of law, the taxation of the manufacturing or distribution of cider shall be at a rate that is not less than the rate imposed for the privilege of manufacturing or distributing malt beverages under ORS 473.030 (1).

(3) The rate of tax imposed by this section shall apply proportionately to quantities in containers of less capacity than those quantities specified in this section.

(4) The tax imposed by this section shall be measured by the volume of cider produced, purchased or received by any manufacturer. If the cider remains unsold and in the possession of the producer at the plant where it was produced, no tax imposed or levied by this section is required to be paid until the cider has become sufficiently aged for marketing at retail, but this subsection shall not be construed so as to alter or affect any provision of this chapter relating to tax liens or the filing of statements. [1997 c.348 §3]

473.040 [Amended by 1997 c.348 §4; repealed by 2007 c.854 §10]

473.045 Tax on sale or use of agricultural products used by wineries; penalty for nonpayment. (1) A tax is hereby imposed upon the sale or use of all agricultural products used in a winery for making wine.

(2) The amount of the tax shall be \$25 per ton of grapes of the vinifera varieties, whether true or hybrid.

(3) An equivalent tax is imposed upon the sale or use of vinifera or hybrid grape products imported for use in a winery licensed under ORS chapter 471 for making wine. Such tax shall be \$25 per ton of grapes used to produce the imported grape product. The tax shall be determined on the basis of one ton of grapes for each 150 gallons of wine made from such vinifera or hybrid grape products.

(4) A tax on the sale or use of products that are not subject to subsection (2) or (3) of this section that are used to make wine in this state shall be imposed at a rate of \$.021 per gallon of wine made from those products.

(5) In the case of vinifera or hybrid grape products harvested in this state, \$12.50 of

such tax shall be levied and assessed against the person selling or providing such grape products to the winery. If the purchasing winery is licensed under ORS chapter 471, that winery shall deduct the tax levied under this subsection from the price paid to the seller. If the purchasing winery is not licensed under ORS chapter 471, the seller shall report all sales on forms provided by the Oregon Liquor Control Commission and pay \$12.50 per ton as a tax directly to the commission.

(6) Taxes paid by sellers under subsection (5) of this section shall be collected by the Oregon Liquor Control Commission on behalf of the Oregon Wine Board. The commission may retain an amount sufficient to cover the cost of collecting the taxes paid under subsection (5) of this section and shall transfer the remainder of those taxes to the board for deposit as provided in ORS 576.775. Failure to pay a tax imposed under subsection (5) of this section subjects the violator to the penalty provided in ORS 473.992.

(7) Except for the tax specified in subsection (4) of this section the taxes specified under this section shall be levied and assessed to the licensed winery at the time of purchase of the product by the winery or of importation of the product, whichever is later. The tax specified in subsection (4) of this section shall be levied and assessed to the licensed winery at the time the wine is made.

(8) The taxes imposed by this section shall be paid by the licensed winery and collected by the commission subject to the same powers as taxes imposed and collected under ORS chapter 473. The tax obligation for a calendar year shall be paid in two installments. Half shall be due on December 31 of the current calendar year. The remaining half shall be due the following June 30. [1977 c.690 §5; 1983 c.651 §6; 1987 c.804 §1; 1991 c.459 §415c; 1995 c.301 §47; 2003 c.604 §101; 2003 c.797 §23]

Note: 473.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 473 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

473.047 Marketing activity tax credit; rules. (1) As used in this section, "qualified marketing activity" means marketing activity:

(a) That promotes the sale of wine or wine products;

(b) That does not promote specific brands of wine or wine products or exclusively promote the products of any particular winery; and

(c) That has been approved by the Oregon Wine Board.

(2) A credit against the privilege tax otherwise due under ORS 473.030 (2) is allowed to a manufacturer or importing distributor of wine for the qualified marketing activity expenditures made by the manufacturer or importing distributor in the calendar year prior to the year for which the credit is claimed.

(3) The credit allowed under this section shall be 28 percent of the sum of the following:

(a) One hundred percent of the cost of qualified marketing activity to the extent that the cost of the activity does not exceed the amount of taxes the manufacturer or importing distributor of wine owed under ORS 473.030 (2) on the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon; and

(b) Twenty-five percent of the tax owed under ORS 473.030 (2) for qualified marketing activity on wine sales above 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon.

(4) The credit allowed under this section may not exceed the tax liability of the manufacturer or importing distributor of wine under ORS 473.030 (2) for the calendar year following the year in which qualified marketing activity occurred.

(5) A manufacturer or importing distributor of wine that wishes to claim the credit allowed under this section shall submit with the manufacturer's or importing distributor's tax return form a certificate issued by the board verifying that the marketing activity was a qualified marketing activity. The credit shall be claimed on the form and include the information required by the Oregon Liquor Control Commission by rule.

(6) The credit shall be claimed against the taxes reported on the return filed under ORS 473.060 for each month in the calendar year following the year in which the qualified marketing activity occurred, until the credit is completely used or the year ends, whichever occurs first.

(7) The board shall by rule further define, consistent with the definition in subsection (1) of this section, the marketing activities that constitute qualified marketing activity. [2001 c.971 §2; 2003 c.797 §24]

473.050 When privilege tax not imposed. In computing any privilege tax imposed by ORS 473.030 or 473.035:

(1) No malt beverage, cider or wine is subject to tax more than once.

(2) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine sold to the Oregon Liquor Control Commission or exported from the state.

(3) No tax shall be levied, collected or imposed upon any malt beverage given away and consumed on the licensed premises of a brewery licensee, or sold to or by a voluntary nonincorporated organization of army, air corps or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the proper authority of each such service.

(4) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine determined by the commission to be unfit for human consumption or unsalable.

(5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon from a United States manufacturer of wines producing less than 100,000 gallons, or 379,000 liters, annually. [Amended by 1971 c.158 §1; 1977 c.856 §20; 1981 c.199 §4; 1983 c.651 §7; 1995 c.301 §24; 1997 c.348 §5; 2007 c.854 §5]

473.057 [1989 c.511 §4; 2003 c.44 §4; repealed by 2007 c.854 §10]

473.060 Payment of taxes; refunds; interest or penalty; appeal. (1) The privilege taxes imposed by ORS 473.030 and 473.035 shall be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by ORS 473.070 shall be paid before the time for filing such statements expires or, as concerns wines, on or before the 20th day of the month after such wines have been withdrawn from federal bond. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month shall be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee, and may waive the collection or refund the payment of any tax imposed and collected on wine, cider or malt beverages subsequently exported from this state, sold to a federal instrumentality or to the commission, or determined by the commission to be unfit for human consumption or unsalable.

(2) The commission may waive any interest or penalty assessed to a manufacturer subject to the tax imposed under ORS 473.030 or 473.035 if the commission, in its discretion, determines that the manufacturer has made a good faith attempt to comply with the requirements of this chapter.

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under ORS 473.030 or 473.035 following the expiration of 36 months from the date on which was filed the statement required under ORS 473.070 reporting the quantity of wine, cider or malt beverages upon which the tax is due.

(4) A manufacturer may appeal a tax imposed under ORS 473.030 or 473.035 in the

manner of a contested case under ORS chapter 183. [Amended by 1955 c.241 §1; 1971 c.158 §2; 1981 c.199 §5; 1995 c.301 §25; 1997 c.348 §6; 1999 c.145 §1; 2007 c.854 §6]

473.065 Deposit in lieu of bond; requirements; refund of excess amounts; waiver of bond. (1) If a manufacturer's total tax liability under ORS 473.030 (1) in the previous calendar year was less than \$1,000, the manufacturer may deposit with the Oregon Liquor Control Commission an amount in cash equal to the manufacturer's total tax liability under ORS 473.030 (1) for the previous calendar year in lieu of the bond required by ORS 471.155 (1).

(2) If a manufacturer's actual tax liability under ORS 473.030 (1) is less than the amount deposited under subsection (1) of this section, the manufacturer may request that the commission refund the excess funds or may apply those funds toward the manufacturer's tax liability under ORS 473.030 (1) for the next calendar year.

(3) If a manufacturer's actual tax liability under ORS 473.030 (1) is greater than the amount deposited under subsection (1) of this section, the manufacturer shall pay to the commission the additional amount owed in the manner required under ORS 473.060.

(4) Unless the commission determines that a winery licensee presents an unusual risk for nonpayment of any license fees, privilege taxes, agricultural products taxes or other tax, penalty or interest imposed under this chapter or ORS chapter 471, the commission shall waive the bond required under ORS 471.155 (1) for the winery licensee if:

(a) The licensee was not liable for a privilege tax under this chapter in the immediately preceding calendar year and does not expect to be liable for a privilege tax under this chapter in the current calendar year; or

(b) The winery was established during the current calendar year and the licensee does not expect to be liable for a privilege tax under this chapter in the current calendar year. [2005 c.632 §2; 2007 c.637 §2]

473.070 Statements by manufacturers as to quantities produced; circumstances when annual reporting allowed. (1) On or before the 20th day of each month, every manufacturer shall file with the Oregon Liquor Control Commission a statement of the quantity of wine, cider and malt beverages produced, purchased or received by the manufacturer during the preceding calendar month.

(2) Notwithstanding subsection (1) of this section, a manufacturer of wine that was not liable for a privilege tax under this chapter

in the prior calendar year and that does not expect to be liable for a privilege tax under this chapter in the current calendar year, or a manufacturer of wine that is newly established during the current calendar year and that does not expect to be liable for a privilege tax under this chapter in the current calendar year, may file a single annual statement of the quantity of wine produced, purchased or received by the manufacturer during the current calendar year. The annual statement shall be filed with the commission on or before January 20 of the following year. [Amended by 1967 c.52 §1; 1981 c.199 §6; 1995 c.301 §26; 1997 c.348 §7; 2005 c.177 §1]

473.080 Estimate by commission when statement not filed or false statement filed. If any manufacturer fails, neglects or refuses to file a statement required by ORS 473.070 or files a false statement, the Oregon Liquor Control Commission shall estimate the amount of wine, cider and malt beverages produced, purchased or received by the manufacturer and assess the privilege tax thereon. The manufacturer shall be estopped from complaining of the amount so estimated. [Amended by 1967 c.52 §2; 1995 c.301 §27; 1997 c.348 §8]

473.090 Lien created by the tax. The privilege tax required to be paid by ORS 473.030 and 473.035 constitutes a lien upon, and has the effect of an execution duly levied against, any and all property of the manufacturer, attaching at the time the beverages subject to the tax were produced, purchased or received, as the case may be, and remaining until the tax is paid or the property sold in payment thereof. The lien created by this section is paramount to all private liens or encumbrances. [Amended by 1997 c.348 §9; 2007 c.854 §7]

473.100 Seizure of property; notice of sale. (1) Whenever any manufacturer is delinquent in the payment of the privilege tax provided for in ORS 473.030 and 473.035, the Oregon Liquor Control Commission or its duly authorized representative shall seize any property subject to the tax and sell, at public auction, property so seized, or a sufficient portion thereof to pay the privilege tax due, together with any penalties imposed under ORS 473.060 for such delinquency and all costs incurred on account of the seizure and sale.

(2) Written notice of the intended sale and the time and place thereof, shall be given to such delinquent manufacturer and to all persons appearing of record to have an interest in the property, at least 10 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the manufacturer at the last-known residence or place of business of the manufacturer in

this state, if any; and in the case of any person appearing of record to have an interest in such property, addressed to such person at the last-known place of residence of the person, if any. The envelope shall be deposited in the United States mail, postage prepaid. In addition, notice shall be published for at least 10 days before the date set for such sale, in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in such county for the 10-day period. The notice shall contain a description of the property to be sold, a statement of the amount of the privilege taxes, penalties and costs, the name of the manufacturer and the further statement that, unless the privilege taxes, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice. [Amended by 1997 c.348 §10; 2007 c.854 §8]

473.110 Sale of property; disposal of proceeds. At the sale, the property shall be sold by the Oregon Liquor Control Commission or by its duly authorized agent in accordance with law and the notice. The commission shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized under ORS 473.100 may be left at the place of sale at the risk of the manufacturer. If upon any such sale, the money received exceeds the amount of all privilege taxes, penalties and costs due the state from the manufacturer, the excess shall be returned to the manufacturer, and a receipt therefor obtained. However, if any person having an interest in or lien upon the property has filed with the commission, prior to the sale, notice of interest or lien, the commission shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If the receipt of the manufacturer is not available, the commission shall deposit such excess money with the State Treasurer, as trustee for the owner, subject to the order of the manufacturer, the heirs, successors or assigns of the manufacturer.

473.120 Collection of sums due state; remedies cumulative. (1) The Oregon Liquor Control Commission shall immediately transmit notice of the delinquency mentioned in ORS 473.100 to the Attorney General. The Attorney General shall at once proceed to collect all sums due to the state from the manufacturer under this chapter by bringing suit against the necessary parties to effect

forfeiture of the bonds of the manufacturer, reducing any deficiency to judgment against the manufacturer.

(2) The remedies of the state provided in ORS 473.090 to 473.120 are cumulative and no action taken by the commission or Attorney General constitutes an election on the part of the state or any of its officers to pursue one remedy to the exclusion of any other remedy provided in this chapter.

473.130 Estimate by commission as prima facie evidence. In any suit brought to enforce the rights of the state, the assessment made by the Oregon Liquor Control Commission under ORS 473.080, or a copy of so much thereof as is applicable in such suit, duly certified by the commission and showing unpaid privilege taxes assessed against any manufacturer, is prima facie evidence:

(1) Of the assessment of the privilege tax and the delinquency thereof.

(2) Of the amount of the privilege tax, interest, penalties and costs due and unpaid to the state.

(3) That the manufacturer is indebted to this state in the amount of such privilege tax, interest and penalties therein appearing unpaid.

(4) That the law relating to assessment and levy of such privilege tax has been fully complied with by all persons required to perform administrative duties under this chapter.

473.140 Records to be kept by manufacturers and purchasers. Every manufacturer shall keep a complete and accurate record of all sales of wine, cider and malt beverages, a complete and accurate record of the number of gallons imported, produced, purchased, manufactured, brewed or fermented, and the date of importation, production, purchase, manufacturing, brewing or fermentation. The records shall be in such form and contain such other information as the Oregon Liquor Control Commission may prescribe. The commission, by rule or regulation, may require the delivery of statements by distributors to purchasers, with wine, cider and malt beverages, and prescribe the matters to be contained therein. Such records and statements shall be preserved by the distributor and the purchaser respectively, for a period of two years, and shall be offered for inspection at any time upon oral or written demand by the commission or its duly authorized agents. [Amended by 1995 c.301 §28; 1997 c.348 §11]

473.150 Inspection of manufacturer's records; records to be kept for prescribed period. (1) The Oregon Liquor Control Commission may, at any time, examine the books and records of a holder of a wine self-

distribution permit or of any manufacturer of wine, cider or malt beverages, and may appoint auditors, investigators and other employees that the commission considers necessary to enforce its powers and perform its duties under this section.

(2) Every holder of a wine self-distribution permit and every manufacturer shall maintain and keep for two years all records, books and accounts required by this chapter and shall provide copies of those records, books and accounts to the commission when requested by the commission. [Amended by 1995 c.301 §29; 1997 c.348 §14; 2007 c.651 §4]

473.160 Records to be kept by persons transporting wine, cider or malt beverage. Every person transporting wine, cider or malt beverages within this state, whether such transportation originates within or without this state, shall keep a true and accurate record of wine, cider or malt beverages transported. The record shall include ingredients which may be used in the manufacture, production, brewing or fermentation of the wine, cider or malt beverages, showing such facts with relation to those beverages, their ingredients and their transportation, as the Oregon Liquor Control Commission may require. The records shall be open to inspection by the representative of the commission at any time. The commission may require from any such person sworn returns of all or any part of the information shown by the records. [Amended by 1995 c.301 §30; 1997 c.348 §12]

473.170 Failure to pay tax or to maintain records. (1) No manufacturer shall:

(a) Fail to pay the privilege tax prescribed in ORS 473.030 and 473.035 when it is due; or

(b) Falsify the statement required by ORS 473.070.

(2) No person shall:

(a) Refuse to permit the Oregon Liquor Control Commission or any of its representatives to make an inspection of the books and records authorized by ORS 473.140 to 473.160;

(b) Fail to keep books of account prescribed by the commission or required by this chapter;

(c) Fail to preserve the books for two years for inspection of the commission; or

(d) Alter, cancel or obliterate entries in the books of account for the purpose of falsifying any record required by this chapter to be made, maintained or preserved. [Amended by 1967 c.52 §3; 1997 c.348 §13; 2007 c.854 §9]

473.180 Applicability to interstate and foreign commerce. None of the provisions of this chapter apply to commerce with foreign nations or commerce with the several

states, except in so far as the same may be permitted under the Constitution and laws of the United States.

473.190 State has exclusive right to tax liquor. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors. [Amended by 1961 c.259 §4; 1967 c.577 §8]

473.200 [Repealed by 1967 c.577 §10]

473.210 [Amended by 1957 c.445 §2; 1965 c.141 §1; repealed by 1967 c.577 §10]

473.220 [Repealed by 1967 c.577 §10]

473.990 Penalties. (1) Violation of ORS 473.170 (1) is punishable upon conviction by a fine not exceeding \$500 or by imprisonment in the county jail not exceeding six months, or both.

(2) Violation of ORS 473.170 (2) is punishable upon conviction by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding one year, or both.

473.992 Penalty upon failure to pay agricultural products tax. Failure to pay a tax under ORS 473.045 (5) is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment in the county jail for not more than 90 days, or both. [2003 c.797 §9]

Note: 473.992 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 473 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Oregon Revised Statutes

Chapter 474

Trade Practices Relating to Malt Beverages

Chapter 474

2007 EDITION

Trade Practices Relating to Malt Beverages

474.005	Definitions	474.055	Supplier prohibited from requiring wholesaler to assent to certain changes in agreement; provisions in violation of ORS 474.005 to 474.095 void
474.007	Wholesale distribution agreements to be in writing	474.065	Limit on authority of supplier to prohibit change in manager of wholesaler
474.011	Good cause required for termination, cancellation or failure to renew agreement	474.075	Supplier's duty to show it acted reasonably
474.015	Grounds for termination, cancellation, failure to renew or refusal to continue agreement	474.085	Remedies of party aggrieved by violation of ORS 474.005 to 474.095
474.025	Successor bound by agreement	474.095	Prohibited conduct of supplier
474.035	Transfer by wholesaler; when conditions may be imposed by supplier	474.105	Legislative finding on ORS 474.115
474.045	Supplier prohibited from interfering with transfer by wholesaler	474.115	Wholesale sale of malt beverage subject to agreement designating territory of sale

LIQUOR; DRUGS

474.005 Definitions. As used in ORS 474.005 to 474.095, unless the context requires otherwise:

(1) "Importer" means any wholesale distributor importing malt beverages into this state for sale to retailer accounts or for sale to other wholesalers designated as subjobbers for resale.

(2) "Malt beverage manufacturer" means any manufacturer, brewer, importer or master distributor of malt beverages located within or outside this state, or any other person, whether located within or outside this state who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the State of Oregon.

(3) "Person" means any natural person, corporation, partnership, trust, agency or other entity, as well as any individual officers, directors or other persons in active control of the activities of such entity.

(4) "Supplier" means any malt beverage manufacturer, agent of a malt beverage manufacturer, importer or holder of a certificate under ORS 471.244 who enters into or is a party to any wholesale distribution agreement with a wholesale distributor.

(5) "Wholesale distribution agreement" means any contract, agreement, commercial relationship, license, association or any other arrangement for a definite or indefinite period between a supplier and wholesale distributor.

(6) "Wholesale distributor" means any person importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer. [1989 c.529 §1]

474.007 Wholesale distribution agreements to be in writing. All wholesale distribution agreements between a supplier and a wholesaler shall be in writing, signed by the parties or their authorized agents. [1989 c.529 §2]

474.010 [Amended by 1953 c.342 §3; 1963 c.137 §1; 1974 c.67 §4; repealed by 1977 c.745 §54]

474.011 Good cause required for termination, cancellation or failure to renew agreement. (1) No supplier shall terminate, cancel or fail to renew a distribution agreement upon expiration of its term or refuse to continue under the agreement without good cause. Good cause exists when a wholesaler fails to comply with a provision of the written agreement that is both reasonable and of

material significance to the business relationship between the supplier and the wholesaler and all of the following occur:

(a) The supplier gave written notice to the wholesaler of the failure to comply within two years of acquiring knowledge of the breach;

(b) The written notice alerted the wholesaler of the failure to comply with the agreement, the intent to terminate and the reasons therefor, and the date the termination would occur, which shall be not less than 90 days after the wholesaler's receipt of the notice;

(c) The wholesaler has been given 30 days in which to submit a plan of corrective action to comply with the agreement and not less than an additional 60 days to correct the noncompliance; and

(d) The supplier acted in good faith.

(2) In the event that a wholesale distribution agreement is terminated by a supplier, the wholesaler shall be entitled to reasonable compensation from the supplier for the laid-in cost to the wholesaler of the inventory of the supplier's products, including any taxes paid on the inventory by the wholesaler, together with a reasonable charge for handling of the products.

(3) In the event that a wholesaler is terminated by a supplier in bad faith or for other than good cause, the wholesaler shall be entitled to additional compensation from the supplier for:

(a) The fair market value of any and all assets, including ancillary businesses of the wholesaler used in distributing the supplier's products.

(b) The goodwill of the business.

(4) The total compensation to be paid by the supplier to the wholesaler shall be reduced by any sum received by the wholesaler from sale of assets of the business used in distribution of the supplier's products as well as by whatever value such assets may have to the wholesaler that are unrelated to the supplier's products.

(5) As used in subsection (3) of this section, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy when each possesses all information relevant to the transaction. [1989 c.529 §3]

474.014 [1961 c.572 §2; repealed by 1977 c.745 §54]

474.015 Grounds for termination, cancellation, failure to renew or refusal to continue agreement. (1) A supplier may terminate or cancel an agreement immediately, fail to renew an agreement upon expiration of its term or refuse to continue under the agreement if:

(a) The state or federal license of the wholesaler has been revoked or suspended for a period of more than 31 days;

(b) The wholesaler is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the assets of the wholesaler's business, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the wholesaler;

(c) The wholesaler, or any individual who holds or owns 10 percent or more of the stock or value of the wholesaler, has been convicted of, or pleads guilty to, a felony;

(d) The wholesaler has committed a fraud in its dealings with the supplier or the supplier's products;

(e) The wholesaler makes a substantial misrepresentation to the supplier which the wholesaler knew to be false and which the supplier relied upon to its detriment;

(f) An assignment of the wholesaler's rights under a distribution agreement, or a change of a controlling ownership interest, other than that caused by the death or legal incapacity of the wholesaler, has been made without written notice as provided in the written distribution agreement, and the supplier has given written notice to the wholesaler of the supplier's intention to terminate on the grounds of transfer without notice unless the transfer was reversed within 30 days from receipt of the notice; or

(g) An assignment of wholesaler's rights is made despite timely and proper notice of disapproval.

(2) In the event of a termination pursuant to this section, the termination shall become effective upon the wholesaler's receipt of written notice thereof. [1989 c.529 §4]

474.016 [1961 c.572 §3; repealed by 1977 c.745 §54]

474.020 [Amended by 1957 c.587 §1; repealed by 1971 c.743 §432]

474.025 Successor bound by agreement. A successor to a supplier or wholesaler, whether by way of merger, purchase of corporate shares, purchase of assets or otherwise, shall be bound by each distribution agreement the predecessor was a party to at the time of transfer with respect to each brand the successor continues to make available for sale in this state. [1989 c.529 §5]

474.030 [Repealed by 1977 c.745 §54]

474.035 Transfer by wholesaler; when conditions may be imposed by supplier.

(1) A wholesaler may transfer, bequeath or devise the wholesaler's business or share in any wholesale business to the deceased wholesaler's spouse, parent, siblings or issue

to succeed the decedent in ownership of the business.

(2) A supplier may provide in writing for prior approval of any other individual designated or designated to succeed a wholesaler in ownership of the business. Conditions of approval by the supplier shall be reasonable with respect to both the supplier's and the wholesaler's interest. [1989 c.529 §6]

474.040 [Repealed by 1977 c.745 §54]

474.045 Supplier prohibited from interfering with transfer by wholesaler. No supplier shall interfere with, prevent or unreasonably delay the transfer of the wholesaler's business or any interest therein if the wholesaler has provided the supplier with written notice of the intent to transfer and the transferee meets reasonable standards and qualifications required by the supplier which are nondiscriminatory and are applied uniformly to all wholesalers similarly situated. [1989 c.529 §7]

474.050 [Amended by 1957 c.587 §2; repealed by 1977 c.745 §54]

474.055 Supplier prohibited from requiring wholesaler to assent to certain changes in agreement; provisions in violation of ORS 474.005 to 474.095 void. (1) No supplier shall require a wholesaler to assent to any condition or amendment to a wholesale distribution agreement that impairs any right guaranteed under ORS 474.005 to 474.095, or that was not made in good faith or that is unreasonable. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(2) Any terms or conditions of any wholesale distribution agreement contrary to the provisions of ORS 474.005 to 474.095 are void. [1989 c.529 §8]

474.060 [Amended by 1955 c.60 §1; repealed by 1977 c.745 §54]

474.065 Limit on authority of supplier to prohibit change in manager of wholesaler. No supplier shall prohibit any change in the manager or successor manager of a wholesaler unless the manager or successor manager fails to meet reasonable standards for such position which are nondiscriminatory and are applied uniformly to all wholesalers similarly situated. [1989 c.529 §9]

474.070 [Repealed by 1977 c.745 §54]

474.075 Supplier's duty to show it acted reasonably. For each dispute arising out of an allegation of bad faith termination or for termination for other than good cause, the supplier shall have the burden of proving that it acted reasonably and in good faith, that good cause existed for any termination, cancellation, discontinuance or nonrenewal and that the supplier complied with the ap-

plicable requirements of the law. [1989 c.529 §10]

474.080 [Amended by 1957 c.587 §3; 1967 c.117 §1; 1971 c.477 §1; repealed by 1977 c.745 §54]

474.085 Remedies of party aggrieved by violation of ORS 474.005 to 474.095. (1) Any party to a wholesale distribution agreement aggrieved by a violation of any provision of ORS 474.005 to 474.095 shall be entitled to:

(a) Injunctive relief enjoining the violation; and

(b) Recovery for damages caused by the violation.

(2) Except as provided in subsection (3) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(3) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (2) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(4) If the violation consists of a termination, cancellation, refusal to renew or refusal to permit a transfer of the wholesaler's business in contravention of ORS 474.005 to 474.095, damages shall include the decrease in the value of the wholesaler's business caused by the violation, including any decrease attributable to the loss of goodwill, less any mitigation. [1989 c.529 §11; 1995 c.696 §23]

474.090 [Repealed by 1977 c.745 §54]

474.095 Prohibited conduct of supplier. No supplier shall:

(1) Coerce or induce, or attempt to coerce or induce, any distributor to engage in any illegal act or course of conduct;

(2) Require a wholesaler to assent to any unreasonable requirement, condition, understanding or term of an agreement which prohibits a wholesaler from selling the product of any other supplier or suppliers;

(3) Require a wholesale distributor to accept delivery of any product or any other item or commodity that was not ordered by the wholesale distributor;

(4) Fail or refuse to enter into a wholesale distribution agreement with a wholesale distributor that handles the supplier's products; or

(5) Take any action that is intended to circumvent the provisions of ORS 474.005 to 474.095. [1989 c.529 §12]

474.100 [Amended by 1971 c.743 §375; repealed by 1977 c.745 §54]

474.105 Legislative finding on ORS 474.115. The Legislative Assembly finds that in addition to the purposes specified in ORS 471.030, ORS 474.115 is necessary to main-

tain and to promote the continued availability of good quality malt beverages for the consumers of Oregon, to promote the orderly marketing of malt beverages, to promote vigorous interbrand malt beverage competition, to encourage competition by the entry of new competitors, to implement the required record-keeping provisions and to facilitate collection of the revenue. [Formerly 471.502]

Note: 474.105 and 474.115 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 471 but were not added to or made a part of ORS chapter 474 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

474.110 [Repealed by 1971 c.743 §432]

474.115 Wholesale sale of malt beverage subject to agreement designating territory of sale. (1) It shall be unlawful for any wholesaler to sell any brand of malt beverage in this state except in the territory described in an agreement with the manufacturer or importer authorizing sale by the wholesaler of the brand within a designated territory. Within the designated territory the wholesaler must service as provided in subsection (2) of this section all of the customers without discrimination. The territorial agreement must be in writing and must specify the brand or brands it covers. Where a manufacturer or importer sells several brands, the agreement need not apply to all brands sold by the manufacturer or importer and may apply only to one brand. No manufacturer or importer shall provide by the written agreement for the distribution of a brand to more than one distributor for all or any part of the designated territory. All such agreements shall be filed with the Oregon Liquor Control Commission.

(2) Every malt beverage wholesaler licensed shall service for the purpose of quality control all of the malt beverages it sells to its customers. Each wholesaler shall provide quality control services and comply with quality control standards as are specified in writing from time to time by the owner of the trademark of the brand or brands of malt beverage if:

(a) These services or standards are reasonable and are reasonably related to the maintenance of quality control; and

(b) The wholesaler has received written notice of them.

(3) An exclusive territorial designation in any agreement shall be changed only upon the written notice of the manufacturer and shall be filed pursuant to this section and ORS 474.105. The commission shall require the manufacturer to verify that the level of service within the designated territory will not be affected by the change. The notice shall only be given after recognizing all

rights of the wholesaler and duties of the manufacturer contained in any written agreement between them. However, if a wholesaler is prevented from servicing the territory due to fire, flood, labor disputes or other causes beyond reasonable control, and if first given permission by the duly licensed exclusive wholesaler of that area and approved by the manufacturer and the commission, another licensed wholesaler not within the designated area may sell the specified brands of malt beverage in that designated area.

(4)(a) It shall be unlawful for any wholesaler, either directly or indirectly, to grant or to afford a quantity discount in connection with the sale of malt beverages to any retailer in this state.

(b) No provision of any agreement between any manufacturer and importer shall expressly or by implication, or in its opera-

tion, establish or maintain the resale price of any brand or brands of malt beverage by the wholesaler. [Formerly 471.503]

Note: See note under 474.105.

474.120 [Repealed by 1977 c.745 §54]

474.130 [Amended by 1957 c.587 §4; 1971 c.743 §376; repealed by 1977 c.745 §54]

474.140 [Repealed by 1977 c.745 §54]

474.150 [Repealed by 1977 c.745 §54]

474.160 [Repealed by 1977 c.745 §54]

474.170 [Repealed by 1971 c.743 §432]

474.180 [Repealed by 1971 c.743 §432]

474.190 [Repealed by 1977 c.745 §54]

474.200 [Repealed by 1977 c.745 §54]

474.210 [Repealed by 1971 c.743 §432]

474.220 [Repealed by 1977 c.745 §54]

474.990 [Amended by 1955 c.330 §1; 1957 c.587 §5; 1961 c.648 §11; 1969 c.310 §1; 1971 c.743 §377; repealed by 1977 c.745 §54]

Oregon Revised Statutes

Chapter 183

**Administrative Procedures Act;
Legislative Review of Rules;
Civil Penalties**

Chapter 183

2007 EDITION

Administrative Procedures Act; Legislative Review of Rules; Civil Penalties

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- 183.090 [1991 c.734 §2; 1997 c.387 §3; 2001 c.621 §71; renumbered 183.745 in 2003]

ADMINISTRATIVE PROCEDURES ACT
(General Provisions)

183.310 Definitions for chapter. As used in this chapter:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "Hearing officer" includes an administrative law judge.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(6)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency.

"Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state;

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employee of the state; and

(C) Agency action under ORS 468B.050 to issue a permit.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(7) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(9) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which

do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1; 2003 c.75 §71; 2005 c.523 §8; 2007 c.288 §9]

Note: See note under 183.417.

183.315 Application of provisions of chapter to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190. [1971 c.734 §19; 1973 c.612 §3; 1973 c.621 §2; 1973 c.694 §1; 1975 c.759 §1; 1977 c.804 §45; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.373 §21; 1989 c.90 §1; 1997 c.26 §1; 1999 c.448 §6; 1999 c.679 §1; 2003 c.64 §8; 2005 c.512 §30; 2005 c.638 §1; 2007 c.239 §8; 2007 c.288 §10]

Note: The amendments to 183.315 by section 8, chapter 239, Oregon Laws 2007, become operative July 1, 2008. See section 16, chapter 239, Oregon Laws 2007. The text that is operative until July 1, 2008, including amendments by section 10, chapter 288, Oregon Laws 2007, is set forth for the user's convenience.

183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision.

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(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190.

Note: See note under 183.417.

183.317 [1971 c.734 §187; repealed by 1979 c.593 §34]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §21]

(Adoption of Rules)

183.325 Delegation of rulemaking authority to named officer or employee.

Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation. A delegation under this section may be made only to one or more named individuals. The delegation of authority shall reflect the name of the authorized individual or individuals, and be signed in acknowledgment by the named individuals. Any officer or employee to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of this chapter. [1979 c.593 §10; 1993 c.729 §1]

183.330 Description of organization; service of order; rules coordinator; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;

(b) Provide information to the public on all rulemaking proceedings of the agency; and

(c) Keep and make available the mailing list required by ORS 183.335 (8).

(3) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8; 1993 c.729 §2; 2001 c.220 §3]

183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless:

(1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

(2) A federal waiver has been granted that authorizes the adoption of the rule;

(3) Local or special conditions exist in this state that warrant a different rule;

(4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

(5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

(6) There is no corresponding federal regulation. [1997 c.602 §2]

183.333 Policy statement; public involvement in development of policy and drafting of rules; advisory committees. (1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.

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

(4) An agency shall consider an advisory committee's recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding. [2003 c.749 §4; 2005 c.807 §4]

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) At least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section must include:

(A) A caption of not more than 15 words that reasonably identifies the subject matter of the agency's intended action. The agency shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.

(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(G) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an association having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which

the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) If requested by at least five persons before the earliest date that the rule could become effective after the agency gives notice pursuant to subsection (1) of this section, the agency shall provide a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective.

(e) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Any public comment received in response to the request made under subsection (2)(b)(G) of this section and the agency's response to that comment.

(D) Any statements provided by the agency under paragraph (d) of this subsection.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious

prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division;

(c) Correcting spelling;

(d) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule;

(e) Correcting statutory or rule references; or

(f) Correcting addresses or telephone numbers referred to in the rules.

(8)(a) Any person may request in writing that an agency send to the person copies of the agency's notices of intended action issued under subsection (1) of this section. The person must provide an address where the person elects to receive notices. The address provided may be a postal mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing address.

(b) A request under this subsection must indicate that the person requests one of the following:

(A) The person may request that the agency mail paper copies of the proposed rule and other information required by subsection (2) of this section to the postal mailing address.

(B) If the agency posts notices of intended action on a website, the person may request that the agency mail the information required by subsection (2)(a) of this section to the postal mailing address with a reference to the website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(C) If the agency provides notice by electronic mail, the person may request that the agency electronically mail the information required by subsection (2)(a) of this section to the electronic mailing address, and either provide electronic copies of the proposed rule and other information required by subsection (2) of this section or provide a reference to a website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(c) Upon receipt of any request under this subsection, the agency shall acknowledge the request, establish a mailing list and maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing the mailing lists and keeping the mailing lists current. Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of the lists.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

(11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection (1) of this section is delivered to the Secretary of State for the purpose of publi-

cation in the bulletin referred to in ORS 183.360.

(b) In addition to all other requirements with which rule adoptions must comply, a rule is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.715.

(c) A rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.

(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph (b) of this subsection, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long as the non-compliance did not substantially prejudice the interests of persons to be affected by the rule.

(b) An agency may use an amended filing to correct a failure to include a fiscal impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS 183.333.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochairs of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this sec-

tion, notice shall be given to the chair or cochairs of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2; 1993 c.729 §3; 1995 c.652 §5; 1997 c.602 §3; 1999 c.123 §1; 1999 c.334 §1; 2001 c.220 §1; 2001 c.563 §1; 2003 c.749 §5; 2003 c.794 §206; 2005 c.17 §1; 2005 c.18 §1; 2005 c.382 §1; 2005 c.807 §5; 2007 c.115 §1; 2007 c.768 §58]

183.336 Cost of compliance effect on small businesses. (1) The statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) must include:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule;

(b) A brief description of the projected reporting, recordkeeping and other administrative activities required for compliance with the proposed rule, including costs of professional services;

(c) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule; and

(d) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule.

(2) An agency shall utilize available information in complying with the requirements of this section. [2005 c.807 §2]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the federal government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the

agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.340 [1957 c.717 §3 (3); 1971 c.734 §6; repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Except as provided in ORS 183.630, any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.

(2) Except as provided in ORS 183.630, all agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of this chapter, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified

of the agency's intention to adopt, amend or repeal a rule.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12; 1997 c.837 §1; 1999 c.849 §§24,25; 2003 c.75 §28]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies.

(1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13; 1991 c.169 §2; 2003 c.794 §207]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as are desirable. The Secretary of State may copyright the compilations prepared under this subsection, and may establish policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publication, sale and distribution of the compilations.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency

officer or employee from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule;

(c) Contains executive orders of the Governor; and

(d) Contains orders issued by the Director of the Department of Revenue under ORS 305.157 extending tax statutes of limitation.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "OAR" with appropriate numerical indications. [1957 c.717 §4 (1),(2),(3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16; 1993 c.729 §13; 1995 c.79 §62; 2001 c.104 §63; 2003 c.168 §3]

183.362 Program for biennial publication of Oregon Administrative Rules. (1) Notwithstanding ORS 183.360, the Secretary of State may implement a program for the publication of the Oregon Administrative Rules not less than once every two years with annual supplements. The Secretary of State may implement a program under this section only if the Secretary of State publishes the full text of proposed administrative rules in the manner specified by this section.

(2) Except as provided in subsection (3) of this section, upon implementing a program under this section the Secretary of State shall require that an agency submit the full text of the proposed rule in addition to information required to be published under the provisions of ORS 183.335 (1). Except as provided in subsection (3) of this section, the Secretary of State shall publish the full text of the proposed rule in the bulletin referred to in ORS 183.360.

(3) The Secretary of State may waive the submission of the full text of a proposed administrative rule and decline to publish the full text of the proposed rule in the bulletin referred to in ORS 183.360 if:

(a) The proposed rule is unusually voluminous; and

(b) In addition to the information provided by the agency under the provisions of ORS 183.335 (2) the agency identifies a location where the rule is available for inspection and copying.

(4) If the adopted rule submitted to the Secretary of State under the provisions of ORS 183.355 is different from the proposed rule submitted to the Secretary of State un-

der a program implemented under this section, the Secretary of State shall publish in the bulletin referred to in ORS 183.360 either the full text of the rule as adopted or a list of the changes made in the proposed rule before the agency adopted the rule. [1993 c.729 §12]

Note: 183.362 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.365 Publication of administrative rules in electronic form. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form administrative rules adopted or amended by state agencies and make the information available to the public and members of the Legislative Assembly.

(2) The Secretary of State shall determine the most cost-effective format and procedures for the timely release of the information described in subsection (1) of this section in electronic form.

(3) Pursuant to ORS 183.360 (2)(b), the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

(4) Although each state agency is responsible for its information resources, centralized information resource management must also exist to:

(a) Provide public access to the information described in subsection (1) of this section;

(b) Provide technical assistance to state agencies; and

(c) Ensure that the information resources needed to implement subsection (1) of this section are addressed along with the needs of the individual agencies.

(5) Personal information concerning a person who accesses the information identified in subsection (1) of this section may be maintained only for the purpose of providing service to the person.

(6) No fee or other charge may be imposed by the Secretary of State as a condition of accessing the information identified in subsection (1) of this section.

(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the State of Oregon relative to any of the information made available pursuant to subsection (1) of this section. [1995 c.614 §5]

Note: 183.365 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative

action. See Preface to Oregon Revised Statutes for further explanation.

183.370 Distribution of published rules. The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4(4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. (1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule. [1957 c.717 §5; 1971 c.734 §8; 2003 c.749 §6]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the man-

ner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

- (a) The rule under review;
- (b) The statutory provisions authorizing the rule; and
- (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

- (a) Violates constitutional provisions;
- (b) Exceeds the statutory authority of the agency; or
- (c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact. The court's review of the master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

183.405 Agency review of rules. (1) Not later than five years after adopting a rule, an agency shall review the rule for the purpose of determining:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended; and

(d) Whether there is continued need for the rule.

(2) An agency shall utilize available information in complying with the requirements of subsection (1) of this section.

(3) If an agency appoints an advisory committee pursuant to ORS 183.333 for consideration of a rule subject to the requirements of this section, the agency shall provide the advisory committee with a report on a review of the rule conducted under this section.

(4) The provisions of this section do not apply to the amendment or repeal of a rule.

(5) The provisions of this section do not apply to:

- (a) Rules adopted to implement court orders or the settlement of civil proceedings;
- (b) Rules that adopt federal laws or rules by reference;
- (c) Rules adopted to implement legislatively approved fee changes; or
- (d) Rules adopted to correct errors or omissions. [2005 c.807 §3]

Note: 183.405 was added to and made a part of 183.325 to 183.410 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

(Contested Cases)

183.411 Delegation of final order authority. Unless otherwise provided by law, an agency may delegate authority to enter a final order in a proceeding or class of proceedings to an officer or employee of the

agency, or to a class of officers or employees of the agency. A delegation of authority under this section must be made in writing before the issuance of any order pursuant to the delegation and must be retained in the agency's records. [2007 c.116 §2]

Note: 183.411 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.413 Notice to parties before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that parties to a contested case hearing have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) and (3) of this section to set forth certain requirements of state agencies so that parties to contested case hearings shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall serve personally or by mail a written notice to each party to the hearing that includes the following:

(a) The time and place of the hearing.

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

(c) A statement that generally identifies the issues to be considered at the hearing.

(d) A statement indicating that the party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources.

(e) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.

(f) A statement indicating whether discovery is permitted and, if so, how discovery may be requested.

(g) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(h) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(i) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(j) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(k) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(L) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(m) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(n) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(o) A description of the appeal process from the determination or order of the agency.

(3) The failure of an agency to give notice of any item specified in subsection (2) of this section does not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37,38,39; 1995 c.79 §63; 2007 c.288 §1]

Note: See note under 183.417.

183.415 Notice of right to hearing. (1) The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions.

(2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(3) Notice under this section must include:

(a) A statement of the party's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

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

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

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

(e) A statement indicating whether and under what circumstances an order by default may be entered. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1; 1997 c.837 §2; 1999 c.849 §§27,28; 2003 c.75 §29; 2007 c.288 §2]

Note: See note under 183.417.

183.417 Procedure in contested case hearing. (1) In a contested case proceeding, the parties may elect to be represented by counsel and to respond and present evidence and argument on all issues properly before the presiding officer in the proceeding.

(2) Agencies may adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.

(3)(a) Unless prohibited by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party and to the attorney of record if the party is represented. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition

on the ground that the informal disposition was obtained by fraud or duress.

(4) An order adverse to a party may be issued upon default only if a prima facie case is made on the record. The record on a default order includes all materials submitted by the party. The record on a default order may be made at the time of issuance of the order. If the record on the default order consists solely of an application and other materials submitted by the party, the agency shall so note in the order.

(5) At the commencement of a contested case hearing, the officer presiding at the hearing shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(6) Testimony at a contested case hearing shall be taken upon oath or affirmation of the witness. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(7) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut the communication. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, the administrative law judge must comply with ORS 183.685.

(8) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of the law to those facts.

(9) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communication that must be disclosed under subsection (7) of this section and that was made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the agency or an administrative law judge.

(10) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony in a contested case proceeding. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. Upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [2007 c.288 §4]

Note: Section 19, chapter 288, Oregon Laws 2007, provides:

Sec. 19. Section 4 of this 2007 Act [ORS 183.417] and the amendments to ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410 by sections 1, 2 and 5 to 18 of this 2007 Act apply only to contested case proceedings commenced by the giving of notice as described in ORS 183.415 on or after the effective date of this 2007 Act [January 1, 2008]. Any contested case proceeding commenced by the giving of notice as described in ORS 183.415 before the effective date of this 2007 Act shall continue to be governed by ORS 35.520, 58.355, 161.346, 181.661, 183.310, 183.315, 183.413, 183.415, 183.480, 279B.425, 279C.450, 351.088, 352.360, 701.145, 776.129 and 813.410, as in effect immediately before the effective date of this 2007 Act. [2007 c.288 §19]

183.418 [1973 c.386 §6; 1989 c.224 §11; 1991 c.750 §5; repealed by 1999 c.1041 §9]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.421 [1991 c.750 §4; repealed by 1999 c.1041 §9]

183.425 Depositions or subpoena of material witness; discovery. (1) On petition of any party to a contested case, or upon the agency's own motion, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19; 1997 c.837 §6]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by this chapter before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by this chapter confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results. When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpoenas in contested cases. (1) An agency may issue subpoenas on its own motion in a contested case. In addition, an agency or hearing officer in a contested case may issue subpoenas upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall

receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the hearing officer, the agency or the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4; 1989 c.980 §10a; 1997 c.837 §3; 1999 c.849 §30]

183.445 Subpoena by agency or attorney of record of party when agency not subject to ORS 183.440. (1) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency.

(2) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued by the agency to compel the appearance of witnesses on behalf of the party, the agency may issue subpoenas on its own motion. [1981 c.174 §6; 1997 c.837 §4; 1999 c.849 §32]

183.450 Evidence in contested cases. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) The hearing officer and agency may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the hearing officer or agency. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer and agency may utilize the hearing officer's or agency's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1; 1995 c.272 §5; 1997 c.391 §1; 1997 c.801 §76; 1999 c.448 §5; 1999 c.849 §34]

183.452 Representation of agencies at contested case hearings. (1) Agencies may, at their discretion, be represented at contested case hearings by the Attorney General.

(2) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise authorized by another law, an agency may be represented at contested case hearings by an officer or employee of the agency if:

(a) The Attorney General has consented to the representation of the agency by an agency representative in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of hearing being conducted.

(3) An agency representative acting under the provisions of this section may not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized by subsection (4) of this section.

(4) The officer presiding at a contested case hearing in which an agency representative appears under the provisions of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(5) Upon judicial review, no limitation imposed under this section on an agency representative is the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a party.

(6) The Attorney General may prepare model rules for agency representatives authorized under this section. [1999 c.448 §3]

Note: 183.452 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.455 [1987 c.259 §3; repealed by 1999 c.448 §10]

183.457 Representation of persons other than agencies participating in contested case hearings. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The State Landscape Contractors Board in the administration of the Landscape Contractors Law.

(b) The State Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010.

(f) The State Fire Marshal in the Department of State Police.

(g) The Department of State Lands for proceedings regarding the issuance or denial

of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

(i) The Water Resources Commission and the Water Resources Department.

(j) The Land Conservation and Development Commission and the Department of Land Conservation and Development.

(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

(L) The Bureau of Labor and Industries.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person

entitled to judicial review of the agency action.

(5) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency. [1987 c.833 §3; 1989 c.453 §2; 1993 c.186 §4; 1995 c.102 §1; 1999 c.448 §1; 1999 c.599 §1]

Note: 183.457 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.458 Nonattorney representation of parties in certain contested case hearings. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support or public assistance as defined in ORS 411.010, a party may be represented by any of the following persons:

(a) An authorized representative who is an employee of a nonprofit legal services program that receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an attorney also employed by a legal services program.

(b) An authorized representative who is an employee of the system described in ORS 192.517 (1). The authorized representative must be supervised by an attorney also employed by the system.

(2) In any contested case hearing before a state agency involving child support, a party may be represented by a law student who is:

(a) Handling the child support matter as part of a law school clinical program in which the student is enrolled; and

(b) Supervised by an attorney employed by the program.

(3) A person authorized to represent a party under this section may present evidence in the proceeding, examine and cross-examine witnesses and present factual and legal arguments in the proceeding. [1999 c.448 §4; 2003 c.14 §86; 2005 c.498 §6]

Note: 183.458 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded

to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearing officer; amendment by agency; exemptions.

(1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearing officer is authorized or required by law or agency rule to issue a final order, the hearing officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption. [1979 c.593 §§36,36b; 1995 c.79 §64; 2001 c.104 §64]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact

and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

(Judicial Review)

183.480 Judicial review of agency orders. (1) Except as provided in ORS 183.417 (3)(b), any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4; 1997 c.837 §5; 2007 c.288 §11]

Note: See note under 183.417.

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such

date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petitioner shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay, the agency may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as

specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that the agency elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, the agency shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, and the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if the court finds that either the fairness of the proceedings or the correctness of the action may have been

impaired by a material error in procedure or a failure to follow prescribed procedure, including a failure by the presiding officer to comply with the requirements of ORS 183.417 (8).

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2; 1989 c.453 §1; 1991 c.331 §44; 2007 c.659 §§2,5]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of ser-

vice shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4) At any time subsequent to the filing of the petition for review and prior to the date set for hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(6) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3; 1999 c.113 §1]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's register.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment in the register of the court pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7; 1981 c.178 §11; 1985 c.540 §39; 2003 c.576 §193]

183.486 Form and scope of decision of reviewing court. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Appeals From Circuit Courts)

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the judgment of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76; 2003 c.576 §394]

(Alternative Dispute Resolution)

183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making proc-

ess in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Mark O. Hatfield School of Government, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Mark O. Hatfield School of Government and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and

(c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall work cooperatively in designing

the program under ORS 36.179 that is intended to provide services to, apply to or involve any state agency.

(b) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall enter into an interagency agreement that includes, but is not limited to, provisions on appropriate roles, reporting requirements and coordination of services provided to state agencies by the Mark O. Hatfield School of Government pursuant to ORS 36.179.

(c) Before providing dispute resolution services in a specific matter to a state agency under ORS 36.179, the Mark O. Hatfield School of Government shall notify the Department of Justice of any proposal to provide such services.

(7) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(8) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

(9) An agency may use the services of an employee of another agency or of the federal government to serve as a mediator or facilitator, and may provide the services of an agency employee to another agency or to the federal government to serve as a mediator or facilitator. An agency may enter into an agreement with another agency or with the federal government to determine reimbursement for services of an employee acting as a mediator or facilitator under the provisions of this subsection. This subsection does not apply to mediation under ORS 243.650 to 243.782. [1993 c.647 §2; 1995 c.515 §2; 1997 c.706 §5; 1997 c.801 §42; 1997 c.837 §7; 2001 c.581 §2; 2003 c.791 §§27,27a; 2005 c.334 §§1,2; 2005 c.817 §6]

Note: 183.502 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

(Housing Cost Impact Statement)

183.530 Housing cost impact statement required for certain proposed rules. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The State Department of Energy. [1995 c.652 §2]

Note: 183.530 to 183.538 were added to and made a part of ORS chapter 183 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. The State Housing Council shall adopt rules prescribing the form to be used when preparing the estimate and other such rules necessary to the implementation of this section and ORS 183.530 and 183.538.

(2) A housing cost impact statement:

(a) For an agency listed in ORS 183.530 shall be incorporated in the:

(A) Fiscal impact statement required by ORS 183.335 (2)(b)(E) for permanent rule adoption; or

(B) Statements required by ORS 183.335 (5) for temporary rule adoption.

(b) Shall not be required for the adoption of any procedural rule by an agency listed in ORS 183.530. [1995 c.652 §3; 1997 c.249 §54]

Note: See note under 183.530.

183.538 Effect of failure to prepare housing cost impact statement; judicial review. (1) Notwithstanding ORS 183.335 (12), 183.400 (4) or any other provision of law, the failure to prepare a housing cost impact statement shall not affect the validity or effective date of any rule or ordinance or any amendment to a rule or ordinance.

(2) If a rule or ordinance or any amendment to a rule or ordinance is challenged based on the failure to prepare a housing cost impact statement, the court or other reviewing authority shall remand the proposed rule or ordinance or any amendment to a rule or ordinance to the adopting or repeal-

ing entity if it determines that a housing cost impact statement is required.

(3) The court or other reviewing authority shall determine only whether a housing cost impact statement was prepared and shall not make any determination as to the sufficiency of the housing cost impact statement. [1995 c.652 §4; 2001 c.220 §4]

Note: See note under 183.530.

(Effects of Rules on Small Business)

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

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards;

(4) Exempting small businesses from any or all requirements of the rule; or

(5) Otherwise establishing less intrusive or less costly alternatives applicable to small business. [1981 c.755 §4; 2003 c.749 §7; 2005 c.807 §6]

183.545 [1981 c.755 §5; repealed by 2003 c.749 §17]

183.550 [1981 c.755 §6; repealed by 2003 c.749 §17]

183.560 [2001 c.374 §1; 2003 c.740 §1; renumbered 183.700 in 2003]

183.562 [2001 c.374 §2; renumbered 183.702 in 2003]

(Office of Administrative Hearings)

183.600 Definitions. For the purposes of ORS 183.600 to 183.690:

(1) "Chief administrative law judge" means the person employed under ORS 183.610 to organize and manage the Office of Administrative Hearings.

(2) "Office" means the Office of Administrative Hearings established under ORS 183.605. [1999 c.849 §2; 2003 c.75 §1]

183.605 Office of Administrative Hearings. (1) The Office of Administrative Hearings is established within the Employment Department. The office shall be managed by the chief administrative law judge employed under ORS 183.610. The office shall make administrative law judges available to agencies under ORS 183.600 to 183.690. Administrative law judges assigned from the office under ORS 183.600 to 183.690 may:

(a) Conduct contested case proceedings on behalf of agencies in the manner provided by ORS 183.600 to 183.690;

(b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and

(c) Perform such other duties as may be authorized under ORS 183.600 to 183.690.

(2) All persons serving as administrative law judges in the office must meet the standards and training requirements of ORS 183.680. [1999 c.849 §3; 2003 c.75 §2]

183.610 Chief administrative law judge.

(1) The Director of the Employment Department shall employ a person to serve as chief administrative law judge for the Office of Administrative Hearings. The director shall consider recommendations by the Office of Administrative Hearings Oversight Committee in hiring a chief administrative law judge. The person employed to serve as chief administrative law judge must be an active member of the Oregon State Bar. The chief administrative law judge has all the powers necessary and convenient to organize and manage the office. Subject to the State Personnel Relations Law, the chief administrative law judge shall employ all persons necessary for the administration of the office, prescribe the duties of those employees and fix their compensation. The chief administrative law judge shall serve for a term of four years. Notwithstanding ORS 236.140, the chief administrative law judge may be removed during a term only for inefficiency, incompetence, neglect of duty, malfeasance in office, unfitness to render effective service or failure to continue to meet the criteria for appointment.

(2) The chief administrative law judge shall employ administrative law judges. The chief administrative law judge shall ensure that administrative law judges employed for the office receive all training necessary to meet the standards required under the program created under ORS 183.680.

(3) The chief administrative law judge shall take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office. [1999 c.849 §4; 2003 c.75 §3]

183.615 Administrative law judges; duties; qualifications; rules. (1) An administrative law judge employed by or contracting with the chief administrative law judge shall conduct hearings on behalf of agencies as assigned by the chief administrative law judge. An administrative law judge shall be impartial in the performance of the administrative law judge's duties and shall remain fair in all hearings conducted by the admin-

istrative law judge. An administrative law judge shall develop the record in contested case proceedings in the manner provided by ORS 183.417 (8).

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief administrative law judge as administrative law judges. The chief administrative law judge by rule may establish additional qualifications for administrative law judges employed for the office. [1999 c.849 §5; 2003 c.75 §4; 2007 c.659 §§3,6]

183.620 Contract administrative law judges. (1) The chief administrative law judge for the Office of Administrative Hearings may contract for the services of persons to act as administrative law judges.

(2) Contract administrative law judges shall meet the same qualifications as administrative law judges regularly employed by the chief administrative law judge and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for administrative law judges regularly employed by the chief administrative law judge and conducting similar hearings. [1999 c.849 §6; 2003 c.75 §5]

183.625 Assignment of administrative law judges; conduct of hearings. (1) In assigning an administrative law judge to conduct hearings on behalf of an agency, the chief administrative law judge shall, whenever practicable, assign an administrative law judge that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to use administrative law judges assigned from the Office of Administrative Hearings to conduct hearings must delegate responsibility for the conduct of the hearing to an administrative law judge assigned from the Office of Administrative Hearings, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize an administrative law judge assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use administrative law judges assigned from the office may contract with the chief administrative law judge for the assignment of an administrative law judge from the office for the purpose of conducting one or more contested cases on behalf of the agency. [1999 c.849 §7; 2003 c.75 §6]

183.630 Model rules of procedure; exemptions; depositions. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief administrative law judge, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) Except as may be expressly granted by the agency to an administrative law judge assigned from the office, or as may be expressly provided for by law, an administrative law judge conducting a hearing for an agency under ORS 183.600 to 183.690 may not authorize a party to take a deposition that is to be paid for by the agency. [1999 c.849 §8; 2003 c.75 §7]

183.635 Agencies required to use administrative law judges from Office of Administrative Hearings; exceptions. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

- (a) Attorney General.
- (b) Boards of stewards appointed by the Oregon Racing Commission.
- (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.
- (d) Department of Corrections.
- (e) Department of Education, State Board of Education and Superintendent of Public Instruction.
- (f) Department of Higher Education and institutions of higher education listed in ORS 352.002.
- (g) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (h) Department of Revenue.

- (i) Department of State Police.
- (j) Employment Appeals Board.
- (k) Employment Relations Board.
- (L) Energy Facility Siting Council.
- (m) Fair Dismissal Appeals Board.
- (n) Governor.
- (o) Land Conservation and Development Commission.
- (p) Land Use Board of Appeals.
- (q) Local government boundary commissions created pursuant to ORS 199.430.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) Public Utility Commission.
- (u) Secretary of State.
- (v) State Accident Insurance Fund Corporation.
- (w) State Apprenticeship and Training Council.
- (x) State Board of Parole and Post-Prison Supervision.
- (y) State Land Board.
- (z) State Treasurer.
- (aa) Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS chapter 59;
- (b) ORS 200.005 to 200.075;
- (c) ORS chapter 455;
- (d) ORS chapter 674;
- (e) ORS chapters 706 to 716;
- (f) ORS chapter 717;
- (g) ORS chapters 722, 723, 725 and 726; and
- (h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470. [1999 c.849 §9; 2001 c.900 §46; 2003 c.75 §8; 2005 c.22 §131; 2005 c.26 §18; 2007 c.239 §9]

Note: The amendments to 183.635 by section 9, chapter 239, Oregon Laws 2007, become operative July 1, 2008. See section 16, chapter 239, Oregon Laws 2007. The text that is operative until July 1, 2008, is set forth for the user's convenience.

183.635 (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

- (a) Attorney General.
- (b) Boards of stewards appointed by the Oregon Racing Commission.
- (c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.
- (d) Department of Corrections.
- (e) Department of Education, State Board of Education and Superintendent of Public Instruction.
- (f) Department of Higher Education and institutions of higher education listed in ORS 352.002.
- (g) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.
- (h) Department of Revenue.
- (i) Department of State Police.
- (j) Employment Appeals Board.
- (k) Employment Relations Board.
- (L) Energy Facility Siting Council.
- (m) Fair Dismissal Appeals Board.
- (n) Governor.
- (o) Land Conservation and Development Commission.
- (p) Land Use Board of Appeals.
- (q) Local government boundary commissions created pursuant to ORS 199.425 or 199.430.
- (r) Oregon Youth Authority.
- (s) Psychiatric Security Review Board.
- (t) Public Utility Commission.
- (u) Secretary of State.
- (v) State Accident Insurance Fund Corporation.
- (w) State Apprenticeship and Training Council.
- (x) State Board of Parole and Post-Prison Supervision.
- (y) State Land Board.
- (z) State Treasurer.
- (aa) Wage and Hour Commission.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

- (a) ORS chapter 59;
- (b) ORS 200.005 to 200.075;
- (c) ORS chapter 455;
- (d) ORS chapter 674;
- (e) ORS chapters 706 to 716;
- (f) ORS chapter 717;
- (g) ORS chapters 722, 723, 725 and 726; and
- (h) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.600 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

- (a) Federal law requires that a different administrative law judge or hearing officer be used; or
- (b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for contested case hearings conducted under the provisions of ORS 183.413 to 183.470.

183.640 Use of Office of Administrative Hearings by exempt agencies and by political subdivisions. (1) Upon request of an agency, the chief administrative law judge for the Office of Administrative Hearings may assign administrative law judges from the office to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of administrative law judges assigned from the office under ORS 183.635.

(2) The chief administrative law judge may contract with any political subdivision of this state to provide the services of administrative law judges to the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision. [1999 c. 849 §10; 2003 c.75 §9]

183.645 Request for change of administrative law judge; rules. (1) After assignment of an administrative law judge from the Office of Administrative Hearings to conduct a hearing on behalf of an agency, the chief administrative law judge shall assign a different administrative law judge for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief administrative law judge may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of administrative law judge under subsection (1) of this section may be granted by the chief administrative law judge without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to an administrative law judge assigned after a request for a different administrative law judge has been granted under subsection (1) of this section, the chief administrative law judge shall assign a different administrative law judge only upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, a different administrative law judge may not be assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges, except upon a showing of good cause. [1999 c.849 §11; 2001 c.294 §8; 2003 c.75 §10]

183.650 Form of order; modification of form of order by agency; finding of historical fact. (1) In any contested case hearing conducted by an administrative law judge assigned from the Office of Administrative Hearings, the administrative law judge shall prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The administrative law judge shall also prepare and serve a proposed order in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings only if the agency determines that the finding of historical fact made by the administrative law judge is not supported by a preponderance of the evidence in the record. For the purposes of this section, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) If a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding

of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the administrative law judge, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment. [1999 c.849 §12; 2003 c.75 §11]

183.655 Fees. The chief administrative law judge for the Office of Administrative Hearings shall establish a schedule of fees for services rendered by administrative law judges assigned from the office. The fee charged shall be in an amount calculated to recover the cost of providing the administrative law judge, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief administrative law judge under this section shall be paid into the Office of Administrative Hearings Operating Account created under ORS 183.660. [1999 c.849 §13; 2003 c.75 §12]

183.660 Office of Administrative Hearings Operating Account. (1) The Office of Administrative Hearings Operating Account is created within the General Fund. The account shall consist of moneys paid into the account under ORS 183.655. Moneys credited to the account are continuously appropriated to the chief administrative law judge for the Office of Administrative Hearings created under ORS 183.605 for the purpose of paying expenses incurred in the administration of the office.

(2) At the discretion of the chief administrative law judge, petty cash funds may be established and maintained for the purpose of administering the duties of the office. [1999 c.849 §14; 2003 c.75 §13]

183.665 Estimates of office expenses. The chief administrative law judge for the Office of Administrative Hearings shall estimate in advance the expenses that the office will incur during each biennium and shall notify each agency required to use the office's services of the agency's share of the anticipated expenses for periods within the biennium. [1999 c.849 §15; 2003 c.75 §14]

183.670 Rules. Subject to the provisions of the State Personnel Relations Law, the chief administrative law judge for the Office of Administrative Hearings may adopt rules to:

(1) Organize and manage the Office of Administrative Hearings established under ORS 183.605.

(2) Facilitate the performance of the duties of administrative law judges assigned from the office.

(3) Establish qualifications for persons employed as administrative law judges by the office.

(4) Establish standards and procedures for the evaluation and training of administrative law judges employed by the office, consistent with standards and training requirements established under ORS 183.680. [1999 c.849 §16; 2003 c.75 §15]

183.675 Alternative dispute resolution. ORS 183.600 to 183.690 do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of an administrative law judge from the Office of Administrative Hearings. [1999 c.849 §16a; 2003 c.75 §16]

183.680 Standards and training program. (1) The chief administrative law judge for the Office of Administrative Hearings, working in coordination with the Attorney General, shall design and implement a standards and training program for administrative law judges employed by the office and for persons seeking to be employed as administrative law judges by the office. The program shall include:

(a) The establishment of an ethical code for persons employed as administrative law judges by the office.

(b) Training for administrative law judges employed by the office that is designed to assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.

(2) The program established by the chief administrative law judge under this section may include:

(a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief administrative law judge for administrative law judges employed by the office.

(b) The certification of courses offered by other persons for the purpose of any training required by the chief administrative law judge for administrative law judges employed by the office.

(c) The provision of specialized training for administrative law judges in subject matter areas affecting particular agencies required to use administrative law judges assigned from the office.

(3) The chief administrative law judge is bound by the ethical code established under this section and must satisfactorily complete training required of administrative law judges employed by the office other than specialized training in subject matter areas

affecting particular agencies. [1999 c.849 §19; 2003 c.75 §17]

183.685 Ex parte communications. (1)

An administrative law judge assigned from the Office of Administrative Hearings who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A copy of any written response to the communication made by the administrative law judge;

(d) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, an administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to an administrative law judge while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to an administrative law judge, or to any agent of an administrative law judge, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of the agency that is using the administrative law judge to conduct the hearing.

(5) The provisions of this section do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges;

(b) Communications made to an administrative law judge by any person employed by the office to assist the administrative law judge; or

(c) Communications made to an administrative law judge by an assistant attorney general if the communications are made in response to a request from the administrative law judge and the assistant attorney general is not advising the agency that is conducting the hearing. [1999 c.849 §20; 2003 c.75 §18]

183.690 Office of Administrative Hearings Oversight Committee. (1) The Office of Administrative Hearings Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief administrative law judge for the Office of Administrative Hearings employed under ORS 183.610 shall serve as an ex officio member of the committee. The chief administrative law judge may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of

the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study the operations of the Office of Administrative Hearings;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Office of Administrative Hearings;

(c) Make any recommendations for additional legislation governing the operations of the Office of Administrative Hearings; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose. [1999 c.849 §21; 2003 c.75 §19; 2005 c.22 §132]

PERMITS AND LICENSES

183.700 Permits subject to ORS 183.702. (1) As used in this section and ORS 183.702, "permit" means an individual and particularized license, permit, certificate, approval, registration or similar form of permission required by law to pursue any activity specified in this section, for which an agency must weigh information, make specific findings and make determinations on a case-by-case basis for each applicant.

(2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

(a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790, 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035, 468B.040, 468B.045, 468B.050 and 468B.095.

(b) The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.

(c) The Water Resources Department under ORS chapters 537 and 540, except those permits issued under ORS 537.747 to 537.765.

(d) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

(e) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140.

(f) The Department of Transportation pursuant to ORS 374.312. [Formerly 183.560]

Note: 183.700 and 183.702 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.702 Statement of criteria and procedures for evaluating permit application; documentation of decision on application; required signature. (1) At the time a person applies for a permit specified in ORS 183.700, the issuing agency shall offer a document to that applicant that specifies the criteria and procedures for evaluating a permit application.

(2) The agencies specified in ORS 183.700 must document in writing the basis for all decisions to deny a permit specified in ORS 183.700, including citation to the criteria applied by the agency and the manner in which agency standards were utilized in applying the criteria. The documentation required under this section shall be made part of the record for the decision on the permit application.

(3) At least one officer or employee of the issuing agency who has authority to sign orders on behalf of the agency, or the officer or employee responsible for the decision to deny a permit specified in ORS 183.700, shall sign the documentation required under subsection (2) of this section.

(4) The issuing agency shall provide to the applicant a copy of the documentation required under subsection (2) of this section. [Formerly 183.562]

Note: See note under 183.700.

183.705 Extended term for renewed licenses; fees; continuing education; rules. (1) Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on an annual basis under the laws administered by the agency also may offer those licenses with terms of two, three, four or five years. Notwithstanding any other provision of law, an agency that issues

licenses that must be renewed on a biennial basis under the laws administered by the agency also may offer those licenses with terms of three, four or five years. Extended terms may be offered only for renewed licenses and may not be offered for initial applications for licenses.

(2) An agency may offer an extended term under this section for a license issued by the agency only after adopting a rule authorizing the extended term. An agency may adopt a rule authorizing an extended term only if the agency finds that the extended term is consistent with public safety and with the objectives of the licensing requirement. An agency by rule may prohibit extended terms based on prior license discipline of an applicant.

(3) An applicant must meet all qualifications established by the agency to be granted an extended term.

(4) An agency may not offer an extended term under this section if:

(a) Another agency or a local government, as defined by ORS 174.116, is authorized by statute to make a recommendation on the issuance of the license;

(b) The agency or the local government, as defined by ORS 174.116, that has authority to make a recommendation on the issuance of the license has recommended against the issuance of the license; and

(c) The recommendation of the agency or the local government, as defined by ORS 174.116, is based on licensing criteria established by statute or by rule.

(5) An extended term granted under this section may be revoked by an agency if the agency determines that the licensee is subject to discipline under the licensing criteria applicable to the licensee. An agency offering extended terms under this section by rule may establish other grounds for revoking an extended term under this section.

(6) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase the annual or biennial license fee established by statute by a percentage no greater than necessary to ensure that there is no revenue loss by reason of the extended term.

(7) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase any annual or biennial continuing education requirement established by statute as necessary to ensure that there is no reduction in the continuing education requirement for licensees by reason of the extended term. [2005 c.76 §2; 2007 c.768 §1]

LEGISLATIVE REVIEW OF RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) "Committee" means the Legislative Counsel Committee.

(2) "Rule" has the meaning given in ORS 183.310.

(3) "State agency" has the meaning given to "agency" in ORS 183.310. [Formerly 171.705]

Note: 183.710 to 183.725 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.715 Submission of adopted rule to Legislative Counsel required; exception.

(1) A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1). The copy of an amended rule that is submitted to the Legislative Counsel must show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating published standards or a specialty code by reference is not required to file a copy of those standards with the Legislative Counsel if:

(a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce; and

(b) The rule filed with the Legislative Counsel identifies the location of the standards or a specialty code so incorporated and makes them available to the Legislative Counsel on the request of the Legislative Counsel. [Formerly 171.707; 1991 c.94 §1; 1999 c.167 §1; 2005 c.18 §2]

Note: See note under 183.710.

183.720 Procedure for review of agency rule; reports on rules claimed to be duplicative or conflicting. (1) The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the committee, and if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting the review. If the Legislative Counsel determines that a rule is not within the intent and scope of the enabling legislation purporting to authorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the Legislative Counsel shall also send a copy of the determination to the state agency. The Legislative Counsel may request that the state agency respond in writing to the determinations or appear at the meeting of the committee at which the committee will consider the determinations. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7) A member of the Legislative Assembly may request that Legislative Counsel prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Counsel prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule adopted by a federal agency. Upon receipt of the written request, the Legislative Counsel shall

prepare a report to the committee that contains:

(a) A copy of the request, including copies of the two rules that the requester asserts are conflicting or duplicative; and

(b) Legislative Counsel's analysis of the requirements of the two rules.

(8) Upon receipt of a report under subsection (7) of this section, the committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned and to the person requesting the review. The committee may direct the Legislative Counsel to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709; 1993 c.729 §7; 1997 c.602 §4; 2001 c.156 §1]

Note: See note under 183.710.

183.722 Required agency response to Legislative Counsel determination. (1) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel has provided a copy of that determination to the state agency pursuant to 183.720 (6), the state agency shall either make a written response to the determination or appear at the meeting of the Legislative Counsel Committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(2) If the Legislative Counsel determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Counsel Committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the state agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the state agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the committee along

with a representative of the Oregon Department of Administrative Services, the state agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the agency to the determinations. [1997 c.602 §7; 1999 c.31 §2]

Note: See note under 183.710.

183.725 Report of Legislative Counsel Committee to agencies and Legislative Assembly. (1) The Legislative Counsel Committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the agency.

(2) The committee shall report to the Legislative Assembly at each regular session on its review of state agency rules. [Formerly 171.713; 1993 c.729 §8; 1997 c.602 §5; 1999 c.31 §1]

Note: See note under 183.710.

CIVIL PENALTIES

183.745 Civil penalty procedures; notice; hearing; judicial review; exemptions; recording; enforcement. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. The agency may by rule provide for a longer period of time in which application for a hearing may be made. If no application for a hearing is made within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section

shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) This section does not apply to penalties:

(a) Imposed under the tax laws of this state;

(b) Imposed under the provisions of ORS 646.760 or 652.332;

(c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or

(d) Imposed by the Public Utility Commission.

(8) This section creates no new authority in any agency to impose civil penalties.

(9) This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

(10) The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

(11) Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

(12) In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(13) As used in this section:

(a) "Agency" has that meaning given in ORS 183.310.

(b) "Civil penalty" includes only those monetary penalties that are specifically denominated as civil penalties by statute. [Formerly 183.090]

Note: 183.745 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

READABILITY OF PUBLIC WRITINGS

183.750 State agency required to prepare public writings in readable form. (1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

EXECUTIVE BRANCH; ORGANIZATION

Oregon Revised Statutes

Miscellaneous Provisions Related to the Sale and Service of Alcoholic Beverages

MISCELLANEOUS PROVISIONS

2007 EDITION

	CONSTITUTIONAL PROVISIONS	165.055	Fraudulent use of a credit card
Note	Constitutional provisions relating to sale of liquor by individual glass - Art. I §39, Oregon Constitution	165.065	Negotiating a bad check
		165.080	Falsifying business records
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25.750	Suspension of licenses, certificates, permits and registrations; when authorized; rules	165.800	Identity theft
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CONSTITUTIONAL PROVISIONS

Note: Section 39, Article I of the Oregon Constitution, provides:

Section 39. Sale of liquor by individual glass. The State shall have power to license private clubs, fraternal organizations, veterans' organizations, railroad corporations operating interstate trains and commercial establishments where food is cooked and served, for the purpose of selling alcoholic liquor by the individual glass at retail, for consumption on the premises, including mixed drinks and cocktails, compounded or mixed on the premises only. The Legislative Assembly shall provide in such detail as it shall deem advisable for carrying out and administering the provisions of this amendment and shall provide adequate safeguards to carry out the original intent and purpose of the Oregon Liquor Control Act, including the promotion of temperance in the use and consumption of alcoholic beverages, encourage the use and consumption of lighter beverages and aid in the establishment of Oregon industry. This power is subject to the following:

(1) The provisions of this amendment shall take effect and be in operation sixty (60) days after the approval and adoption by the people of Oregon; provided, however, the right of a local option election exists in the counties and in any incorporated city or town containing a population of at least five hundred (500). The Legislative Assembly shall prescribe a means and a procedure by which the voters of any county or incorporated city or town as limited above in any county, may through a local option election determine whether to prohibit or permit such power, and such procedure shall specifically include that whenever fifteen per cent (15%) of the registered voters of any county in the state or of any incorporated city or town as limited above, in any county in the state, shall file a petition requesting an election in this matter, the question shall be voted upon at the next regular November biennial election, provided said petition is filed not less than sixty (60) days before the day of election.

(2) Legislation relating to this matter shall operate uniformly throughout the state and all individuals shall be treated equally; and all provisions shall be liberally construed for the accomplishment of these purposes.

[Created through initiative petition filed July 2, 1952, and adopted by the people Nov. 4, 1952]

SUSPENSION OF OCCUPATIONAL AND DRIVER LICENSES

25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules. (1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is under order or judgment to pay monthly child support and is in arrears, with respect to any such judgment or order requiring the payment of child support, in an amount equal to three months of support or \$2,500, whichever occurs later, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which preclude the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43]

25.752 Memberships in professional organizations that are required by state law. As used in ORS 25.750 to 25.783, "licenses, certificates, permits or registrations" includes, but is not limited to, memberships in professional organizations that are re-

quired by state law in order to engage in a profession. [1995 c.620 §12]

25.756 Identifying persons holding licenses, certificates, permits and registrations. The Department of Justice shall enter into agreements regarding the identification of persons who are subject to the provisions of ORS 25.750 to 25.783 and who hold licenses, certificates, permits or registrations with:

(1) The Oregon Liquor Control Commission;

(2) All entities that issue licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title; and

(3) The Department of Transportation. [1993 c.365 §4; 1995 c.620 §2; 1995 c.750 §8; 1997 c.704 §38; 1999 c.80 §12]

25.759 Notice to persons subject to suspension; contents. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

(1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.

(2) The name, Social Security number, if available, date of birth, if known, and child support case number or numbers of the person subject to the action.

(3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.

(4) The procedures available for contesting the suspension of a license, certificate, permit or registration.

(5) That the only bases for contesting the suspension are:

(a) That the arrears are not greater than three months of support or \$2,500;

(b) That there is a mistake in the identity of the obligor;

(c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or

(d) That the person subject to the suspension is in compliance with a previous agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

(a) Contest the action in writing on a form prescribed by the administrator;

(b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or

(c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration. [1993 c.365 §5; 1995 c.620 §3; 1997 c.704 §39; 1999 c.80 §13; 2001 c.323 §2; 2001 c.455 §15; 2003 c.73 §44]

25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement. (1)

If the administrator is contacted within 30 days of the date of the notice specified in ORS 25.759, the administrator and the obligor may enter into an agreement as provided for by rule of the Department of Justice. If no contest is filed or if no agreement is entered into within the time prescribed by ORS 25.750 to 25.783, or if the obligor fails to comply with the terms of an agreement previously entered into, the administrator shall advise the issuing entity to suspend the license, certificate, permit or registration forthwith.

(2) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §6; 1995 c.620 §4; 1999 c.80 §14; 2001 c.323 §3; 2003 c.73 §45]

25.765 Procedure if obligor contacts administrator within time limits; hearing. (1)

If the obligor makes the contact within 30 days of the date of the notice as provided for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether suspension should occur. If the administrator determines that suspension should occur, the adminis-

trator shall make a written determination of such finding.

(2) The obligor may object to the determination described in subsection (1) of this section within 30 days after the date of the determination. Any hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Any suspension is stayed pending the decision of the administrative law judge. Any order of the administrative law judge that supports a suspension shall result in the notification to the issuing entity by the administrator to suspend the license, certificate, permit or registration forthwith.

(3) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §7; 1995 c.620 §5; 1999 c.80 §15; 1999 c.849 §§43,44; 2001 c.323 §§4,5; 2003 c.75 §26; 2005 c.560 §7]

25.768 Judicial review of order. The order of the administrative law judge is final and is subject to judicial review as provided in ORS 183.482. Any suspension under ORS 25.750 to 25.783 is not stayed pending judicial review. [1993 c.365 §8; 2003 c.75 §76]

25.771 Obligor holding more than one license, certificate, permit or registration. In the event that an obligor holds more than one license, certificate, permit or registration described in ORS 25.750, any determination regarding suspension of one license, certificate, permit or registration is sufficient to suspend any other license, certificate, permit or registration described in ORS 25.750. [1993 c.365 §9; 1995 c.620 §6]

25.774 Reinstatement. When, at any time after suspension under ORS 25.750 to 25.783, the conditions resulting in the suspension no longer exist, the administrator shall so notify the issuing entity and shall confirm that the license, certificate, permit or registration may be reinstated contingent upon the requirements of the issuing entity. Until the issuing entity receives notice under this section, the issuing entity may not reinstate, reissue, renew or otherwise make the license, certificate, permit or registration available to the holder of the suspended license, certificate, permit or registration. [1993 c.365 §10; 1995 c.620 §7; 1999 c.80 §16; 2001 c.323 §6]

25.777 Reimbursing issuing entities for costs incurred. The Department of Justice shall enter into agreements to reimburse issuing entities for their costs of compliance with ORS 25.750 to 25.783 to the extent that those costs are eligible for Federal Financial Participation under Title IV-D of the Social Security Act. [1993 c.365 §11; 1995 c.620 §8; 2001 c.323 §7]

25.780 Other licenses, certificates, permits and registrations subject to suspension. In addition to any other grounds for suspension provided by law:

(1) The Oregon Liquor Control Commission and any entity that issues licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title shall suspend without further hearing the licenses, certificates, permits or registrations of a person upon certification by the administrator that the person is subject to an order suspending the license, certificate, permit or registration. The certification must include the information specified in ORS 25.750 (1).

(2) The Department of Transportation shall suspend without further hearing the driver license or driver permit of a person upon certification by the administrator that the person is subject to an order suspending the license or permit. The certification must include the information specified in ORS 25.750 (1). [1993 c.365 §13; 1995 c.620 §9; 1995 c.750 §5; 1999 c.80 §17; 2001 c.323 §8]

25.783 Confidentiality of information. Any entity described in ORS 25.756 that receives an inquiry as to the status of a person who has had a license, certificate, permit or registration suspended under ORS 25.750 to 25.783 shall respond only that the license, certificate, permit or registration was suspended pursuant to ORS 25.750 to 25.783. The entity shall not release or make other use of information that it receives pursuant to ORS 25.750 to 25.783. [1993 c.365 §14; 1995 c.620 §10]

25.785 Issuing entities to require Social Security number. (1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, certificate, permit or registration subject to suspension under ORS 25.750 to 25.783 shall require that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, certificate, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this

section knowing the statement to be false. [1997 c.746 §117; 1999 c.80 §93; 2003 c.610 §1; 2005 c.22 §17]

FALSE SWEARING; UNSWORN FALSIFICATION

162.075 False swearing. (1) A person commits the crime of false swearing if the person makes a false sworn statement, knowing it to be false.

(2) False swearing is a Class A misdemeanor. [1971 c.743 §184]

162.085 Unsworn falsification. (1) A person commits the crime of unsworn falsification if the person knowingly makes any false written statement to a public servant in connection with an application for any benefit.

(2) Unsworn falsification is a Class B misdemeanor. [1971 c.743 §185]

OBSTRUCTING GOVERNMENTAL ADMINISTRATION

162.245 Refusing to assist a peace officer. (1) A person commits the offense of refusing to assist a peace officer if upon command by a person known by the person to be a peace officer the person unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.

(2) Refusing to assist a peace officer is a Class B violation. [1971 c.743 §199; 1999 c.1051 §150]

162.247 Interfering with a peace officer or parole and probation officer. (1) A person commits the crime of interfering with a peace officer or parole and probation officer if the person, knowing that another person is a peace officer or a parole and probation officer as defined in ORS 181.610:

(a) Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person; or

(b) Refuses to obey a lawful order by the peace officer or parole and probation officer.

(2) Interfering with a peace officer or parole and probation officer is a Class A misdemeanor.

(3) This section does not apply in situations in which the person is engaging in:

(a) Activity that would constitute resisting arrest under ORS 162.315; or

(b) Passive resistance. [1997 c.719 §1; 1999 c.1040 §7; 2005 c.668 §1]

162.285 Tampering with a witness. (1) A person commits the crime of tampering with a witness if:

(a) The person knowingly induces or attempts to induce a witness or a person the person believes may be called as a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or

(b) The person knowingly induces or attempts to induce a witness to be absent from any official proceeding to which the person has been legally summoned.

(2) Tampering with a witness is a Class C felony. [1971 c.743 §203; 1979 c.231 §1]

162.365 Criminal impersonation. (1) A person commits the crime of criminal impersonation if with intent to obtain a benefit, to injure or defraud another or to facilitate an unlawful activity, the person does an act in the assumed character of:

(a) A public servant; or

(b) An active member or veteran of the Armed Forces of the United States.

(2) It is no defense to a prosecution for criminal impersonation that:

(a) The office, position or title that the person pretended to hold did not in fact exist; or

(b) The unit of government that the person pretended to represent did not in fact exist.

(3)(a) Criminal impersonation is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, criminal impersonation is a Class C felony if the public servant impersonated is a peace officer, judge or justice of the peace. [1971 c.743 §211; 1993 c.243 §1; 1997 c.395 §2; 2003 c.577 §12; 2007 c.510 §1]

162.385 Giving false information to peace officer for a citation or arrest on a warrant. (1) A person commits the crime of giving false information to a peace officer for issuance or service of a citation or for an arrest on a warrant if the person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of:

(a) The officer's issuing or serving the person a citation under authority of ORS 133.055 to 133.076 or ORS chapter 153; or

(b) The officer's arresting the person on a warrant.

(2) A person who violates this section commits a Class A misdemeanor. [1983 c.661 §11; 1999 c.1051 §70; 2003 c.777 §1; 2007 c.771 §1]

MENACING

163.190 Menacing. (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor. [1971 c.743 §95]

FORGERY AND RELATED OFFENSES

165.002 Definitions for ORS 165.002 to 165.070. As used in ORS 165.002 to 165.027, and 165.032 to 165.070, unless the context requires otherwise:

(1) "Written instrument" means any paper, document, instrument, article or electronic record containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.

(5) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or pur-

ports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(7) To "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

(8) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

(9) "Electronic record" has the meaning given that term in ORS 84.004.

(10) "Signature" includes, but is not limited to, an electronic signature, as defined in ORS 84.004. [1971 c.743 §151; 2001 c.535 §27]

165.013 Forgery in the first degree. (1) A person commits the crime of forgery in the first degree if the person violates ORS 165.007:

(a) And the written instrument is or purports to be any of the following:

(A) Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency;

(B) Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person;

(C) A deed, will, codicil, contract or assignment;

(D) A check for \$1,000 or more, a credit card purchase slip for \$1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total \$1,000 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or

(E) A public record; or

(b) By falsely making, completing or altering, or by uttering, at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels or a combination of at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels.

(2) The value of single check or credit card transactions may be added together under subsection (1)(a)(D) of this section if the transactions were committed:

(a) Against multiple victims within a 30-day period; or

(b) Against the same victim within a 180-day period.

(3) Forgery in the first degree is a Class C felony. [1971 c.743 §153; 1993 c.680 §25; 2005 c.761 §1]

165.017 Criminal possession of a forged instrument in the second degree.

(1) A person commits the crime of criminal possession of a forged instrument in the second degree if, knowing it to be forged and with intent to utter same, the person possesses a forged instrument.

(2) Criminal possession of a forged instrument in the second degree is a Class A misdemeanor. [1971 c.743 §154]

165.022 Criminal possession of a forged instrument in the first degree.

(1) A person commits the crime of criminal possession of a forged instrument in the first degree if, knowing it to be forged and with intent to utter same, the person possesses a forged instrument of the kind and in the amount specified in ORS 165.013 (1).

(2) Criminal possession of a forged instrument in the first degree is a Class C felony. [1971 c.743 §155; 2005 c.761 §2]

165.055 Fraudulent use of a credit card.

(1) A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, the person uses a credit card for the purpose of obtaining property or services with knowledge that:

- (a) The card is stolen or forged; or
- (b) The card has been revoked or canceled; or
- (c) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(2) "Credit card" means a card, booklet, credit card number or other identifying symbol or instrument evidencing an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(3) The value of single credit card transactions may be added together if the transactions were committed:

- (a) Against multiple victims within a 30-day period; or
- (b) Against the same victim within a 180-day period.

(4) Fraudulent use of a credit card is:

(a) A Class A misdemeanor if the aggregate total amount of property or services the person obtains or attempts to obtain is under \$750.

(b) A Class C felony if the aggregate total amount of property or services the person obtains or attempts to obtain is \$750 or more. [1971 c.743 §160; 1973 c.133 §7; 1987 c.907 §11; 1993 c.680 §26]

165.065 Negotiating a bad check. (1) A person commits the crime of negotiating a bad check if the person makes, draws or utters a check or similar sight order for the

payment of money, knowing that it will not be honored by the drawee.

(2) For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

(3) Negotiating a bad check is:

(a) A Class A misdemeanor, except as provided in paragraph (b) of this subsection.

(b) Enhanced from a Class A misdemeanor to a Class C felony if at the time of sentencing it is established beyond a reasonable doubt that the person has been convicted in this state, within the preceding five years, of the crime of negotiating a bad check or of theft by deception by means of a bad check. [1971 c.743 §161; 1979 c.594 §1]

165.080 Falsifying business records.

(1) A person commits the crime of falsifying business records if, with intent to defraud, the person:

(a) Makes or causes a false entry in the business records of an enterprise; or

(b) Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

(c) Fails to make a true entry in the business records of an enterprise in violation of a known duty imposed upon the person by law or by the nature of the position of the person; or

(d) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(2) Falsifying business records is a Class A misdemeanor. [1971 c.743 §163]

165.100 Issuing a false financial statement.

(1) A person commits the crime of issuing a false financial statement if, with intent to defraud, the person:

(a) Knowingly makes or utters a written statement which purports to describe the financial condition or ability to pay of the person or some other person and which is inaccurate in some material respect; or

(b) Represents in writing that a written statement purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to that person's current financial condition or ability to pay, knowing the statement to be materially inaccurate in that respect.

(2) Issuing a false financial statement is a Class A misdemeanor. [1971 c.743 §167]

IDENTITY THEFT

165.800 Identity theft. (1) A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

(2) Identity theft is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing alcohol;

(b) Was under 18 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing tobacco products; or

(c) Used the personal identification of another person solely for the purpose of misrepresenting the person's age to gain access to a:

(A) Place the access to which is restricted based on age; or

(B) Benefit based on age.

(4) As used in this section:

(a) "Another person" means a real person, whether living or deceased, or an imaginary person.

(b) "Personal identification" includes, but is not limited to, any written document or electronic data that does, or purports to, provide information concerning:

(A) A person's name, address or telephone number;

(B) A person's driving privileges;

(C) A person's Social Security number or tax identification number;

(D) A person's citizenship status or alien identification number;

(E) A person's employment status, employer or place of employment;

(F) The identification number assigned to a person by a person's employer;

(G) The maiden name of a person or a person's mother;

(H) The identifying number of a person's depository account at a "financial institution" or "trust company," as those terms are defined in ORS 706.008, or a credit card account;

(I) A person's signature or a copy of a person's signature;

(J) A person's electronic mail name, electronic mail signature, electronic mail address or electronic mail account;

(K) A person's photograph;

(L) A person's date of birth; and

(M) A person's personal identification number. [1999 c.1022 §1; 2001 c.870 §3; 2007 c.583 §1]

165.803 Aggravated identity theft. (1) A person commits the crime of aggravated identity theft if:

(a) The person violates ORS 165.800 in 10 or more separate incidents within a 180-day period;

(b) The person violates ORS 165.800 and the person has a previous conviction for aggravated identity theft;

(c) The person violates ORS 165.800 and the losses incurred in a single or aggregate transaction are \$10,000 or more within a 180-day period; or

(d) The person violates ORS 165.800 and has in the person's custody, possession or control 10 or more pieces of personal identification from 10 or more different persons.

(2) Aggravated identity theft is a Class B felony.

(3) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after January 1, 2008; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4) The state shall plead in the accusatory instrument and prove beyond a reasonable doubt, as an element of the offense, the previous conviction for aggravated identity theft. [2007 c.584 §1]

MISREPRESENTATION OF AGE

165.805 Misrepresentation of age by a minor. (1) A person commits the crime of misrepresentation of age by a minor if:

(a) Being less than a certain, specified age, the person knowingly purports to be of any age other than the true age of the person with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or

(b) Being unmarried, the person knowingly represents that the person is married with the intent of securing a right, benefit or privilege which by law is denied to unmarried persons.

(2) Misrepresentation of age by a minor is a Class C misdemeanor.

(3) In addition to and not in lieu of any other penalty established by law, a person who, using a driver permit or license or other identification issued by the Department of Transportation of this state or its equivalent in another state, commits the crime of misrepresentation of age by a minor in order to purchase or consume alcoholic liquor may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the department under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) The prohibitions of this section do not apply to any person acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under a certain, specified age.

(5) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [1971 c.743 §285; 1991 c.860 §1; 1993 c.18 §25; 2001 c.791 §3]

DISORDERLY CONDUCT; HARASSMENT

166.023 Disorderly conduct in the first degree. (1) A person commits the crime of disorderly conduct in the first degree if, with intent to cause public inconvenience, annoyance or alarm, or knowingly creating a risk thereof, the person initiates or circulates a report, knowing it to be false:

(a) Concerning an alleged hazardous substance or an alleged or impending fire, explosion, catastrophe or other emergency; and

(b) Stating that the hazardous substance, fire, explosion, catastrophe or other emergency is located in or upon a school as defined in ORS 339.315.

(2)(a) Disorderly conduct in the first degree is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, disorderly conduct in the first degree is a Class C felony if the defendant

has at least one prior conviction for violating subsection (1) of this section. [2005 c.631 §3]

166.025 Disorderly conduct in the second degree. (1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or in violent, tumultuous or threatening behavior;

(b) Makes unreasonable noise;

(c) Disturbs any lawful assembly of persons without lawful authority;

(d) Obstructs vehicular or pedestrian traffic on a public way;

(e) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;

(f) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

(g) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(2) Disorderly conduct in the second degree is a Class B misdemeanor. [1971 c.743 §220; 1983 c.546 §5; 2001 c.104 §55; 2005 c.631 §1]

166.065 Harassment. (1) A person commits the crime of harassment if the person intentionally:

(a) Harasses or annoys another person by:

(A) Subjecting such other person to offensive physical contact; or

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates subsection (1) of this section by subjecting another person to offensive physical contact and the offensive physical contact consists of touching the sexual or other intimate parts of the other person. [1971 c.743 §223; 1981 c.468 §1; 1985 c.498 §1; 1987 c.806 §3; 1995 c.802 §1; 2001 c.870 §2]

GAMBLING OFFENSES

167.117 Definitions for ORS 167.108 to 167.164 and 464.270 to 464.530. As used in ORS 167.108 to 167.164 and 464.270 to 464.530, unless the context requires otherwise:

(1) "Bingo or lotto" means a game, played with cards bearing lines of numbers, in which a player covers or uncovers a number selected from a container, and which is won by a player who is present during the game and who first covers or uncovers the selected numbers in a designated combination, sequence or pattern.

(2) "Bookmaker" means a person who unlawfully accepts a bet from a member of the public upon the outcome of a future contingent event and who charges or accepts a percentage, fee or vigorish on the wager.

(3) "Bookmaking" means promoting gambling by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(4) "Casino game" means any of the traditional gambling-based games commonly known as dice, faro, monte, roulette, fan-tan, twenty-one, blackjack, Texas hold-'em, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panquinqui, red dog, acey-deucey, or any other gambling-based game similar in form or content.

(5)(a) "Charitable, fraternal or religious organization" means any person that is:

(A) Organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal or other non-profit purposes; and

(B) Exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes.

(b) The fact that contributions to an organization profiting from a contest of chance do not qualify for a charitable deduction for tax purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the Internal Revenue Code of 1986, as amended, constitutes

prima facie evidence that the organization is not a bona fide charitable, fraternal or religious organization.

(6) "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(7) "Gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. "Gambling" does not include:

(a) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

(b) Engaging in contests of chance under the following conditions:

(A) The contest is played for some token other than money;

(B) An individual contestant may not purchase more than \$100 worth of tokens for use in the contest during any 24-hour period;

(C) The tokens may be exchanged only for property other than money;

(D) Except when the tokens are exchanged for a beverage or merchandise to be consumed on the premises, the tokens are not redeemable on the premises where the contest is conducted or within 50 miles thereof; and

(E) Except for charitable, fraternal or religious organizations, no person who conducts the contest as owner, agent or employee profits in any manner from operation of the contest.

(c) Social games.

(d) Bingo, lotto or raffle games or Monte Carlo events operated in compliance with ORS 167.118, by a charitable, fraternal or religious organization licensed pursuant to ORS 167.118, 464.250 to 464.380 and 464.420 to 464.530 to operate such games.

(8) "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and

policy schemes are not gambling devices within this definition. Amusement devices other than gray machines, that do not return to the operator or player thereof anything but free additional games or plays, shall not be considered to be gambling devices.

(9)(a) "Gray machine" means any electrical or electromechanical device, whether or not it is in working order or some act of manipulation, repair, adjustment or modification is required to render it operational, that:

(A) Awards credits or contains or is readily adaptable to contain, a circuit, meter or switch capable of removing or recording the removal of credits earned by a player, other than removal during the course of continuous play; or

(B) Plays, emulates or simulates a casino game, bingo or keno.

(b) A device is no less a gray machine because, apart from its use or adaptability as such, it may also sell or deliver something of value on the basis other than chance.

(c) "Gray machine" does not include:

(A) Any device commonly known as a personal computer, including any device designed and marketed solely for home entertainment, when used privately and not for a fee and not used to facilitate any form of gambling;

(B) Any device operated under the authority of the Oregon State Lottery;

(C) Any device manufactured or serviced but not operated in Oregon by a manufacturer who has been approved under rules adopted by the Oregon State Lottery Commission;

(D) A slot machine;

(E) Any device authorized by the Oregon State Lottery Commission for:

(i) Display and demonstration purposes only at trade shows; or

(ii) Training and testing purposes by the Department of State Police; or

(F) Any device used to operate bingo in compliance with ORS 167.118 by a charitable, fraternal or religious organization licensed to operate bingo pursuant to ORS 167.118, 464.250 to 464.380 and 464.420 to 464.530.

(10) "Handle" means the total amount of money and other things of value bet on the bingo, lotto or raffle games, the value of raffle chances sold or the total amount collected from the sale of imitation money during Monte Carlo events.

(11) "Internet" means an interactive computer service or system or an information service, system or access software pro-

vider that provides or enables computer access by multiple users to a computer server and includes, but is not limited to, an information service, system or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to, a World Wide Web page, newsgroup, message board, mailing list or chat area on any interactive computer service or system or other online service.

(12) "Lottery" or "policy" means an unlawful gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones;

(b) The winning chances are to be determined by a drawing or by some other method; and

(c) The holders of the winning chances are to receive something of value.

(13) "Monte Carlo event" means a gambling event at which wagers are placed with imitation money upon contests of chance in which players compete against other players or against the house. As used in this subsection, "imitation money" includes imitation currency, chips or tokens.

(14) "Numbers scheme or enterprise" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of a future contingent event otherwise unrelated to the particular scheme.

(15) "Operating expenses" means those expenses incurred in the operation of a bingo, lotto or raffle game, including only the following:

(a) Salaries, employee benefits, workers' compensation coverage and state and federal employee taxes;

(b) Security services;

(c) Legal and accounting services;

(d) Supplies and inventory;

(e) Rent, repairs, utilities, water, sewer and garbage;

(f) Insurance;

(g) Equipment;

(h) Printing and promotions;

(i) Postage and shipping;

(j) Janitorial services and supplies; and

(k) Leasehold improvements.

(16) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in bookmaking is not a player.

(17) "Profits from unlawful gambling" means that a person, acting other than solely as a player, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby the person participates or is to participate in the proceeds of unlawful gambling.

(18) "Promotes unlawful gambling" means that a person, acting other than solely as a player, engages in conduct that materially aids any form of unlawful gambling. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes unlawful gambling if, having control or right of control over premises being used with the knowledge of the person for purposes of unlawful gambling, the person permits the unlawful gambling to occur or continue or makes no effort to prevent its occurrence or continuation.

(19) "Raffle" means a lottery operated by a charitable, fraternal or religious organization wherein the players pay something of value for chances, represented by numbers or combinations thereof or by some other medium, one or more of which chances are to be designated the winning ones or determined by a drawing and the player holding the winning chance is to receive something of value.

(20)(a) "Slot machine" means a gambling device that as a result of the insertion of a coin or other object operates, either com-

pletely automatically, or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value or otherwise entitle the player to something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on the basis other than chance.

(b) "Slot machine" does not include any device authorized by the Oregon State Lottery Commission for:

(A) Display and demonstration purposes only at trade shows; or

(B) Training and testing purposes by the Department of State Police.

(21) "Social game" means:

(a) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and

(b) If authorized pursuant to ORS 167.121, a game, other than a lottery, 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.

(22) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein.

(23) "Trade show" means an exhibit of products and services that is:

(a) Not open to the public; and

(b) Of limited duration.

(24) "Unlawful" means not specifically authorized by law. [1971 c.669 §3a; 1971 c.743 §263; 1973 c.788 §1; 1974 c.7 §1; 1975 c.421 §1; 1977 c.850 §1; 1983 c.813 §1; 1987 c.914 §1; 1991 c.962 §7; 1995 c.577 §2; 1997 c.867 §1; 1999 c.193 §1; 2001 c.228 §1; 2001 c.502 §7; 2005 c.57 §1; 2005 c.355 §2]

167.122 Unlawful gambling in the second degree. (1) A person commits the crime of unlawful gambling in the second degree if the person knowingly:

(a) Places a bet with a bookmaker; or

(b) Participates or engages in unlawful gambling as a player.

(2) Unlawful gambling in the second degree is a Class A misdemeanor. [1971 c.743 §264; 1997 c.867 §21]

167.127 Unlawful gambling in the first degree. (1) A person commits the crime of unlawful gambling in the first degree if the person knowingly promotes or profits from unlawful gambling.

(2) Unlawful gambling in the first degree is a Class C felony. [1971 c.743 §265; 1997 c.867 §22]

REGULATION OF PRIVATE SECURITY SERVICE PROVIDERS

181.870 Definitions. As used in ORS 181.620, 181.870 to 181.887, 181.991 and 203.090:

(1) "Certification" means recognition by the Department of Public Safety Standards and Training that a private security professional meets all of the qualifications listed in ORS 181.875.

(2) "Executive manager" means a person:

(a) Who is authorized to act on behalf of a company or business in matters of licensure and certification;

(b) Who is authorized to hire and terminate personnel;

(c) Whose primary responsibility is the management of certified private security professionals; and

(d) Who has final responsibility for a company's or business's compliance with ORS 181.870 to 181.887.

(3) "Instructor" means any person who has been certified by the department as meeting the requirements to provide instruction to private security providers or applicants.

(4) "License" means recognition by the department that an executive manager or supervisory manager meets the requirements adopted by the Board on Public Safety Standards and Training as necessary to provide private security services.

(5) "Primary responsibility" means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(6) "Private security professional" means an individual who performs, as the individual's primary responsibility, private security services for consideration, regardless of whether the individual, while performing the private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services.

(7) "Private security provider" means any individual who performs the functions of a private security professional, executive manager, supervisory manager or instructor.

(8) "Private security services" means the performance of at least one of the following activities:

(a) Observing and reporting unlawful activity.

(b) Preventing or detecting theft or misappropriation of goods, money or other items of value.

(c) Protecting individuals or property, including but not limited to proprietary information, from harm or misappropriation.

(d) Controlling access to premises being protected.

(e) Securely moving prisoners.

(f) Taking enforcement action by detaining persons or placing persons under arrest under ORS 133.225.

(g) Providing canine services for guarding premises or for detecting unlawful devices or substances.

(9) "Supervisory manager" means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals. [1995 c.510 §1a; 1997 c.588 §1; 1997 c.853 §23; 1999 c.198 §1; 2001 c.498 §1; 2003 c.14 §84; 2003 c.546 §3; 2005 c.447 §1]

181.871 Applicability. (1) ORS 181.870 to 181.887 do not apply to:

(a) A person certified by the Department of Public Safety Standards and Training as a police officer or a parole and probation officer.

(b) A law enforcement officer of the United States.

(c) An officer or employee of this state, Oregon Health and Science University established by ORS 353.020 or the United States while performing duties of the office or employment.

(d) A person appointed or commissioned by the Governor to perform law enforcement or security services.

(e) An attorney admitted to practice law in this state while engaged in the practice of law.

(f) An insurance adjuster licensed in this state while performing duties authorized by the license.

(g) A person who monitors fire alarm systems and other alarm systems that are not designed to detect unauthorized intrusions while monitoring such systems.

(h) A person while protecting the person's property.

(i) A person who repairs and installs intrusion alarms while repairing or installing intrusion alarms.

(j) A person acting as an investigator as defined in ORS 703.401.

(k) A person performing crowd management or guest services, including, but not limited to, a person described as a ticket taker, an usher, a parking attendant or event staff or a person employed for the purpose of age verification by a licensee of the Oregon Liquor Control Commission, who is not armed and is not hired with the primary responsibility of taking enforcement action as described in ORS 181.870 (8)(f).

(L) A person performing security services at a facility regulated by the United States Nuclear Regulatory Commission if the facility is operated by the person's employer.

(m) An individual while on active duty as a member of the armed services or while performing duties as a law enforcement officer.

(n) An employee of a financial institution who has been designated as a security officer for the financial institution pursuant to the Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) and regulations adopted thereunder or pursuant to ORS 723.276 (5).

(2) The exemption provided by subsection (1)(k) of this section applies only:

(a) If there is at least one person on-site who is certified or licensed under ORS 181.878 for every 10 or fewer uncertified persons performing the services described in subsection (1)(k) of this section;

(b) If any enforcement action, as described in ORS 181.870 (8)(f), other than incidental or temporary action, is taken by or under the supervision of a person certified or licensed under ORS 181.878; and

(c) During the time when a crowd has assembled for the purpose of attending or taking part in an organized event, including pre-event assembly, event operation hours and post-event departure activities. [1995 c.510 §2; 1997 c.588 §2; 1997 c.853 §24; 1997 c.870 §25; 1999 c.198 §6; 1999 c.291 §29; 2001 c.498 §2; 2001 c.838 §22; 2003 c.14 §85; 2003 c.546 §5; 2005 c.447 §2]

181.873 Prohibited acts; temporary assignment of person not certified allowed.

(1) It is unlawful:

(a) For a person to engage in the business of, or perform any service as a private security professional, or to offer services in such capacity unless the person has obtained a certificate under ORS 181.878.

(b) For a person to engage in the business of, or perform any service as an executive manager or supervisory manager, or to offer services in such capacities unless the person has obtained a license under ORS 181.878.

(c) For a person to perform supervisory duties over persons performing crowd management or guest services, as described in ORS 181.871, unless the person has obtained a license or certificate under ORS 181.878.

(d) Except as otherwise provided in subsection (2) of this section, for an executive manager to assign a person to perform private security services unless the person is certified as a private security professional under ORS 181.878.

(2) An executive manager may temporarily assign a person who is not certified as required by this section to perform private security services within this state for a period of time not to exceed 90 days if:

(a) The person is employed in another state;

(b) The person holds a private security professional's certification or license from the other state; and

(c) The certification or licensing standards of the other state meet or exceed the standards of this state. [1995 c.510 §3; 2001 c.498 §3; 2003 c.546 §7; 2005 c.447 §3]

181.875 Qualifications for private security professional; rules. (1) An applicant for certification as a private security professional:

(a) Must be:

(A) At least 18 years of age, if an applicant for certification as an unarmed private security professional; or

(B) At least 21 years of age, if an applicant for certification as an armed private security professional;

(b) Must have satisfactorily completed training requirements approved by the Board on Public Safety Standards and Training; and

(c) Must not be required to register or be registered as a sex offender under ORS 181.595, 181.596 or 181.597.

(2) The Department of Public Safety Standards and Training, in consultation with the board, shall adopt rules specifying those crimes for which a conviction requires the denial or revocation of certification as a private security professional or instructor. [1995 c.510 §4; 1997 c.588 §5; 1999 c.198 §3; 2001 c.288 §1; 2001 c.654 §2a; 2005 c.447 §4]

181.876 Application procedure. An applicant for certification as a private security professional shall submit a written application to the Department of Public Safety Standards and Training. The application must be on a form approved by the department, contain all the information required by the department and be made under oath to the department. [1995 c.510 §5; 1997 c.588 §6; 1997 c.853 §25; 1999 c.198 §4; 2001 c.654 §3; 2005 c.447 §5]

181.877 Qualifications for executive manager or supervisory manager. An applicant for licensure as an executive manager or supervisory manager must meet the qualifications set forth in ORS 181.875. [2001 c.288 §3; 2001 c.498 §4a; 2003 c.546 §10]

181.878 Board on Public Safety Standards and Training to establish standards; department to establish procedures and fees; rules. (1) The Board on Public Safety Standards and Training shall establish standards for:

(a) Issuing, denying, renewing and revoking licenses for executive managers and supervisory managers; and

(b) Reviewing the private security services of executive managers in relation to the licensing and certification standards set forth in ORS 181.870 to 181.887.

(2) In accordance with any applicable provision of ORS chapter 183, to promote consistent standards for private security services by improving the competence of private security providers, the board, in conjunction with the Private Security Policy Committee, shall establish reasonable minimum standards of physical, emotional, intellectual and moral fitness for private security providers.

(3) The board, in consultation with the Department of Public Safety Standards and Training, may establish by rule accreditation standards for required training programs. The board, in consultation with the Private Security Policy Committee, may establish to what extent training or educational programs offered by employers may be considered equivalent to required training programs.

(4) The department shall:

(a) Establish and carry out procedures for issuing, denying, renewing and revoking, subject to terms and conditions imposed by the department, a private security provider's certificate or license;

(b) In collaboration with the Private Security Policy Committee, recommend for approval by the board the content of and standards for all training courses and testing required for certification as a private security professional and the standards for all instructors providing the training;

(c) Establish procedures in consultation with the board for temporary assignment of persons performing private security services for a period of no longer than 120 days while an application for certification is being processed;

(d) In collaboration with the Private Security Policy Committee, establish fees for issuing certificates and licenses to private security providers. The fees may not exceed the prorated direct costs of administering:

(A) The certification or licensing program required by this section;

(B) The criminal records checks required by ORS 181.880; and

(C) Any training program required by rules of the department or board; and

(e) In collaboration with the Private Security Policy Committee, establish fees for accrediting training programs offered by employers.

(5) In establishing procedures for issuing certificates and licenses under subsection (4)(a) of this section, the department shall establish a procedure for issuing a certificate or license to a person upon submission by the person of proof of successful completion of a training program accredited by the board pursuant to subsection (3) of this section as being equivalent to the required training program offered by the department.

(6) The department shall investigate alleged violations of the provisions of ORS 181.870 to 181.887 and of any rules adopted by the department or the board.

(7) The department and the board may adopt rules necessary to carry out their duties under ORS 181.870 to 181.887 and 181.991. For efficiency, the department and board may adopt rules jointly as a single set of combined rules. [1995 c.510 §6; 1997 c.588 §7; 1997 c.853 §26; 1999 c.198 §5; 2001 c.498 §5; 2003 c.546 §12; 2005 c.447 §6]

181.880 Licenses and certificates; issuance; duration. (1) A license or certificate issued by the Department of Public Safety Standards and Training under ORS 181.878 expires two years following the date of issuance or on the assigned renewal date.

(2) The department shall offer certificates or licenses to private security providers in levels and categories as established by the Board on Public Safety Standards and Training in consultation with the department.

(3) Upon receipt of an application for certification under ORS 181.876, the department shall forward a complete set of the applicant's fingerprints to the Department of State Police and request that the Department of State Police conduct a nationwide criminal records check of the applicant as provided in ORS 181.534. Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall maintain in the department's files the fingerprint cards used to conduct the criminal records check. [1995 c.510 §§7,18; 1997 c.853 §27; 1999 c.198 §2; 2005 c.730 §§11,80]

181.882 Hearing if license or certificate denied, suspended or revoked. (1) If the Board on Public Safety Standards and Training or the Department of Public Safety Standards and Training denies a license or certificate or declines to renew a license or

certificate or suspends or revokes a license or certificate, opportunity for a hearing consistent with the provisions of ORS 181.661 shall be afforded as provided in ORS chapter 183.

(2) Judicial review of orders issued after a hearing under subsection (1) of this section shall be as provided in ORS chapter 183. [1995 c.510 §8; 1997 c.853 §28]

181.885 Effect of being charged with crime. (1) If a private security provider is charged with a crime, the private security provider shall notify the private security provider's employer, or, if the private security provider is not employed, the Department of Public Safety Standards and Training, of that fact not later than 48 hours after the charge is filed.

(2) If an executive manager knows that an employee has been charged with a crime, the executive manager shall notify the department of that fact not later than 48 hours after the executive manager acquired the knowledge.

(3) The department may suspend the certificate or license of a private security provider charged with a crime pending disposition of the charge.

(4) If an applicant for certification or licensure as a private security provider is charged with a crime, the applicant shall notify the department of that fact not later than 48 hours after the charge is filed. [1995 c.510 §10; 1997 c.853 §30; 2003 c.546 §4]

181.886 Persons providing private security services on September 9, 1995. Any person engaged in providing private security services on September 9, 1995, shall file an application for a license or certificate within 180 days after September 9, 1995. Such persons may continue providing private security services without a license or certificate until a license or certificate is issued or denied. [1995 c.510 §11]

181.887 Disposition of funds received by department. All moneys received by the Department of Public Safety Standards and Training under ORS 181.870 to 181.887 and 181.991, including penalties recovered under ORS 181.991 (2), shall be paid into the General Fund in the State Treasury and placed to the credit of the Police Standards and Training Account established in ORS 181.690. [1995 c.510 §12; 1997 c.853 §31; 2005 c.447 §12; 2007 c.362 §2]

181.990 Penalties. Violation of ORS 181.140 is a Class A misdemeanor. [Amended by 1971 c.743 §343]

181.991 Penalties relating to regulation of private security services; criminal and civil. (1) A person commits a:

(a) Class A misdemeanor if the person knowingly falsifies any information pertinent to an application for a license or certificate under ORS 181.870 to 181.887.

(b) Class A violation if the person provides private security services as a private security professional without being certified to do so under ORS 181.878 and having in the person's possession the certificate issued under ORS 181.878.

(2) In addition to any other liability or penalty provided by law, the Board on Public Safety Standards and Training may impose a civil penalty not to exceed \$1,500 for a violation of any provision of ORS 181.870 to 181.887 or any rule adopted by the Board on Public Safety Standards and Training or Department of Public Safety Standards and Training pursuant to ORS 181.870 to 181.887.

(3) Judicial review of civil penalties imposed under subsection (2) of this section shall be as provided under ORS 183.480. [1995 c.510 §§13,14; 1997 c.853 §33; 2005 c.447 §8]

TAX REVENUE DISBURSEMENT

221.760 Prerequisites for cities in counties over 100,000 population to receive revenues from cigarette, gas and liquor taxes. (1) The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall disburse such funds in the case of a city located within a county having more than 100,000 inhabitants, according to the most recent federal decennial census, only if the officer reasonably is satisfied that the city meets the requirements set out in subsection (2) of this section, or if the city provides four or more of the following municipal services:

- (a) Police protection.
- (b) Fire protection.
- (c) Street construction, maintenance and lighting.
- (d) Sanitary sewers.
- (e) Storm sewers.
- (f) Planning, zoning and subdivision control.
- (g) One or more utility services.

(2) In the year in which any city is first incorporated and the following two years it shall be considered a city for the purposes of ORS 323.455, 366.785 to 366.820 and 471.805 if the city charter gives the city power to provide four or more of the municipal services enumerated in subsection (1) of this section. [1969 c.634 §§1,2]

221.770 Revenue sharing to cities; conditions for receipt; formula for distribution. (1) A share of certain revenues of this state shall be apportioned among and

distributed to the cities of this state for general purposes as provided in this section. A city shall not be included in apportionments or receive distributions under this section for a fiscal year commencing on July 1 unless the city:

(a) Elects to receive distributions under this section for the fiscal year by enactment of an ordinance or resolution expressing that election and filing a copy of that ordinance or resolution with the Oregon Department of Administrative Services not later than July 31 of the fiscal year;

(b) Holds at least one public hearing, after adequate public notice, at which citizens have the opportunity to provide written and oral comment to the authority responsible for approving the proposed budget of the city for the fiscal year on the possible uses of the distributions, including offset against property tax levies by the city for the fiscal year, and certifies its compliance with this paragraph to the Oregon Department of Administrative Services not later than July 31 of the fiscal year;

(c) Holds at least one public hearing, after adequate public notice, at which citizens have the opportunity to provide written and oral comment to, and ask questions of, the authority responsible for adopting the budget of the city for the fiscal year on the proposed use of the distributions in relation to the entire budget of the city for the fiscal year, including possible offset of the distributions against property tax levies by the city for the fiscal year, and certifies its compliance with this paragraph to the Oregon Department of Administrative Services not later than July 31 of the fiscal year; and

(d) Levied a property tax for the year preceding the year in which revenue sharing is due under ORS 471.810 and this section.

(2) Not later than 35 days after the last day of each calendar quarter ending March 31, June 30, September 30 and December 31, the Oregon Liquor Control Commission shall determine the amount of the net revenue under ORS 471.805, received during the preceding calendar quarter and shall certify that amount to the Oregon Department of Administrative Services.

(3) In addition to amounts otherwise apportioned to cities under ORS 471.810, not later than 20 days after the date the Oregon Department of Administrative Services receives a certification under subsection (2) of this section, the department shall apportion among the cities of this state in the manner provided in subsection (4) of this section an amount equal to 14 percent of the amount so certified, and shall pay to each city the amount so apportioned to the city. Payments

shall be made from the Oregon Liquor Control Commission Account.

(4) The amount apportioned to each city under subsection (3) of this section shall be a percentage of the total amount to be apportioned among the cities determined by dividing the adjusted population of the city by the sum of the adjusted populations of all cities. The adjusted population of a city shall be determined by multiplying the city's population by the sum of:

(a) The city's local consolidated property taxes per capita divided by the average consolidated property taxes per capita for all cities in the state; and

(b) The amount of state income per capita divided by the amount of city income per capita.

(5) The amount apportioned to each city shall be further limited to an amount no greater than the amount of all property taxes levied by the city during the year previous to the year in which distributions are made.

(6) For purposes of the formula set forth in subsection (4) of this section, "city population" is the population of a city as last determined under ORS 190.510 to 190.590.

(7)(a) For purposes of the formula set forth in subsection (4) of this section, "local consolidated property taxes" has the meaning given in subsection (8) of this section, for a city divided by the population of the city as last determined under ORS 190.510 to 190.590.

(b) The Oregon Department of Administrative Services shall determine the amounts of property taxes for each city during the fiscal year closing on June 30 preceding the fiscal year commencing on July 1 for which calendar quarter apportionments are made, and that determination shall be used for each calendar quarter apportionment for that fiscal year commencing on July 1.

(8) For purposes of subsection (7) of this section "consolidated property taxes" are the total of all compulsory contributions in the form of ad valorem taxes on property located within a city levied during a one-year period by the city, a county, any school district and any special governmental district for public purposes and in amounts as compiled by the Department of Revenue on the basis of application of consolidated tax rates to assessor code area valuations.

(9) For purposes of the formula set forth in subsection (4) of this section, "income per capita" is the estimated average annual money income of residents of this state and of residents of each city of this state, respectively, based upon the latest information available from the most recent federal decennial census.

(10) A city receiving a distribution under this section may return all or any part of the distribution to the Oregon Department of Administrative Services, which shall deposit the returned distribution or part thereof in the General Fund to be available for payment of the general expenses of the state. [1977 c.831 §1; 1987 c.158 §35; 1987 c.406 §1; 1995 c.79 §79; 1997 c.108 §1; 2005 c.755 §4]

SUSPENSION OF YOUTH DRIVING PRIVILEGES

419C.472 Suspension of driving privileges. (1) The court may order that the driving privileges of a youth be suspended if:

(a) The petition alleges that the youth is within the jurisdiction of the court for violating ORS 471.430;

(b) The youth has been issued a summons under ORS 419C.306; and

(c) The youth fails to appear as required by the summons.

(2) When a court issues an order under subsection (1) of this section:

(a) The court shall send a notice to the Department of Transportation certifying that the youth failed to appear and that the court has ordered the suspension of the driving privileges of the youth; and

(b) Neither the state nor a juvenile department counselor may file a petition under ORS 419C.250 alleging that the youth is within the jurisdiction of the court for having committed an act that if committed by an adult would constitute a violation of ORS 153.992. [2001 c.817 §5]

BEVERAGE CONTAINERS (Generally)

459A.700 Definitions for ORS 459A.700 to 459A.740. As used in ORS 459.992 (3) and (4) and 459A.700 to 459A.740, unless the context requires otherwise:

(1) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(2) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar, or carton containing a beverage.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Consumer" means every person who purchases a beverage in a beverage container for use or consumption.

(5) "Dealer" means every person in this state who engages in the sale of beverages in beverage containers to a consumer, or means

a redemption center certified under ORS 459A.735.

(6) "Distributor" means every person who engages in the sale of beverages in beverage containers to a dealer in this state including any manufacturer who engages in such sales.

(7) "In this state" means within the exterior limits of the State of Oregon and includes all territory within these limits owned by or ceded to the United States of America.

(8) "Manufacturer" means every person bottling, canning or otherwise filling beverage containers for sale to distributors or dealers.

(9) "Place of business of a dealer" means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

(10) "Use or consumption" includes the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale or the keeping or retention of a beverage for the purposes of sale. [Formerly 459.810]

Note: The amendments to 459A.700 by section 1, chapter 303, Oregon Laws 2007, become operative January 1, 2009. See section 10, chapter 303, Oregon Laws 2007. The text that is operative on and after January 1, 2009, is set forth for the user's convenience.

459A.700. As used in ORS 459.992 (3) and (4) and 459A.700 to 459A.740, unless the context requires otherwise:

(1) "Beverage" means water and flavored water, beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(2)(a) "Beverage container" means an individual, separate, sealed glass, metal or plastic bottle or can containing a beverage in a quantity less than or equal to three fluid liters.

(b) "Beverage container" does not include cartons, foil pouches and drink boxes.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Consumer" means every person who purchases a beverage in a beverage container for use or consumption.

(5) "Dealer" means every person in this state who engages in the sale of beverages in beverage containers to a consumer, or means a redemption center certified under ORS 459A.735.

(6) "Distributor" means every person who engages in the sale of beverages in beverage containers to a dealer in this state including any manufacturer who engages in such sales.

(7) "Importer" means any dealer or manufacturer who directly imports beverage containers into this state.

(8) "In this state" means within the exterior limits of the State of Oregon and includes all territory within these limits owned by or ceded to the United States of America.

(9) "Manufacturer" means every person bottling, canning or otherwise filling beverage containers for sale to distributors, importers or dealers.

(10) "Place of business of a dealer" means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

(11) "Use or consumption" includes the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale or the keeping or retention of a beverage for the purposes of sale.

(12) "Water and flavored water" means any beverage identified through the use of letters, words or symbols on its product label as a type of water.

Note: Sections 8 and 9, chapter 303, Oregon Laws 2007, provide:

Sec. 8. Bottle Bill Task Force. (1) There is created the Bottle Bill Task Force, consisting of nine members appointed as follows:

(a) The President of the Senate shall appoint one member from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives.

(c) The Governor shall appoint seven members based upon their ability to represent the best interests of Oregon as a whole. No more than three members of the task force appointed by the Governor may receive or have previously received a substantial portion of their own income or their family's income from the beverage container industry.

(2) The task force shall study and make recommendations on beverage container collection and refund matters, including but not limited to:

(a) Establishing and paying for redemption centers to redeem beverage containers;

(b) Expanding the list of beverages to be included in the definition of "beverage" in ORS 459A.700;

(c) Increasing the refund value to be paid when redeeming beverage containers;

(d) Limiting the redemption of beverage containers that are purchased out of state; and

(e) Collecting and utilizing the refund value of unredeemed beverage containers.

(3) A majority of the members of the task force constitutes a quorum for the transaction of business.

(4) Official action by the task force requires the approval of a majority of the members of the task force.

(5) The Governor shall designate one member of the Bottle Bill Task Force to serve as chairperson, who shall serve as chairperson at the pleasure of the Governor.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(7) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(8) The task force may adopt rules necessary for the operation of the task force.

(9) The task force shall submit a report, and shall include recommendations for legislation, to the interim legislative committees on environment and natural resources on or before November 1, 2008.

(10) The Legislative Administrator shall provide staff support to the task force, with the support of the Department of Environmental Quality.

(11) Members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties.

(13) For the purposes of this section, "beverage" and "beverage container" have the meanings given those terms in ORS 459A.700. [2007 c.303 §8]

Sec. 9. Section 8 of this 2007 Act is repealed on July 1, 2009. [2007 c.303 §9]

459A.705 Refund value required. (1) Except as provided in subsection (2) of this section, every beverage container sold or offered for sale in this state shall have a refund value of not less than five cents.

(2) Every beverage container certified as provided in ORS 459A.725, sold or offered for sale in this state, shall have a refund value of not less than two cents. [Formerly 459.820]

459A.710 Practices required of dealers and distributors. Except as provided in ORS 459A.715:

(1) A dealer shall not refuse to accept from any person any empty beverage containers of the kind, size and brand sold by the dealer, or refuse to pay to that person the refund value of a beverage container as established by ORS 459A.705.

(2) A distributor shall not refuse to accept from a dealer any empty beverage containers of the kind, size and brand sold by the distributor, or refuse to pay the dealer the refund value of a beverage container as established by ORS 459A.705. [Formerly 459.830]

Note: The amendments to 459A.710 by section 2, chapter 303, Oregon Laws 2007, become operative January 1, 2009. See section 10, chapter 303, Oregon Laws 2007. The text that is operative on and after January 1, 2009, is set forth for the user's convenience.

459A.710. Except as provided in ORS 459A.715:

(1)(a) Except as provided in paragraph (b) of this subsection, a dealer may not refuse to accept from any person any empty beverage containers that contained the kind of beverage sold by the dealer, or refuse to pay to that person the refund value of a beverage container as established by ORS 459A.705.

(b) A dealer that occupies a space of less than 5,000 square feet in a single area may refuse to accept from any person any empty beverage containers of the kind, size and brand that the dealer does not sell.

(2) A distributor or importer may not refuse to accept from a dealer any empty beverage containers of the kind, size and brand sold by the distributor or importer, or refuse to pay the dealer the refund value of a beverage container as established by ORS 459A.705.

(3) The manufacturer, distributor or importer of any beverage sold in this state shall ensure that all dealers or redemption centers in this state that redeem beverage containers are paid the refund value for those beverage containers and that those beverage containers are collected from the dealer or redemption center in a timely manner.

459A.712 Liability of manufacturer, distributor and importer for failure to pay refund value of beverage containers. Any manufacturer, distributor or importer that fails to pay to a dealer or redemption center the refund value of beverage containers and to collect beverage containers as required by ORS 459A.710 (3) is liable to the dealer or redemption center for treble the

unpaid refund value and treble the collection costs incurred by the dealer or redemption center for any beverage containers that were not collected as required. [2007 c.303 §7]

Note: 459A.712 becomes operative January 1, 2009. See section 10, chapter 303, Oregon Laws 2007.

459A.715 Refusal of dealer or distributor to accept or pay refund in certain cases; notice. (1) A dealer may refuse to accept from any person, and a distributor may refuse to accept from a dealer, any empty beverage container that does not state thereon a refund value as established by ORS 459A.705.

(2) A dealer may refuse to accept and to pay the refund value of:

(a) Empty beverage containers if the place of business of the dealer and the kind of empty beverage containers are included in an order of the Oregon Liquor Control Commission approving a redemption center under ORS 459A.735.

(b) Any beverage container visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust.

(c)(A) More than 144 individual beverage containers returned by any one person during one day, if the dealer occupies a space of 5,000 or more square feet in a single area.

(B) More than 50 individual beverage containers returned by any one person during one day, if the dealer occupies a space of less than 5,000 square feet in a single area.

(d) Any beverage container that is damaged to the extent that the brand appearing on the container cannot be identified.

(3)(a) In order to refuse containers under subsection (2)(b), (c)(A) or (d) of this section, if a dealer occupies a space of 5,000 or more square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 144 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

(b) In order to refuse containers under subsection (2)(b), (c)(B) or (d) of this section, if a dealer occupies a space of less than 5,000 square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 50 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

[Formerly 459.840; 1993 c.356 §1; 2003 c.761 §1; 2007 c.303 §3]

Note: The amendments to 459A.715 by section 4, chapter 303, Oregon Laws 2007, become operative January 1, 2009. See section 10, chapter 303, Oregon Laws 2007. The text that is operative on and after January 1, 2009, is set forth for the user's convenience.

459A.715. (1) A dealer may refuse to accept from any person, and a distributor or importer may refuse to accept from a dealer, any empty beverage container that does not state thereon a refund value as established by ORS 459A.705.

(2) A dealer may refuse to accept and to pay the refund value of:

(a) Empty beverage containers if the place of business of the dealer and the kind of empty beverage containers are included in an order of the Oregon Liquor Control Commission approving a redemption center under ORS 459A.735.

(b) Any beverage container visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust.

(c)(A) More than 144 individual beverage containers returned by any one person during one day, if the dealer occupies a space of 5,000 or more square feet in a single area.

(B) More than 50 individual beverage containers returned by any one person during one day, if the dealer occupies a space of less than 5,000 square feet in a single area.

(d) Any beverage container that is damaged to the extent that the brand appearing on the container cannot be identified.

(3)(a) In order to refuse containers under subsection (2)(b), (c)(A) or (d) of this section, if a dealer occupies a space of 5,000 or more square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;
2. More than 144 individual beverage containers from any one person during one day; or
3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

(b) In order to refuse containers under subsection (2)(b), (c)(B) or (d) of this section, if a dealer occupies a space of less than 5,000 square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;
2. More than 50 individual beverage containers from any one person during one day; or
3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

459A.720 Indication of refund value; exception; prohibition of certain metal containers and plastic container holders.

(1) Every beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, or by a label or other method securely affixed to the beverage container, the refund value of the container.

(2) Subsection (1) of this section shall not apply to glass beverage containers designed for beverages having a brand name permanently marked thereon which, on October 1, 1972, had a refund value of not less than five cents.

(3) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container without the aid of a can opener.

(4) On or after March 1, 1979, no person shall sell or offer for sale at retail in this state, in addition to beverages as defined in ORS 459A.700 (1), any beverage in liquid form intended for human consumption in any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab without

the aid of a can opener. However, nothing in this subsection shall prohibit the sale of a container the only detachable part of which is a piece of pressure sensitive tape.

(5) No person shall sell or offer for sale at retail in this state metal beverage containers connected to each other by a separate holding device constructed of plastic rings or other material which will not decompose by photobiodegradation, chemical degradation, or biodegradation within 120 days of disposal. [Formerly 459.850]

459A.725 Certification of containers as reusable by more than one manufacturer; rules. (1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the Oregon Liquor Control Commission may certify beverage containers which satisfy the requirements of this section.

(2) A beverage container may be certified 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.

(3) The commission may by rule establish appropriate liquid capacities and shapes for beverage containers to be certified or decertified in accordance with the purposes set forth in subsection (1) of this section.

(4) A beverage container shall not be certified under this section if 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, it 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. [Formerly 459.860]

459A.730 Decision upon certification applications; review and withdrawal of certifications. (1) Unless an application for certification under ORS 459A.725 is denied by the Oregon Liquor Control Commission within 60 days after the filing of the application, the beverage container shall be deemed certified.

(2) The commission may review at any time certification of a beverage container. If after such review, with written notice and hearing afforded to the person who filed the application for certification under ORS 459A.725, the commission determines the

container is no longer qualified for certification, it shall withdraw certification.

(3) Withdrawal of certification shall be effective not less than 30 days after written notice to the person who filed the application for certification under ORS 459A.725 and to the manufacturers referred to in ORS 459A.725 (2). [Formerly 459.870]

459A.735 Redemption centers. (1) To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at which any person may return empty beverage containers and receive payment of the refund value of such beverage containers.

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the beverage containers which will be accepted at the redemption center and the names and addresses of the dealers to be served by the redemption center. The application shall include such additional information as the commission may require.

(3) The commission shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The order of the commission approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to insure the redemption center will provide a convenient service to the public as the commission may determine.

(4) The commission may review at any time approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with its order approving the redemption center, or if the redemption center no longer provides a convenient service to the public. [Formerly 459.880]

Note: The amendments to 459A.735 by section 5, chapter 303, Oregon Laws 2007, become operative January 1, 2009. See section 10, chapter 303, Oregon Laws 2007. The text that is operative on and after January 1, 2009, is set forth for the user's convenience.

459A.735. (1) To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at

which any person may return empty beverage containers and receive payment of the refund value of such beverage containers.

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind of beverage containers that will be accepted at the redemption center and the names and addresses of the dealers to be served by the redemption center. The application shall include such additional information as the commission may require.

(3) The commission shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The order of the commission approving a redemption center shall state the dealers to be served by the redemption center and the kind of empty beverage containers that the redemption center must accept. The order may contain such other provisions to ensure the redemption center will provide a convenient service to the public as the commission may determine.

(4) The commission may review at any time approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with its order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

459A.740 Certification and withdrawal procedures. The procedures for certification or withdrawal provided for in ORS 459A.725 to 459A.735 shall be in accordance with ORS chapter 183. [Formerly 459.890]

(Penalties)

459.992 Criminal penalties; license suspension and revocation. (1) The following are Class A misdemeanors:

(a) Violation of rules or ordinances adopted under ORS 459.005 to 459.105 and 459.205 to 459.385.

(b) Violation of ORS 459.205.

(c) Violation of ORS 459.270.

(d) Violation of ORS 459A.080.

(e) Violation of ORS 459.272.

(2) Each day a violation referred to by subsection (1) of this section continues constitutes a separate offense. Such separate offenses may be joined in one indictment or complaint or information in several counts.

(3) Violation of ORS 459A.705, 459A.710 or 459A.720 is a Class A misdemeanor.

(4) In addition to the penalty prescribed by subsection (3) of this section, the Oregon Liquor Control Commission or the State Department of Agriculture may revoke or suspend the license of any person who willfully violates ORS 459A.705, 459A.710 or 459A.720, who is required by ORS chapter 471 or 635, respectively, to have a license. [Subsections (1), (2) and (3) enacted as 1971 c.648 §20; subsection (4) en-

acted as 1971 c.699 §20; subsections (5) and (6) enacted as 1971 c.745 §10; 1973 c.835 §158; 1977 c.867 §22; 1981 c.81 §2; 1981 c.709 §17; 1983 c.729 §17; 1983 c.766 §8; subsections (3) and (4) renumbered 466.995; 1993 c.526 §10; 1995 c.301 §37]

459.995 Civil penalties. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur a civil penalty not to exceed \$10,000 a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed \$500 for each violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135. [1973 c.835 §130; 1977 c.317 §1; 1981 c.709 §18; 1983 c.703 §16; 1983 c.729 §18; 1983 c.766 §9; subsections (2) and (3) renumbered 466.880; 1987 c.706 §19; 1989 c.290 §7; 1989 c.763 §14; 1991 c.385 §§14,90; 1991 c.650 §3; 1991 c.653 §8; 1991 c.734 §32; 1991 c.882 §13; 1993 c.18 §115; 1993 c.526 §11; 1993 c.560 §73; 1995 c.584 §5; 2001 c.924 §8; 2007 c.302 §16]

Note: Section 19 (2), chapter 302, Oregon Laws 2007, provides:

Sec. 19. (2) The amendments to ORS 459.995 by section 16 of this 2007 Act apply to violations of section 9 (1) of this 2007 Act [459A.335 (1)] occurring on or after January 1, 2009. [2007 c.302 §19(2)]

Note: The amendments to 459.995 by section 17, chapter 302, Oregon Laws 2007, become operative January 1, 2010. See section 19, chapter 302, Oregon Laws 2007. The text that is operative on and after January 1, 2010, is set forth for the user's convenience.

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur a civil penalty not to exceed \$10,000 a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed \$500 for each violation.

(d) Any person who violates the provisions of ORS 459.247 (1)(f) shall incur a civil penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of improperly shall be a separate violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

VIDEO LOTTERY GAMES

461.217 Video lottery game regulation; limitation on number and placement of terminals; rules. (1) As used in this section, "video lottery game retailer" means a contractor under contract with the Oregon State Lottery to place video lottery game terminals on premises authorized by the contract.

(2) A video lottery game terminal that offers a video lottery game authorized by the Director of the Oregon State Lottery may be placed for operation only on the premises of an establishment that has a contract with the Oregon State Lottery as a video lottery game retailer. The terminal must be within the control of an employee of the video lottery game retailer. A terminal may not be placed in any other business or location.

(3) A video lottery game terminal may be placed only on the premises of an establishment licensed by the Oregon Liquor Control Commission with a full on-premises sales li-

cense, a limited on-premises sales license or a brewery-public house license. A video lottery game terminal may be placed only in that part of the premises that is posted by the Oregon Liquor Control Commission as being closed to minors. In addition to the requirements of this subsection, the director may by rule establish such other criteria and conditions as the director determines appropriate for the placement of video lottery game terminals in establishments.

(4) No more than six video lottery terminals may be placed in or on premises described in subsection (3) of this section.

(5) No more than 10 video lottery game terminals may be placed on the premises of a race meet licensee licensed under ORS 462.020 that qualifies as a video lottery game retailer. [1991 c.962 §10; 1999 c.351 §16; 2003 c.787 §1; 2007 c.631 §1]

DRUG PARAPHERNALIA

475.525 Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions. (1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance as defined by ORS 475.005.

(2) For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices marketed for use or designed for use in increasing the

potency of any species of plant which is a controlled substance;

(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bongs;

(M) Ice pipes or chillers; and

(N) Lighting equipment specifically designed for the growing of controlled substances.

(3) Drug paraphernalia does not include hypodermic syringes or needles.

(4) In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

(a) Instructions, oral or written, provided with the object concerning its use;

(b) Descriptive materials accompanying the object which explain or depict its use;

(c) National and local advertising concerning its use;

(d) The manner in which the object is displayed for sale;

(e) The existence and scope of legitimate uses for the object in the community; and

(f) Any expert testimony which may be introduced concerning its use.

(5) The provisions of ORS 475.525 to 475.565 do not apply to persons registered under the provisions of ORS 475.125 or to persons specified as exempt from registration under the provisions of that statute. [1989 c.1077 §1; 1995 c.440 §10]

ENFORCEMENT OF WAGE CLAIMS

652.335 Liability of liquor dispenser licensee for wage claims of certain individuals. (1) A person operating a commercial establishment where food is cooked and served who holds a full on-premises sales license issued under ORS 471.175 is liable for all valid wage claims of individuals employed in the kitchen facilities and dining space of such establishment who are not employed by such person, if the wage claims cannot be enforced against the employer of such individuals. The Commissioner of the Bureau of Labor and Industries may in such a case proceed under ORS 652.310 to 652.414 against the person operating the establishment as if that person had employed the individuals assigning the wage claims.

(2) This section does not impose any liability not otherwise imposed by law for compensation for the performance of an individual's personal services in excess of a period of 60 days, nor does it subject the person operating an establishment described in this section to criminal penalties for violation of any law providing for payment of wages. [1961 c.475 §2; 1999 c.351 §40]

OCCUPATIONAL OR PROFESSIONAL LICENSING

670.280 Denial, suspension or revocation of license based on criminal conviction; denial of license or imposition of discipline for conduct substantially related to fitness and ability of applicant or licensee. (1) As used in this section:

(a) "License" includes a registration, certification or permit.

(b) "Licensee" includes a registrant or a holder of a certification or permit.

(2) Except as provided in ORS 342.143 or 342.175, a licensing board, commission or agency may not deny, suspend or revoke an occupational or professional license solely

for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.

(3) A licensing board, commission or agency may deny an occupational or professional license or impose discipline on a licensee based on conduct that is not undertaken directly in the course of the licensed activity, but that is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required. In determining whether the conduct is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required, the licensing board, commission or agency shall consider the relationship of the facts with respect to the conduct and all intervening circumstances to the specific occupational or professional standards. [1973 c.359 §1; 1991 c.662 §6a; 2003 c.749 §13]

MISUSE OF IDENTIFICATION CARD; MISUSE OF OR FALSE APPLICATION FOR LICENSE

807.400 Issuance; application; contents; renewal; fee; validity; replacement; cancellation; rules. (1) The Department of Transportation shall issue an identification card to any person who:

(a) Is domiciled in or resident of this state, as described in ORS 807.062;

(b) Does not have a current, valid driver license;

(c) Furnishes such evidence of the person's age and identity as the department may require; and

(d) Submits to collection of biometric data by the department that establish the identity of the person as provided in ORS 807.024.

(2) The department shall work with other agencies and organizations to attempt to improve the issuance system for identification cards.

(3) Every original application for an identification card must be signed by the applicant. The department shall require at least one document to verify the address of an applicant for issuance of an identification card in addition to other documents the department may require of the applicant. If the address of an applicant has changed since the last time an identification card was issued to or renewed for the applicant, the department shall require proof to verify the address of

an applicant for renewal of an identification card, in addition to anything else the department may require.

(4) Every identification card shall be issued upon the standard license form described under ORS 807.110 and shall bear a statement to the effect that the identification card is not a license or any other grant of driving privileges to operate a motor vehicle and is to be used for identification purposes only. The department shall use the same security procedures, processes, materials and features for an identification card as are required for a license under ORS 807.110. The identification card is not required to contain the residence address of persons listed in ORS 807.110 (1)(c).

(5) Upon order of the juvenile court, the department shall include on the card the fact that the person issued the identification card is an emancipated minor.

(6) Each original identification card shall expire on a date consistent with the expiration dates of licenses as set forth in ORS 807.130.

(7) Identification cards shall be renewed under the terms for renewal of licenses as set forth in ORS 807.150.

(8) The fee for an original identification card or a renewal thereof shall be the fee established under ORS 807.410.

(9) An identification card becomes invalid if the holder of the card changes residence address from that shown on the identification card and does not provide the department with notice of the change as required under ORS 807.420.

(10) If a person to whom an identification card was issued and who changes residence address appears in person at a department office that issues identification cards, the department may do any of the following:

(a) Issue a replacement identification card containing the new address upon receipt of the old identification card and payment of the fee established for issuing a replacement identification card with a changed address under ORS 807.410. Except as otherwise provided in subsection (12) of this section, the replacement identification card shall bear the same distinguishing number as the card being replaced.

(b) Note the new address on the old identification card in a manner to be determined by the department.

(11) An identification card becomes invalid if the holder of the card changes the person's name from that shown on the card, including a change of name by marriage, without providing the department with notice of the change as required under ORS

807.420. Upon receiving such notice and the old identification card, the department shall issue a replacement identification card upon payment of the fee required under ORS 807.410.

(12) In the event that, for a reason identified by the department by rule, a person needs a replacement identification card that bears a different distinguishing number from the card being replaced, the person to whom the card was issued may obtain a replacement card from the department upon furnishing proof satisfactory to the department of the need for such replacement and payment of the replacement fee under ORS 807.410.

(13) The department may establish by rule reasons for issuing replacement identification cards that are in addition to the reasons identified in subsections (10) to (12) of this section. The fee for a replacement identification card is provided under ORS 807.410.

(14) Upon cancellation of an identification card, the card is terminated and must be surrendered to the department. An identification card may be canceled for any of the reasons that driving privileges or a license may be canceled under ORS 809.310. The department may reissue an identification card canceled under this subsection when the applicant has satisfied all requirements for the identification card.

(15) Notwithstanding any other provision of this section, the department may issue an identification card to a person under this subsection without charge when the person surrenders a license or driver permit to the department for reasons described in this subsection. If the department issues an identification card under this subsection, the identification card shall expire at the same time as the surrendered driver license or driver permit would have expired. An identification card issued under this subsection is subject to the same requirements and fees for renewal or upon expiration as any other identification card issued under this section. The department may issue identification cards under this subsection as described under any of the following:

(a) The department may issue an identification card under this subsection to a person who voluntarily surrenders a license or driver permit to the department based upon the person's recognition that the person is no longer competent to drive.

(b) The department may issue an identification card to a person under this subsection when the person's driving privileges are suspended under ORS 809.419 (1). This paragraph only applies if the person volun-

tarily surrenders the person's license or driver permit to the department as provided under ORS 809.500. [1983 c.338 §866; 1985 c.16 §437; 1985 c.174 §13; 1985 c.301 §2; 1989 c.535 §2; 1993 c.393 §2a; 1993 c.741 §82; 1993 c.751 §48; 2001 c.452 §1; 2003 c.402 §19; 2005 c.59 §10; 2005 c.241 §2a; 2005 c.775 §8; 2007 c.542 §§8,9]

Note: The amendments to 807.400 by section 8, chapter 775, Oregon Laws 2005, become operative July 1, 2008. See section 17, chapter 775, Oregon Laws 2005. The text that is operative until July 1, 2008, including amendments by section 8, chapter 542, Oregon Laws 2007, is set forth for the user's convenience.

807.400. (1) The Department of Transportation shall issue an identification card to any person who:

(a) Is domiciled in or resident of this state, as described in ORS 807.062;

(b) Does not have a current, valid driver license; and

(c) Furnishes such evidence of the person's age and identity as the department may require.

(2) The department shall work with other agencies and organizations to attempt to improve the issuance system for identification cards.

(3) Every original application for an identification card must be signed by the applicant. The department shall require at least one document to verify the address of an applicant for issuance of an identification card in addition to other documents the department may require of the applicant. If the address of an applicant has changed since the last time an identification card was issued to or renewed for the applicant, the department shall require proof to verify the address of an applicant for renewal of an identification card, in addition to anything else the department may require.

(4) Every identification card shall be issued upon the standard license form described under ORS 807.110 and shall bear a statement to the effect that the identification card is not a license or any other grant of driving privileges to operate a motor vehicle and is to be used for identification purposes only. The department shall use the same security procedures, processes, materials and features for an identification card as are required for a license under ORS 807.110. The identification card is not required to contain the residence address of persons listed in ORS 807.110 (3).

(5) Upon order of the juvenile court, the department shall include on the card the fact that the person issued the identification card is an emancipated minor.

(6) Each original identification card shall expire on a date consistent with the expiration dates of licenses as set forth in ORS 807.130.

(7) Identification cards shall be renewed under the terms for renewal of licenses as set forth in ORS 807.150.

(8) The fee for an original identification card or a renewal thereof shall be the fee established under ORS 807.410. In no event shall the issuance or renewal of an identification card be subject to any fee in addition to that set forth in ORS 807.410.

(9) An identification card becomes invalid if the holder of the card changes residence address from that shown on the identification card and does not provide the department with notice of the change as required under ORS 807.420.

(10) If a person to whom an identification card was issued and who changes residence address appears in person at a department office that issues identification cards, the department may do any of the following:

(a) Issue a replacement identification card containing the new address upon receipt of the old identification card and payment of the fee established for issuing a replacement identification card with a changed ad-

dress under ORS 807.410. Except as otherwise provided in subsection (12) of this section, the replacement identification card shall bear the same distinguishing number as the card being replaced.

(b) Note the new address on the old identification card in a manner to be determined by the department.

(11) An identification card becomes invalid if the holder of the card changes the person's name from that shown on the card, including a change of name by marriage, without providing the department with notice of the change as required under ORS 807.420. Upon receiving such notice and the old identification card, the department shall issue a replacement identification card upon payment of the fee required under ORS 807.410.

(12) In the event that, for a reason identified by the department by rule, a person needs a replacement identification card that bears a different distinguishing number from the card being replaced, the person to whom the card was issued may obtain a replacement card from the department upon furnishing proof satisfactory to the department of the need for such replacement and payment of the replacement fee under ORS 807.410.

(13) The department may establish by rule reasons for issuing replacement identification cards that are in addition to the reasons identified in subsections (10) to (12) of this section. The fee for a replacement identification card is provided under ORS 807.410.

(14) Upon cancellation of an identification card, the card is terminated and must be surrendered to the department. An identification card may be canceled for any of the reasons that driving privileges or a license may be canceled under ORS 809.310. The department may reissue an identification card canceled under this subsection when the applicant has satisfied all requirements for the identification card.

(15) Notwithstanding any other provision of this section, the department may issue an identification card to a person under this subsection without charge when the person surrenders a license or driver permit to the department for reasons described in this subsection. If the department issues an identification card under this subsection, the identification card shall expire at the same time as the surrendered driver license or driver permit would have expired. An identification card issued under this subsection is subject to the same requirements and fees for renewal or upon expiration as any other identification card issued under this section. The department may issue identification cards under this subsection as described under any of the following:

(a) The department may issue an identification card under this subsection to a person who voluntarily surrenders a license or driver permit to the department based upon the person's recognition that the person is no longer competent to drive.

(b) The department may issue an identification card to a person under this subsection when the person's driving privileges are suspended under ORS 809.419 (1). This paragraph only applies if the person voluntarily surrenders the person's license or driver permit to the department as provided under ORS 809.500.

807.430 Misuse of identification card; penalty. (1) A person commits the offense of misuse of an identification card if the person performs any act in relation to an identification card issued under ORS 807.400 that is prohibited in relation to a license under ORS 807.530, 807.580 to 807.600 or 809.500 or fails to perform any act in relation to an identification card issued under ORS 807.400 that is required in relation to a license under ORS 807.530, 807.580 to 807.600 or 809.500.

(2) The offense described by this section, misuse of identification card, is a Class A misdemeanor. [1983 c.338 §869; 1985 c.393 §67; 1987 c.262 §3]

807.500 Unlawful production of certain documents; affirmative defense; penalty.

(1) A person commits the offense of unlawful production of identification cards, licenses, permits, forms or camera cards if the person, without the authority of the Department of Transportation, advertises for the production of, produces in any way or causes to be produced any facsimiles of the identification cards, licenses, permits, forms or camera cards upon which the department issues identification cards, licenses or driver permits under the vehicle code.

(2) The offense described in this section, unlawful production of identification cards, licenses, permits, forms or camera cards, is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person produced an identification card, license or permit solely for the purpose of enabling the person to purchase alcohol; or

(b) Was under 18 years of age at the time of committing the offense and the person produced an identification card, license or permit solely for the purpose of enabling the person to purchase tobacco products. [1983 c.338 §330; 1985 c.597 §19; 1993 c.393 §3; 2003 c.633 §1]

807.510 Transfer of documents for purposes of misrepresentation; penalty.

(1) A person commits the offense of transfer of documents for the purposes of misrepresentation if the person:

(a) Manufactures, produces, sells, offers for sale or transfers to another person any document purporting to be a certificate of birth, certificate of baptism, driver license or any other document designated by the Department of Transportation by rule as acceptable for establishing age or identity; and

(b) Knows or has reason to know that the document may be used to represent a person as another person in obtaining documents issued by a government agency to grant driving privileges or for identification purposes.

(2) The offense described in this section, transfer of documents for purposes of misrepresentation, is a Class A misdemeanor. [1983 c.338 §331; 1985 c.597 §20; 1993 c.393 §4]

807.520 False swearing to receive license; penalty.

(1) A person commits the offense of false swearing to receive a driver license if the person makes any false affida-

vit or knowingly swears or affirms falsely to any matter required to be sworn to or affirmed in the process of applying for, receiving and holding a license or driver permit under the vehicle code.

(2) The offense described in this section, false swearing to receive a driver license, is a Class A misdemeanor. [1983 c.338 §332]

807.530 False application for license; penalty.

(1) A person commits the offense of providing a false application for a license if the person in applying for a license or driver permit or for renewal or replacement thereof under the vehicle code knowingly:

(a) Uses or gives a false or fictitious name or identity;

(b) Gives or uses a false or fictitious address;

(c) Gives or uses a false age;

(d) Makes a false statement;

(e) Conceals a material fact;

(f) Uses or attempts to use false identification documents;

(g) Allows another person to take any test related to issuance of a license or permit on behalf of the applicant; or

(h) Otherwise commits fraud in the application.

(2) The offense described in this section, providing a false application for a license, is a Class A misdemeanor. [1983 c.338 §333; 1985 c.16 §153; 1993 c.393 §5; 1999 c.770 §3; 2005 c.59 §9]

807.540 Failure to surrender prior license; penalty.

(1) A person commits the offense of failing to surrender a prior license if the person accepts a license or driver permit issued by the Department of Transportation to that person without first surrendering all out-of-state licenses or driver permits issued to that person.

(2) The offense described in this section, failure to surrender a prior license, is a Class D traffic violation. [1983 c.338 §334; 1985 c.16 §154; 1985 c.597 §21; 1995 c.383 §9]

807.550 Holding multiple licenses; penalty.

(1) A person commits the offense of holding multiple licenses if the person applies for and accepts a license or driver permit, other than an instruction driver permit, when the person holds an existing license or driver permit.

(2) The offense described in this section, holding multiple licenses, is a Class B traffic violation. [1983 c.338 §335; 1985 c.608 §30]

807.560 Failure to notify department upon change of address or name; rules; penalty.

(1) A person to whom a license or driver permit is issued commits the offense of failure to notify upon change of driver ad-

dress or name if the person does not notify the Department of Transportation in a manner authorized by the department by rule upon any change of the person's:

(a) Residence from that noted on the person's license or driver permit as issued;

(b) Name from that noted on the person's license or driver permit as issued, including a change of name by marriage; or

(c) Place of employment, if the person is a corrections officer, as provided in ORS 802.253, or an eligible employee, as defined in ORS 802.250, whose place of employment address is noted on department records in accordance with ORS 802.250 or 802.253.

(2) Notice required under this section:

(a) Must be given within 30 days of change.

(b) Must be given in person for a change of name.

(3) Failure to notify upon change of driver address or name is a Class D traffic violation. [1983 c.338 §337; 1985 c.563 §8; 1989 c.695 §2; 1991 c.523 §8; 2003 c.129 §3; 2005 c.292 §9]

807.570 Failure to carry or present license; penalty. (1) A person commits the offense of failure to carry a license or to present a license to a police officer if the person either:

(a) Drives any motor vehicle upon a highway in this state without a license, driver permit or out-of-state license in the person's possession; or

(b) Does not present and deliver such license or permit to a police officer when requested by the police officer under any of the following circumstances:

(A) Upon being lawfully stopped or detained when driving a vehicle.

(B) When the vehicle that the person was driving is involved in an accident.

(2) This section does not apply to any person expressly exempted under ORS 807.020 from the requirement to have a driver license or driver permit.

(3) Except as provided in ORS 813.110, it is a defense to any charge under this section that the person so charged produce a license, driver permit or out-of-state license that had been issued to the person and was valid at the time of violation of this section.

(4) A police officer may detain a person arrested or cited for the offense described in this section only for such time as reasonably necessary to investigate and verify the person's identity.

(5) The offense described in this section, failure to carry a license or to present a li-

cense to a police officer, is a Class C misdemeanor. [1983 c.338 §339; 1985 c.16 §158; 1987 c.217 §6]

807.580 Using invalid license; penalty.

(1) A person commits the offense of using an invalid license if the person knowingly displays or permits to be displayed or possesses any license or driver permit that the person knows is fictitious, canceled, revoked, suspended or fraudulently altered.

(2) The offense described in this section, using an invalid license, is a Class A misdemeanor. [1983 c.338 §340]

807.590 Permitting misuse of license; penalty.

(1) A person commits the offense of permitting misuse of a license if the person has been issued a license or driver permit and the person knowingly lends the license or driver permit to another or knowingly permits another person to use the license or driver permit.

(2) The offense described in this section, permitting misuse of a license, is a Class A misdemeanor. [1983 c.338 §341]

807.600 Using another's license; penalty.

(1) A person commits the offense of using another's license if the person knowingly displays or represents as the person's license or driver permit a license or driver permit that has not been issued to the person.

(2) The offense described in this section, using another's license, is a Class A misdemeanor. [1983 c.338 §342; 1985 c.16 §159]

807.610 Employing or providing vehicle to unqualified driver; penalty.

(1) A person commits the offense of employing or providing a vehicle to an unqualified driver if the person does any of the following:

(a) Employs another person for the purpose of engaging in a particular type of operation of a vehicle for which the person does not have an appropriate grant of driving privileges from this state in the form of a license, driver permit, endorsement or statutory grant of driving privileges allowing the person to engage in the particular type of operation.

(b) Rents, leases or otherwise furnishes a motor vehicle owned or controlled by the person to any other person without first seeing the other person's license, driver permit or license with endorsement allowing the person, under the vehicle code, to operate the particular type of vehicle being furnished.

(2) The offense described in this section, employing or providing a vehicle to an unqualified driver, is a Class D traffic violation. [1985 c.608 §7; 1995 c.383 §10; 2003 c.14 §486]

807.620 Giving false information to police officer; penalty. (1) A person commits the offense of giving false information to a police officer if the person knowingly uses or gives a false or fictitious name, address or date of birth to any police officer who is enforcing motor vehicle laws.

(2) The offense described in this section, giving false information to a police officer, is a Class A misdemeanor. [1983 c.338 §343; 1985 c.16 §160; 1985 c.597 §22]

OPEN CONTAINER VIOLATIONS

811.170 Violation of open container law; penalty. (1) A person commits the offense of violation of the open container law in a motor vehicle if the person does any of the following:

(a) Drinks any alcoholic liquor in a motor vehicle when the vehicle is upon a highway.

(b) Possesses on one's person, while in a motor vehicle upon a highway, any bottle, can or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) Keeps in a motor vehicle when the vehicle is upon any highway, any bottle, can or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed. The following apply to this paragraph:

(A) This paragraph applies only to the registered owner of any motor vehicle or, if the registered owner is not then present in the vehicle, to the driver of the vehicle.

(B) This paragraph does not apply if the bottle, can or other receptacle is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk.

(C) For purposes of this paragraph, a utility compartment or glove compartment is considered within the area occupied by the driver and passengers.

(D) This paragraph does not apply to the living quarters of a camper or motor home.

(2) The offense described in this section does not apply to passengers in a motor vehicle operated by a common carrier and used primarily to carry passengers for hire.

(3) The offense described in this section, violation of the open container law in a motor vehicle, is a Class B traffic violation. [1983 c.338 §597; 1985 c.16 §303; 2001 c.827 §10]

DRIVING UNDER INFLUENCE OF INTOXICANTS

813.010 Driving under the influence of intoxicants; penalty. (1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:

(a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

(b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

(c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled substance.

(2) A person may not be convicted of driving while under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.

(3) A person convicted of the offense described in this section is subject to ORS 813.020 in addition to this section.

(4) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public.

(5)(a) Driving while under the influence of intoxicants is a Class C felony if the current offense was committed in a motor vehicle and the defendant has been convicted, at least three times in the 10 years prior to the date of the current offense, of any of the following offenses in any combination:

(A) Driving while under the influence of intoxicants in violation of:

(i) This section; or

(ii) The statutory counterpart to this section in another jurisdiction.

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof.

(C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) For the purposes of paragraph (a) of this subsection, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(6) In addition to any other sentence that may be imposed, the court shall impose a fine on a person convicted of driving while under the influence of intoxicants as follows:

(a) For a person's first conviction, a minimum of \$1,000.

(b) For a person's second conviction, a minimum of \$1,500.

(c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sentenced to a term of imprisonment.

(7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on a person convicted of driving while under the influence of intoxicants if:

(a) The current offense was committed in a motor vehicle; and

(b) There was a passenger in the motor vehicle who was under 18 years of age and was at least three years younger than the person driving the motor vehicle. [1983 c.338 §587; 1985 c.16 §293; 1987 c.138 §5; 1991 c.835 §7; 1999 c.619 §3; 1999 c.1049 §1; 2003 c.14 §495; 2003 c.445 §1; 2007 c.879 §3]

813.012 Crime classification for purposes of rules of Oregon Criminal Justice Commission. (1) The Oregon Criminal Justice Commission shall classify a violation of ORS 813.010 that is a felony as crime category 6 of the rules of the Oregon Criminal Justice Commission.

(2) In determining criminal history for a person convicted of a felony that has operation of a motor vehicle as an element, or of a felony that involved death, injury or property damage caused by the use of a motor vehicle, the commission shall:

(a) Consider two prior convictions of misdemeanor driving while under the influence of intoxicants to be equivalent to one conviction of felony driving while under the influence of intoxicants; and

(b) Consider felony driving while under the influence of intoxicants to be a person felony and consider misdemeanor driving while under the influence of intoxicants to be a person Class A misdemeanor. [1999 c.1049 §3]

813.020 Fee to be paid on conviction; screening and treatment; mandatory imprisonment or community service; attendance at victim impact treatment session; session fee. When a person is con-

victed of driving while under the influence of intoxicants in violation of ORS 813.010, a court shall comply with the following in addition to any fine or other penalty imposed upon the person under ORS 813.010:

(1) The court shall require the person to:

(a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 813.010; and

(b) Complete a screening interview and a treatment program as provided in ORS 813.021.

(2) The court must impose and not suspend execution of a sentence requiring the person either to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice requires otherwise, or to perform community service for times specified by the court under ORS 137.129. For purposes of this subsection:

(a) A court may provide for the imprisonment to be served in jail, minimum security facilities or inpatient rehabilitation or treatment centers.

(b) Whenever the judge provides for the mandatory imprisonment to be served other than consecutively, the judgment must specifically so provide and the judge must state the reasons in writing.

(3) In a county that has a victim impact program a court may require the person to attend a victim impact treatment session. If the court requires attendance under this section, the court may require the defendant to pay a reasonable fee to the victim impact program to offset the cost of the defendant's participation. The fee shall be established for each county by the victim impact panel coordinator and steering committee of that county and shall be not less than \$5 or more than \$50. [1983 c.338 §588; 1985 c.16 §294 and former 487.549; 1989 c.576 §5; 1991 c.557 §3; 1993 c.13 §4; 1993 c.468 §1; 1999 c.126 §1; 2003 c.14 §496]

813.215 Eligibility for diversion. (1) A defendant is eligible for diversion if the defendant meets all of the following conditions:

(a) On the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement, the defendant had no charge, other than the charge for the present offense, pending for:

(A) An offense of driving while under the influence of intoxicants in violation of:

(i) ORS 813.010; or

(ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a con-

trolled substance, an inhalant or any combination thereof; or

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) The defendant has not been convicted of an offense described in paragraph (a) of this subsection within the period beginning 10 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)(a).

(d) The defendant was not participating in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(e) The defendant did not participate in a diversion or rehabilitation program described in paragraph (d) of this subsection, other than a program entered into as a result of the charge for the present offense, within the period beginning 10 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(g) The defendant has not been convicted of an offense described in paragraph (f) of this subsection within the period beginning 10 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(h) The defendant did not hold a commercial driver license on the date of the commission of the offense.

(i) The defendant was not operating a commercial motor vehicle at the time of the offense.

(j) The present driving while under the influence of intoxicants offense did not involve an accident resulting in:

(A) Death of any person; or

(B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

(2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction. [1987 c.441 §3; 1997 c.749 §5; 1999 c.445 §1; 1999 c.1051 §295; 2005 c.649 §29; 2007 c.122 §11; 2007 c.867 §14; 2007 c.879 §10]

813.220 Matters to be considered by court in determining to allow diversion agreement; reasons for denial. After the time for requesting a hearing under ORS 813.210 has expired with no request for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement. In making a determination under this section, the court:

(1) Shall consider whether the diversion will be of benefit to the defendant and the community.

(2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.

(3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.

(4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement.

(5) May take into consideration whether the offense was committed in a motor vehicle and whether there was a passenger in the motor vehicle who was under 18 years of age and at least three years younger than the defendant.

(6) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant failed to appear at an arraignment on the present offense without good cause.

(7) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if, after the date the defendant filed the petition, the defendant was charged with or convicted of:

(a) An offense of driving while under the influence of intoxicants in violation of:

(A) ORS 813.010; or

(B) The statutory counterpart to ORS 813.010 in another jurisdiction;

(b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof; or

(c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(8) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant participated in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in another jurisdiction after the date the defendant filed the petition.

(9) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed the petition.

(10) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

(11) For the purposes of subsection (7) of this section, may not consider a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older as a prior conviction. [1983 c.338 §371; 1987 c.441 §6; 1997 c.749 §6; 1999 c.1051 §296; 2003 c.445 §2; 2007 c.867 §15; 2007 c.879 §7]

Oregon Administrative Rules

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

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

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

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

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

Stats. Implemented: ORS 183.335

Hist.: LCC 19-1980, f. 6-4-80, ef. 6-5-80; OLCC
6-1994, f. & cert. ef. 11-22-94; OLCC 10-2004,
f. 10-15-04 cert. ef. 11-1-04

845-001-0007

Attorney General's Model Rules of Procedure

The Commission adopts, by reference, the Attorney General's Model Rules of Procedure, effective January 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 ORS 192.410 to 192.505.

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

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

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

(a) Mediation of workplace interpersonal disputes involving the

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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 communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

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

the mediation.

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

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

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

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

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

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- (C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or
- (D) A strike notice submitted to the Employment Relations Board.
- (l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.
- (m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:
 - (A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege;
 - (B) Attorney work product prepared in anticipation of litigation or for trial;
 - (C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency;
 - (D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or
 - (E) Settlement concepts or proposals, shared with the mediator or other parties.
- (n) A mediation communication made to the agency may be disclosed and may

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

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

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

(7) Exceptions to confidentiality and inadmissibility.

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

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

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

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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

In its 1999 session, the Oregon Legislative Assembly adopted HB 2525, creating the Oregon Hearing Officer Panel. Effective January 1, 2000, the Attorney General adopted procedural rules for contested cases for use by agencies, such as OLCC, required to use a central panel of hearing officers for their hearings (Hearing Officer Panel Rules). These rules are set forth at OAR 137-003-0501 to 137-003-0700.

The Hearing Officer Panel adopted an additional rule governing requests for change of Hearing Officers, OAR 471-060-0005. The current rule is included at the end of this section.

These rules govern our contested case hearings, except to the extent they are supplemented by OLCC Rules (Chapter 845, Division 3).

OAR Chapter 845, Division 3 and applicable OAR Chapter 137 rules are set forth together in this section for your convenience.

DIVISION 3 CONTESTED CASE PROCEDURES

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

845-003-0200

Statement of Purpose

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

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

(3) These rules apply to all contested case proceedings pending with or received by the Commission on or after the effective date.

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

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

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

845-003-0210

Model Rules of Procedure

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

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

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

845-003-0220

Definitions

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

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

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

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

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

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

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

(7) "Party" means:

(a) Any person, entity, government agency or body upon whom a charging

document has been served;

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

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

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

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

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

845-003-0270

Request for a Contested Case Hearing and Response to Charging Document

(1) Any party who wants to contest a charging document shall file a response ("answer") to the charging document and request a contested case hearing. The answer and request for hearing must be in writing and filed with the Administrative Process Division within the time limit established in the charging document. Unless the intended action of the Commission is a suspension or nonrenewal of a license on an emergency basis under ORS 183.430(2), the time limit for response to 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, ORS 183.341(2), ORS 183.415(4), 183.450(3) & 471.030

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

Hist.: OLCC 6-2002(Temp), f. 5-6-02, cert. ef. 5-7-02 thru 11-2-02; OLCC 13-2002, f. 10-25-02 cert. ef. 11-3-02

845-003-0340

Interpreters

(1) Notwithstanding OAR 137-003-0590(3)(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), ORS 471.730(5) & (6); ORS 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.341(2), ORS 183.425(2), OL 1999, Ch. 849.

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

99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00

845-003-0590

Exceptions

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

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

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

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

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

Stats. Implemented: ORS 183.341(2), 183.460

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

845-003-0670

Retained Authority of Commissioners

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

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

(3) The Commissioners delegate to the

Administrator the authority to prepare and issue a Final Order by Default when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.

(4) 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.

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

(6) 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.

(7) 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.

(8) 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).

(9) 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.

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

**CHAPTER 137
DEPARTMENT OF JUSTICE**

137-003-0000

Applicability of Rules in OAR 137, Division 3

(1) An agency that does not use an administrative law judge assigned from the Office of Administrative Hearings to conduct contested case hearings for the agency may choose to adopt any or all of the Model Rules for Contested Cases in OAR 137-003-0000 to 137-003-0092 or in 137-003-0501 to 137-003-0700. The agency may adopt these rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355.

(2) When an administrative law judge assigned from the Office of Administrative Hearings conducts a contested case hearing for the agency, the proceedings shall be conducted pursuant to OAR 137-003-0501 to 137-003-0700, unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, by order, has exempted the agency or a category of the agency's cases from the application of such rules in whole or in part. These rules need not be adopted by the agency to be effective.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0501

Rules for Office of Administrative Hearings

(1) OAR 137-003-0501 to 137-003-0700 apply to the conduct of all contested case hearings conducted for an agency by an administrative law judge assigned from the Office of Administrative Hearings unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, by order, has exempted the agency or a category of the agency's cases from the application of these rules in whole or in part.

(2) Any procedural rules adopted by the agency related to the conduct of hearings shall not apply to contested case hearings conducted for the agency by an administrative law judge assigned from the Office of Administrative Hearings unless required by state or federal law or specifically authorized by these rules or by order of the Attorney General. An agency may have rules specifying the time for requesting a contested case hearing, the content of a hearing request, any requirement for and content of a response to the contested case notice, the permissible scope of the hearing and timelines for issuance of a proposed or final order. Agencies with authority to assess the costs of an action or proceeding against a party may have rules specifying procedures related to assessment of costs. The agency's substantive rules, including those allocating the burden of proof, shall apply to all of its hearings.

(3) If permitted by law, the agency may delegate to an administrative law judge any of the agency's functions under these rules, including the authority to issue a final order. This delegation must be in writing and may be for a category of cases or on a case-by-case basis.

(4) For purposes of OAR 137-003-0501 to 137-003-0700, "good cause" exists when an action, delay, or failure to act arises from an excusable mistake, surprise, or excusable neglect or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

Stat. Auth.: ORS 183.341

Stats. Implemented: OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0505

Contested Case Notice

(1) When the agency is required to issue a contested case notice pursuant to ORS 183.415, the notice shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the

matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

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

(e) A statement of the authority and jurisdiction under which a hearing is to be held on the matters asserted or charged;

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a contested case hearing; or

(B) A statement of the time and place of the hearing;

(g) A statement indicating whether and under what circumstances an order by default may be entered; and

(h) Any other information required by law.

(2) A contested case notice may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the contested case and all materials submitted by a party, automatically become part of the contested case record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a contested case hearing if

a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.413, 183.415, OL 1999, Ch. 849 & 2007 HB 2423

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0510

Rights of Parties in Contested Cases

1) In addition to the information required to be given in writing under ORS 183.413(2) and 183.415(2) and (3), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise or unless the agency has been notified in writing that the party is represented by an attorney licensed in Oregon. The agency may provide this information in writing or orally.

(2) The agency may request the administrative law judge to provide to each party written notice of any or all of the information required to be given under ORS 183.413(2) or section (1) of this rule before the commencement of the hearing. The administrative law judge shall provide any such written notice personally or by mail.

(3) Unless otherwise precluded by law, the party(ies) and the agency, if participating in the contested case hearing, may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(4) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default.

(5) A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency or administrative law judge shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.413, 183.415, OL 1999, Ch. 849 & 2007 HB 2423

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0515

Agency Referral to Office of Administrative Hearings

(1) When referring a contested case to the Office of Administrative Hearings, the agency shall provide written notice of the referral to the Office of Administrative Hearings that includes the name of the agency and the name and address of each party and its counsel. The notice may also include the agency case number, the name and address of the agency staff person or the assigned assistant attorney general, if any, upon whom pleadings and other papers should be served, and any other information requested by the Office of Administrative Hearings.

(2) The agency referral notice must be accompanied by a copy of the agency's contested case notice in the case, a copy of any request for hearing and copies of motions or petitions filed with the agency and orders issued by the agency in the contested case.

(3) The agency shall provide a copy of the referral notice to each party or their counsel, if any. The agency may include additional copies of documents already sent to or received from the parties or their counsel with the copy of the

referral notice.

(4) After a case has been referred by the agency to the Office of Administrative Hearings, the agency may withdraw the case from the Office of Administrative Hearings if the agency notifies the parties in writing that:

(a) The agency is withdrawing its contested case notice;

(b) All of the issues in the case have been resolved without the need to hold a hearing; or

(c) The agency has determined that it is not appropriate for the case to proceed to a hearing at that time and the reason therefor.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0520

Filing and Service of Pleadings and Other Documents in Contested Case

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents, correspondence, motions including motions for a discovery order, pleadings, rulings and orders filed for the record in the contested case shall be filed:

(a) With the agency before the case is referred by the agency to the Office of Administrative Hearings;

(b) With the Office of Administrative Hearings or assigned administrative law judge after the agency has referred the case to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order;

(c) With the agency after the assigned administrative law judge issues a proposed order, or with the administrative law judge if the administrative law judge has authority

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to issue the final order.

(3) The agency shall refer to the Office of Administrative Hearings or the assigned administrative law judge any motion or other matter filed with the agency that should have been filed with the Office of Administrative Hearings or the assigned administrative law judge under section (2) of this rule.

(4) The Chief Administrative Law Judge or assigned administrative law judge shall refer to the agency any motion or other matter filed with the Office of Administrative Hearings or assigned administrative law judge that should have been filed with the agency under section (2) of this rule.

(5) The person or agency filing any pleading, motion, correspondence or other document with the agency, the Office of Administrative Hearings or administrative law judge assigned to the case shall simultaneously provide copies of the documents to the agency and the parties, or their counsel if the agency or parties are represented.

(a) Copies shall be provided to the agency and the parties, or their counsel if the agency or parties are represented, by hand delivery, by facsimile, by mail or as otherwise permitted by the agency by rule or in writing, or as otherwise directed by the administrative law judge with the agreement of the agency and the parties.

(b) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the administrative law judge is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

(6) Each party shall notify all other parties, the agency and the administrative law judge of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the administrative law judge, all other parties and the agency, unless the agency has waived the right to receive notice.

(7) The agency shall notify all parties and the administrative law judge of any change in the

agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(8) Motions, pleadings and other documents sent through the U.S. Postal Service to the agency, Office of Administrative Hearings or assigned administrative law judge shall be considered filed on the date postmarked. Documents sent by facsimile or hand-delivered are considered filed when received by the agency, Office of Administrative Hearings or assigned administrative law judge. If the agency permits or the administrative law judge directs alternative means of filing, the agency or the administrative law judge should determine when filing is effective for each alternative method permitted or directed.

(9) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

(10) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0525

Scheduling Hearings

1) Subject to the approval of the agency, the Office of Administrative Hearings or assigned administrative law judge shall:

(a) Set the date and time of the hearing, including a postponed or continued hearing;

(b) Determine the location of the hearing; and

(c) Determine whether cases shall be consolidated or bifurcated.

(2) Unless otherwise provided by law, the Office of Administrative Hearings or assigned administrative law judge may postpone or continue a hearing:

- (a) For good cause; or
- (b) By agreement of the parties and the agency, if the agency is participating in the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0528

Late Hearing Requests

(1)(a) When a party requests a hearing after the time specified by the agency, the agency may accept the late request only if:

(A) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rules provide a different standard; and

(B) The agency receives the request before the entry of a final order by default or before 60 calendar days after the entry of the final order by default, unless other applicable statutes or agency rules provide a different timeframe.

(b) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(c) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(d) Before granting a party's late hearing request, the agency will provide all other parties, if any, an opportunity to respond to the late hearing request.

(2) If a party requesting a hearing disputes the facts underlying the agency's claim that a hearing request was late, the agency will provide a right to a hearing on that factual dispute. The administrative law judge will issue a proposed order recommending that the agency find that the hearing request is either timely filed or late.

(3) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency will provide a right to a hearing on the reasons why the hearing request is late. The administrative law judge will issue a proposed order recommending that the agency grant or deny the late hearing request.

(4) In addition to the right to a hearing provided in (2) and (3) of this rule, the agency by rule or in writing may provide in any case or class of cases a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it must be conducted pursuant to these rules by an administrative law judge from the Office of Administrative Hearings.

(5) If the late hearing request is allowed by the agency, the agency will enter an order granting the request and refer the matter to the Office of Administrative Hearings to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(6) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(7) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or administrative law judge has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-

31-05, cert. ef. 1-1-06

137-003-0530

Late Filing and Amendment of Documents

(1) Unless otherwise provided by law, when a party or agency fails to file any document for the contested case proceeding, except a hearing request, within the time specified by agency rules or these rules of procedure, the late filing may be accepted if the agency or administrative law judge determines that there was good cause for failure to file the document within the required time.

(2) The decision whether a late filing will be accepted shall be made:

(a) By the agency if OAR 137-003-0520 requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520 requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(3) The agency or administrative law judge may require a statement explaining the reasons for the late filing.

(4) Notwithstanding any other provision of these rules, at any time after the issuance of the notice required by ORS 183.415, an agency may issue an amended notice. If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to enable the party to file an amended response, if required by agency rules, or to respond to any new material contained in the amended notice. If the agency files an amended notice after the evidentiary record has been closed, the agency shall inform the administrative law judge, who will reopen the record and conduct any further hearing or listen to additional argument required by new matters in the amended notice. If the administrative law judge has issued a proposed order, the administrative law judge shall prepare an amended proposed order after completion of any further hearing.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the administrative law judge may permit the party or

agency to file an amended document if the agency or administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

(6) The decision whether an amended document will be accepted shall be made:

(a) By the agency if OAR 137-003-0520(2) requires the document to be filed with the agency; or

(b) By the administrative law judge if OAR 137-003-0520(2) requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(7) The agency or administrative law judge may require a statement explaining the reasons for the amendment.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0535

Participation as Party or Limited Party

(1) The agency may by rule or in writing identify persons or entities who shall be parties or limited parties.

(2) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties. Unless otherwise provided by law, a person requesting to participate as a party or limited party shall file a petition with the agency and shall include a sufficient number of copies of the petition for service on all parties.

(3) The petition shall be filed at least 21 calendar days before the date set for the hearing, unless the agency by rule has set a different deadline or unless the agency and the parties agree to a different deadline. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file within the required time.

(4) The petition shall include the following:

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

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

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

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

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

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(5) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.

(6) If the agency determines under OAR 137-003-0530 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

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

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

(7) If a person is granted participation as a party or a limited party, the hearing may be postponed or continued to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(8) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

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

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

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

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

(9) The agency may treat a petition to participate as a party as if it were a petition to participate as a limited party.

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

(11) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner, all parties and the Office of Administrative Hearings or assigned administrative law judge. If the petition is allowed, the agency shall also provide petitioner with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(4), 183.450(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0540

Agency Participation as Interested Agency or Party

(1) At any time after an agency refers a contested case to the Office of Administrative Hearings, the agency may also notify the parties that it intends to name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own

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initiative or upon request by that other agency.

(2) Each party shall have seven calendar days from the date of service of the notice to file objections. The agency may establish a shorter or longer period of time for filing objections.

(3) The agency decision to name an agency as a party or as an interested agency shall be by written order and served promptly on the parties, the named agency and the Office of Administrative Hearings or assigned administrative law judge.

(4) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices as any party in the proceeding. An interested agency, unlike a party, has no right to judicial review.

(5) An agency may not be named as a party under this rule without written authorization of the Attorney General.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 180.060,
180.220, 183.341, 183.415(4) & OL 1999,
Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0545

Representation of Agency by Attorney General or Agency Representative

(1) An agency may be represented at a contested case hearing by the Attorney General.

(2) An agency may be represented at a contested case hearing by an officer or employee of the agency if the Attorney General has consented to that representation in a particular hearing or class of hearings and the agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of contested case hearing involved.

(3) The administrative law judge shall not allow an agency representative appearing under section (2) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an

agency;

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

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341,
183.413, 183.415 & OL 1999, Ch. 448, 599
& 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0550

Representation of Parties; Out-of-state Attorneys

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

(2) Corporations, partnerships, limited liability companies, unincorporated associations, trusts and government bodies must be represented by an attorney except as provided in OAR 137-003-0555 or as otherwise authorized by law.

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 9.320, 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0555

Authorized Representative of Parties Before Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, Office of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.990; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and

Development; State Department of Agriculture for purposes of hearings under ORS 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, an authorized officer or employee of a governmental authority other than a state agency or other authorized representatives recognized by state or federal law;

(c) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

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

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may

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appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the administrative law judge with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The administrative law judge may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the administrative law judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341,
183.457 & OL 1999, Ch. 448, 599 & 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0560

Emergency License Suspension, Refusal to Renew

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)

(a) When the agency issues an emergency suspension order, the agency

shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

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

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3)

(a) If timely requested by the licensee, the agency shall refer the matter to the Office of Administrative Hearings to hold a hearing on the emergency suspension order as soon as practicable;

(b) The agency may decide whether the hearing on the emergency suspension order shall be combined with any underlying agency proceeding affecting the license.

(c) At the hearing regarding the emergency suspension order, the administrative law judge shall consider the facts and circumstances including, but not limited to:

(A) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety; and

(B) Whether circumstances at the

time of the hearing justify confirmation, alteration or revocation of the order.

(4) Following the hearing, the administrative law judge shall issue a proposed order consistent with OAR 137-003-0645 unless the administrative law judge has authority to issue a final order without first issuing a proposed order. Any proposed order shall contain a recommendation whether the emergency suspension order should be confirmed, altered or revoked. The final order shall be consistent with OAR 137-003-0665 and shall be based upon the criteria in section (3)(c) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.430 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0565

Use of Collaborative Dispute Resolution in Contested Case Hearing

(1) When an agency issues a contested case notice, the party(ies) and the agency, if participating in the contested case hearing, may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither a party's request, nor any agreement by the agency, to participate in such a process tolls the period for filing a timely request for a contested case hearing.

(2) The agency, if participating in the contested case hearing, or the administrative law judge, if the agency is not participating in the contested case hearing, may establish a deadline for the conclusion of the collaborative DR process,

(3) The participants in the collaborative DR process may sign an agreement containing any of the provisions listed in OAR 137-005-0030 or such other terms as may be useful to further the collaborative DR process.

(4) If the party(ies), and the agency if participating in the contested case hearing, have agreed to participate in a collaborative DR process and a party makes a timely request for a contested case hearing, the hearing shall be suspended until the collaborative DR process is completed, the agency or the party opts out of the collaborative

DR process, or the deadline, if any, for the conclusion of the collaborative process is reached.

(5) Collaborative dispute resolution may occur at any time before issuance of a final order. Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0510(4).

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341, 183.415(5) & 183.502

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0570

Discovery in Contested Case Hearing

(1) Discovery by the agency or any party may be permitted in appropriate contested cases. Any party or the agency may file a motion pursuant to the requirements in this rule for an order requiring discovery. Before requesting a discovery order, a party or the agency must seek the discovery through an informal exchange of information.

(2) A motion for an order requiring discovery should be filed with and decided by the agency or the administrative law judge, as required by OAR 137-003-0520(2).

(3) Any party seeking an order from the administrative law judge requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the requested discovery informally.

(4) After receiving a written request for an order requiring discovery, the agency or the administrative law judge shall issue a written order to require or deny discovery, or the agency may issue an order to require discovery on the agency's own motion. (5) Discovery may include but is not limited to one or more of the following methods:

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

(b) Production of documents, which may but need not be limited to documents that the party producing the

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- documents plans to offer as evidence;
- (c) Production of objects for inspection;
- (d) Permission to enter upon land to inspect land or other property;
- (e) Up to 20 requests for admission, including subparts, unless otherwise authorized by the administrative law judge or the agency;
- (f) Up to 20 written interrogatories, including subparts, unless otherwise authorized by the administrative law judge or the agency;
- (g) Prehearing conferences, as provided in OAR 137-003-0575.

(6) Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case. If the relevance or necessity of the requested discovery is not apparent, the agency or the administrative law judge may require the party or agency requesting discovery to explain how the request is likely to produce information that is relevant and necessary, or likely to facilitate resolution of the case.

(7) The agency or the administrative law judge may authorize the requested discovery if the agency or the administrative law judge determines that the requested discovery is reasonably likely to produce information that is generally relevant to the case and necessary, or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the administrative law judge may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or administrative law judge shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(8) If the agency or the administrative law judge authorizes discovery, the agency or the administrative law judge shall control the methods, timing and extent of discovery. The agency or the administrative law judge may limit discovery to a list of witnesses and the documents upon which the agency and parties will rely. The

agency may adopt rules governing discovery in the agency's contested cases as long as those rules are not in conflict with the requirements of this rule. Upon request of a party or the agency, the administrative law judge or the agency may issue a protective order limiting the public disclosure of information that is confidential or privileged by law.

(9) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(10) Unless otherwise prohibited by law, the agency may delegate to an administrative law judge its authority to issue subpoenas in support of a discovery order and control discovery. The delegation must be by rule or in writing, and it may be limited.

(11) The administrative law judge may refuse to admit evidence that was not disclosed in response to a discovery order or discovery request, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence that was not disclosed as ordered or requested, the administrative law judge may grant a continuance to allow an opportunity for the agency or other party to respond.

(12) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge does not treat failure to respond to the request for admissions as admissions, the administrative law judge may grant a continuance to enable the parties and the agency to develop the record as needed.

(13) Nothing in this rule shall be

construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

(14) A party or agency dissatisfied with an administrative law judge's discovery order may ask the Chief Administrative Law Judge for immediate review of the order. A request for review by the Chief Administrative Law Judge must be made in writing within 10 days of the date of the discovery order. The Chief Administrative Law Judge shall review the order and independently apply the criteria set out above in subsection seven of this rule. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

(15) If a party is dissatisfied with the Chief Administrative Law Judge's discovery order, the party may request that the agency review the order. A request for review must be made in writing within 10 days of the filing of the Chief Administrative Law Judge's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Administrative Law Judge's discovery order.

(16) If the agency is dissatisfied with the Chief Administrative Law Judge's discovery order, the agency may review the order on its own motion. Any decision to review the order must be stated in writing within 10 days of the filing of the Chief Administrative Law Judge's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Administrative Law Judge's discovery order.

(17) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(18) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should

serve a copy of the public records request upon the agency representative or the attorney representing the agency.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341,
183.425 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00;
DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ
19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-
2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0572

Depositions in Contested Cases

(1) Depositions may not be taken in contested cases without agency authorization.

(2) A party or an attorney representing the agency may petition the agency for an order to take a deposition of a witness. A copy of the petition shall be sent to all other parties and the administrative law judge. The petition shall include the name and address of the witness, explain why the witness's testimony is material to the proceedings and explain why no other means of obtaining the witness's testimony for the hearing is adequate. As used in this rule, materiality means the testimony sought tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable.

(3) The agency shall consider the petition and issue a written order either granting or denying the deposition. If the agency grants the deposition, the deposition shall be taken on such terms as the agency may order including, but not limited to, location, manner of recording, time of day, persons permitted to be present and duration.

(4) Examination and cross-examination of deponents may proceed as permitted at hearing.

(5) The testimony of the deponent shall be recorded.

(6) All objections made at the time of the examination shall be noted on the record.

(7) At any time during the taking of a deposition, upon motion and a showing by a party, the agency or a deponent that the deposition is being conducted or hindered in bad faith or in a manner not consistent with these rules or in such manner as unreasonably to annoy, embarrass or oppress the deponent, the agency or any party, the agency may order the examination to cease or may

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limit the scope or manner of the taking of the deposition. The taking of the deposition shall be suspended for the time necessary to make a motion under this subsection.

(8) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party or the agency, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party or the agency.

(9) Deposition of a non-party may be compelled by a subpoena issued by the agency. The agency or the party requesting the deposition may apply to circuit court to compel obedience to a subpoena issued to compel a deposition.

(10) Unless otherwise prohibited by law, the agency may delegate to the administrative law judge its authority to authorize or limit depositions. Unless expressly required by law or expressly stated in the delegation by the agency, an administrative law judge may not require the agency to pay for any deposition taken by a party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341,
183.425 & OL 1999, Ch. 849

Hist.: DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0573

Individually Identifiable Health Information

(1) This rule is intended to facilitate the issuance of a Qualified Protective Order (QPO) by an administrative tribunal in a contested case proceeding. The process described in this rule may be used by an agency or party to a contested case proceeding to request information from Covered Entities by using a QPO. This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, capitalized terms used but not otherwise defined in this rule have the meaning given those terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164.

(a) An agency or administrative law judge who conducts a contested case

hearing on behalf of an agency is an “administrative tribunal,” as that term is used in 45 CFR § 164.512(e).

(b) The HIPAA Privacy Rules define “Covered Entity” to include the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse;
or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(3) An administrative tribunal may issue a QPO at the request of a party, a Covered Entity, an Individual, or the agency.

(a) A request for a QPO may be accompanied by a copy of the subpoena, discovery request, or other lawful process that requests Protected Health Information from a Covered Entity.

(b) If the Individual has signed an authorization permitting disclosure of the Protected Health Information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) A QPO is an order of the administrative tribunal that:

(a) Prohibits the use or disclosure of Protected Health Information by the agency or parties for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(b) Requires that all copies of the Protected Health Information be returned to the Covered Entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(c) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply

to the Protected Health Information.

(5) This rule addresses only the process for requesting a QPO from an administrative tribunal in a contested case hearing. This rule does not address any claims or defenses related to the admissibility or confidentiality of Protected Health Information for purposes of discovery or the hearing.

(6) The provisions of this rule do not supercede any other provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of Protected Health Information without the use of a QPO.

(7) This rule applies to all contested cases that are either pending or initiated on or after April 14, 2003.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.341, HIPAA
1996, 45 CFR part 160 &164

Stats. Implemented: ORS 183.341, Or. Law
1999, 849

Hist.: DOJ 2-2003, f. 3-19-03, cert. ef. 4-1-03;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0575

Prehearing Conferences

(1) Prior to hearing, the administrative law judge may conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The administrative law judge may convene the conference on the initiative of the administrative law judge or at the agency's or a party's request.

(2) Prior to the conference, the administrative law judge shall notify the party(ies) and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency may add additional matters to be considered at the conference by providing notice in writing to the administrative law judge and the parties.

(3) The party(ies) and the agency, if participating in the contested case hearing, shall appear at a prehearing conference through legal counsel or through persons authorized to represent the party or the agency in the contested case hearing.

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

following:

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

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant or immaterial issues;

(d) To obtain stipulations of fact and to admit documents into evidence;

(e) To provide to the administrative law judge, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

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

(h) To assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits; and

(j) To consider any other matters that may expedite the orderly conduct of the proceeding.

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

(6) The failure of a party or the agency to appear at a prehearing conference convened by the administrative law judge shall not preclude the administrative law judge from making rulings on any matters identified by the administrative law judge in the notice issued under section (2) of this rule, and discussion of any of these matters at the conference in the absence of the agency or a party notified of the conference does not constitute an ex parte communication with the administrative law judge.

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(7) The administrative law judge conducting the prehearing conference must make a record of any stipulations, rulings and agreements. The administrative law judge shall either make an audio or stenographic record of the pertinent portions of the conference or shall place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(8) After the hearing begins, the administrative law judge may at any time recess the hearing to discuss any of the matters listed in section (4) of this rule.

(9) Nothing in this rule precludes the agency and parties from engaging in informal discussions of any of the matters listed in section (4) of this rule without the participation of the administrative law judge. Any agreement reached in an informal discussion shall be submitted to the administrative law judge in writing or presented orally on the record at the hearing.

(10) An agency may adopt rules regarding the exchange of exhibits and a list of witnesses before the hearing. In the absence of an agency rule to the contrary, an administrative law judge may establish deadlines for the exchange of exhibits and a list of witnesses before the hearing.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341, 183.430, 183.502 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0580

Motion for Summary Determination

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule may elect not to make available this process for summary determination.

(5) The party and the agency may stipulate to a record upon which the requested summary determination shall be made.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading. When a motion for summary

determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 44.415, 183.341, 183.440, 183.445 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0585

Subpoenas

(1) Subpoenas for the attendance of witnesses or the production of documents at the hearing may be issued as follows:

(a) By an agency on its own motion or by an Assistant Attorney General on behalf of the agency;

(b) By the agency or administrative law judge upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought; and

(c) By an attorney representing a party on behalf of that party.

(2) A motion to quash a subpoena must be presented in writing to the administrative law judge, with service on the agency and any other party in the manner required by OAR 137-003-0520.

(a) The agency and any party may respond to the motion to quash within seven calendar days of receiving the motion. Any response must be in writing and served on the agency and any other party in the manner required

by OAR 137-003-0520.

(b) The administrative law judge shall rule on the motion to quash within 14 calendar days of receiving the motion.

(3) If a person fails to comply with a properly issued subpoena, the agency, administrative law judge or party may apply to any circuit court judge to compel obedience with the requirements of the subpoena.

(4) The administrative law judge may establish longer or shorter periods than those under section (2) of this rule for the filing of motions and responses.

(5) The agency shall be responsible for paying any mileage or fees required by ORS 44.415 for witnesses subpoenaed to a hearing under subsection (1)(a) of this rule. The party shall be responsible for paying any mileage or fees required by ORS 44.415 for witnesses subpoenaed to a hearing under subsections (1)(b) or (c) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 44.415, 183.341, 183.440, 183.445 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0590

Qualified Interpreters

(1) 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.

(2) If an individual with a disability is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(3) If a non-English speaking person is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a

non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge. No fee shall be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the administrative law judge the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a

qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The administrative law judge shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under ORS 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive communication

device for an individual with a disability, must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14-day advance notice.

(b) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of;

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.418, 183.421 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0595

Public Attendance; Exclusion of Witnesses; Removal of Disruptive Individuals

(1) Unless otherwise required by law, contested case hearings are open to the public unless the agency by rule or in writing determines that the hearing will be closed to non-participants in the hearing.

(2) The administrative law judge may exclude witnesses from the hearing, except for a party, a party's authorized representative, expert witnesses, the agency representative, one agency officer or employee and any persons authorized by statute to attend.

(3) An administrative law judge may expel any person from the contested case hearing

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if that person engages in conduct that disrupts the hearing.

(4) Any party, party's representative, agency or agency's representative, having knowledge or reasonable belief that any person participating in the hearing may present a danger or may be a threat to anyone involved in the hearing, should immediately notify the Office of Administrative Hearings or the assigned administrative law judge, if any, the agency and the parties or their representatives, if appropriate, of the potential danger.

(5) An administrative law judge, the Office of Administrative Hearings, or the agency may take any other measures reasonably required to ensure the safety and security of the participants in the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0600

Conducting the Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the Office of Administrative Hearings.

(2) If the administrative law judge has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that administrative law judge shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).

(3) At the commencement of the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing shall be conducted so as to include the following:

(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been

limited;

(c) Any rebuttal evidence; and

(d) Any closing arguments.

(5) The administrative law judge, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(6) The hearing may be continued with recesses as determined by the administrative law judge.

(7) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.

(8) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(9) If the administrative law judge receives any written or oral ex parte communication during the contested case proceeding, the administrative law judge shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.

(10) The administrative law judge may request that any closing arguments be submitted in writing or orally.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(9) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0605

Telephone Hearings

(1) Unless precluded by law, the administrative law judge may hold a hearing or portion of a hearing by telephone and may permit a party or witness to appear at a hearing by telephone.

(2) If a hearing is to be held by telephone, each party and the agency, if participating in the contested case hearing, shall provide, before the commencement of the hearing, to all other parties,

to the agency and to the administrative law judge copies of the exhibits it intends to offer into evidence at the hearing.

(3) If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties, to the agency, if participating in the contested case hearing, and to the administrative law judge a copy of each document about which the witness will be questioned.

(4) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (2) during the telephone hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing may be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(5) The administrative law judge shall make an audio or stenographic record of any telephone hearing.

(6) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0610

Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the administrative law judge.

(3) All offered evidence, not objected to, will be received by the administrative law judge

subject to the administrative law judge's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order. If the administrative law judge has authority to issue a final order without first issuing a proposed order, the administrative law judge may rule on the admissibility of the evidence in the final order.

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.450 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0615

Judicial Notice and Official Notice of Facts

(1) The administrative law judge may take notice of judicially cognizable facts on the record before issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued. The agency or party(ies) may present rebuttal evidence.

(2) The administrative law judge may take official notice of general, technical or scientific facts within the specialized knowledge of the administrative law judge.

(a) If the administrative law judge takes official notice of general, technical or scientific facts, the administrative law judge shall provide such notice to the parties and the agency, if the agency is

participating in the contested case hearing, before the issuance of the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued.

(b) The agency or a party may object or may present rebuttal evidence in response to the administrative law judge's official notice of general, technical or scientific facts.

(c) If an objection is made or if rebuttal evidence is presented, the administrative law judge shall rule before the issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order, in the final order on whether the noticed facts will be considered as evidence in the proceeding.

(3) Before the issuance of the proposed order or a final order issued by an administrative law judge, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the administrative law judge and parties to the hearing.

(b) A party may present rebuttal evidence in response to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts.

(c) If a party presents rebuttal evidence, the administrative law judge shall rule on whether the noticed facts will be considered as evidence in the proceeding.

(4) After the issuance of a proposed order, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific

facts in writing to the parties to the hearing and, if authorized to issue a final order, to the administrative law judge.

(b) A party may object in writing to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts with service on any other parties, the agency and, if authorized to issue a final order, on the administrative law judge in the manner required by OAR 137-003-0520. A party may request that the agency or, if authorized to issue a final order, the administrative law judge provide an opportunity for the party to present written or non-written rebuttal evidence.

(c) The agency may request the administrative law judge to conduct further hearing proceedings under OAR 137-003-0655 as necessary to permit a party to present rebuttal evidence.

(d) If a party presents rebuttal evidence, the agency or, if authorized to issue a final order, the administrative law judge shall rule in the final order on whether the noticed facts were considered as evidence.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341,
183.450(4) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ
11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0625

Ex Parte Communications with Administrative Law Judge

(1) For purposes of this rule, an ex parte communication is:

(a) An oral or written communication;

(b) By a party, a party's representative or legal adviser, any other person who has a direct or indirect interest in the outcome of the proceeding, any other person with personal knowledge of the facts relevant to the proceeding, or any officer, employee or agent of the

- agency;
- (c) That relates to a legal or factual issue in the contested case proceeding;
- (d) Made directly or indirectly to the administrative law judge;
- (e) While the contested case proceeding is pending;
- (f) That is made without notice and opportunity for the agency and all parties to participate in the communication.

(2) If an administrative law judge receives an ex parte communication during the pendency of the contested case proceeding, the administrative law judge shall place in the record:

- (a) The name of each individual from whom the administrative law judge received an ex parte communication;
- (b) A copy of any ex parte written communication received by the administrative law judge;
- (c) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge;
- (d) A copy of any written response made by the administrative law judge to any ex parte oral or written communication; and
- (e) A memorandum reflecting the substance of any oral response made by the administrative law judge to any ex parte oral or written communication.

(3) The administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication. Any responses shall be made part of the record.

4) The provisions of this rule do not apply to:

- (a) Communications made to an administrative law judge by other administrative law judges;
- (b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge; or

(c) Communications made to the administrative law judge by an assistant attorney general if the communications are made in response to a request from the administrative law judge and the assistant attorney general is not advising the agency about the matters at issue in the contested case proceeding.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0630

Pre-hearing Motions

(1) A request for any order or other relief may be made by filing a motion in writing. The motion need not be in any particular form.

(2) Unless otherwise provided by statute or rule, all motions shall be filed in writing at least seven calendar days before the date set for the hearing and a copy provided to the parties and to the agency in the manner required by OAR 137-003-0520 except:

- (a) Motions seeking to intervene or to be granted party status under OAR 137-003-0535,
- (b) Motions made in a pre-hearing conference,
- (c) Motions for a ruling on legal issues under OAR 137-003-0580; and
- (d) Motions to continue a scheduled conference or hearing,
- (e) Motions to quash a subpoena under OAR 137-003-0585 when the subpoena is served less than 14 days before the date set for the hearing.

(3) The agency or a party may file a response to a motion. Responses to motions made seven calendar days before the date of the hearing shall be in writing with service to the parties and to the agency in the manner required by OAR 137-003-0520 and shall be filed on the earlier of:

- (a) Five calendar days after receipt of the motion, or
- (b) The date and time of the hearing.

(4) Responses to late-filed motions may be presented orally or in writing at the contested

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case hearing.

(5) At the request of a party or the agency, or on the administrative law judge's own motion, the administrative law judge may establish longer or shorter periods than those under sections (2) and (3) of this rule for the filing of motions and responses. The administrative law judge may also consider motions presented orally at the contested case hearing. In exercising discretion under this subsection, the administrative law judge shall consider the duty to ensure a full and fair inquiry into the facts and the likelihood of undue delay or unfair prejudice.

(6) The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule or order.

(7) The administrative law judge shall rule on all motions on the record before issuance of a proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, in the final order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0635

Transmittal of Questions to the Agency

(1) Questions regarding the following issues may be transmitted to the agency:

- (a) The agency's interpretation of its rules and applicable statutes; or
- (b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the agency, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the agency unless the agency by rule or in writing elects not to make available this process for transmittal of questions to the agency.

(3) The administrative law judge shall submit any transmitted question in writing to the agency. The submission shall include a summary of the matter in which the question arises and shall be served on the agency representative and parties

in the manner required by OAR 137-003-0520.

(4) The agency may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the agency responds to the transmitted question.

(6) The agency shall respond in writing to the transmitted question within a reasonable time and the response shall be made a part of the record of the contested case hearing. The agency's response may be to decline to answer the transmitted question. The agency shall provide its response to the administrative law judge and to each party. The parties may reply to the agency's response within a reasonable time.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 12-2007, f. 10-30-07, cert. ef. 11-2-07

137-003-0640

Immediate Review by Agency

(1) Before issuance of a proposed order or before issuance of a final order if the administrative law judge has authority to issue a final order, the agency or a party may seek immediate review by the agency of the administrative law judge's decision on any of the following:

- (a) A ruling on a motion to quash a subpoena under OAR 137-003-0585;
- (b) A ruling refusing to consider as evidence judicially or officially noticed facts presented by the agency under OAR 137-003-0615 that is not rebutted by a party;
- (c) A ruling on the admission or exclusion of evidence based on a claim of the existence or non-existence of a privilege.

(2) The agency by rule or in writing may elect not to make available this process of immediate review by the agency.

(3) The agency or a party may file a response to the request for immediate review. The response shall be in writing and shall be filed with the agency within five calendar days after receipt of the request for review with service on the administrative law judge, the agency representative, if any, and any other party.

(4) The mere filing or pendency of a request for immediate agency review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(5) The agency shall rule on all requests for immediate agency review in writing and the request and ruling shall be made part of the record of the proceeding.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0645

Proposed Orders in Contested Cases

(1) Unless the administrative law judge is authorized or required to issue a final order without first issuing a proposed order, the administrative law judge shall prepare a proposed order.

(2) The proposed order shall be based exclusively on:

- (a) The pleadings, including the contested case notice, and motions;
- (b) The applicable law;
- (c) Evidence and arguments;
- (d) Stipulations;
- (e) Ex parte written communications received by the administrative law judge, memoranda prepared by the administrative law judge reflecting the substance of any ex parte oral communications made to the administrative law judge, written responses made by the administrative law judge and any memoranda prepared by the administrative law judge reflecting the substance of any oral

responses made by the administrative law judge;

(f) Judicially cognizable facts and matters officially noticed;

(g) Proposed findings of fact and written argument submitted by a party or the agency;

(h) Intermediate orders or rulings by the administrative law judge or agency; and

(i) Any other material made part of the record of the hearing.

(3) The proposed order shall fully dispose of all issues presented to the administrative law judge that are required to resolve the case. The proposed order shall be in writing and shall include:

(a) The case caption;

(b) The name of the administrative law judge(s), the appearances of the parties and identity of witnesses;

(c) A statement of the issues;

(d) References to specific statutes or rules at issue;

(e) Rulings on issues presented to the administrative law judge, such as admissibility of offered evidence, when the rulings are not set forth in the record;

(f) Findings as to each issue of fact and as to each ultimate fact required to support the proposed order, along with a statement of the underlying facts supporting each finding;

(g) Conclusions of law based on the findings of fact and applicable law;

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s);

(i) The action the administrative law judge recommends the agency take as a result of the facts found and the legal conclusions arising therefrom; and

(j) The name of the administrative law judge who prepared the proposed order and date the order was issued.

(4) The agency by rule may provide that the proposed order will become a final order if no exceptions are filed within the time specified in the agency rule unless the agency notifies the

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parties and the administrative law judge that the agency will issue the final order. If the agency adopts such a rule, the proposed order shall include a statement to this effect.

(5) If the recommended action in the proposed order is adverse to any party, the proposed order shall also include a statement that the party may file exceptions and present argument to the agency or, if authorized to issue the final order, to the administrative law judge. The proposed order shall include information provided by the agency as to:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(6) The administrative law judge shall serve the proposed order on the agency and each party.

(7) The proposed order shall include a certificate of service, documenting the date the proposed order was served on the agency and each party.

(8) The administrative law judge shall transmit the hearing record to the agency when the proposed order is served or, if the administrative law judge has authority to issue a final order, when the final order is served.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.460, 183.464 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0650

Exceptions to Proposed Order

(1) If the recommended action in the proposed order is adverse to any party or the agency, the party or agency may file exceptions and present argument to the agency or, if authorized to issue a final order, to the administrative law judge.

(2) The agency shall by rule or in writing describe:

(a) Where and when written exceptions must be filed to be

considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(3) The agency may request the administrative law judge to review any written exceptions received by the agency and request the administrative law judge either to provide a written response to the exceptions to be made a part of the record or to revise the proposed order as the administrative law judge considers appropriate to address any exceptions. The administrative law judge shall not consider new or additional evidence unless, pursuant to OAR 137-003-0655(2), the agency requests the administrative law judge to conduct further hearing. The administrative law judge's response must be in writing, either in the form of a response to the exceptions or a revised proposed order, and sent to all parties and the agency.

(4) Agency staff may comment to the agency or the administrative law judge on the proposed order, and the agency or the administrative law judge may consider such comments, subject to OAR 137-003-0625 and 137-003-0660.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.460, 183.464 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0655

Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, the agency

shall specify the scope of the hearing and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

- (a) The official(s) who are to render the final order have not considered the record; or
- (b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, administrative law judge shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the administrative law judge may not consider new or additional evidence unless the agency requests the administrative law judge to conduct further hearings under section (1) of this rule. The agency or administrative law judge may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the administrative law judge shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS Chapter 244, including but not limited to ORS 244.120 and 244.130.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & OL

1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0660

Ex Parte Communications to Agency during Review of Contested Case

(1) For purposes of this rule, an ex parte communication is an oral or written communication to an agency decision maker during its review of the contested case not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about legal issues or about facts in the record.

(2) If an agency decision maker receives an ex parte communication during its review of a contested case, the decision maker shall:

- (a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and
- (b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication.

(3) The agency shall include in the record of the contested case proceeding:

- (a) The ex parte communication, if in writing;
- (b) A statement of the substance of the ex parte communication, if oral;
- (c) The agency's notice to the parties of the ex parte communication; and
- (d) Rebuttal evidence, if any.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.462 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0665

Final Orders in Contested Cases

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(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (5) of this rule, all final orders in contested cases shall include the following:

(a) Each of the elements identified in OAR 137-003-0645(3)(a)-(h),

(b) An Order stating the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom; and

(c) A citation of the statutes under which the order may be appealed.

(3) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties as to why the agency made the modification. For purposes of this provision, an agency modifies a proposed order in a “substantial manner” when the effect of the modifications is to change the outcome or the basis for the order or to change a finding of fact.

(4) The agency may modify a finding of historical fact made by the administrative law judge only if the agency determines that the finding made by the administrative law judge is not supported by a preponderance of the evidence in the record. For purposes of this provision, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(5) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0510(4), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference a stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties.

(6) The final order shall be served on each party.

(7) The date of service of the final order on the parties shall be specified in writing and be

part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(5), 183.470 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0670

Default in Cases Involving a Notice of Proposed Action that Does Not Become Final Without a Hearing or Default

(1) This rule applies when the agency issues a notice of proposed action that does not become final in the absence of a request for hearing. The agency or, if authorized, the administrative law judge may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make the request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency or administrative law judge notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the failure of the party to appear was caused by circumstances beyond the party’s reasonable control, the agency or administrative law judge may not issue a final order by default under section (1)(c) of this rule. In this case, the administrative

law judge shall schedule a new hearing.

(3)

a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(b) Except as provided in subsection (c) of this section, if the agency designated the agency file in a matter as the record when a contested case notice for the matter was issued in accordance with OAR 137-003-0505 and no further testimony or evidence is necessary to establish a prima facie case, the agency file, including all materials submitted by a party, shall constitute the record. No hearing shall be conducted. The agency or, if authorized, the administrative law judge shall issue a final order by default under section (1) of this rule in accordance with OAR 137-003-0665.

(c) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645. The agency or, if authorized, the administrative law judge shall issue a final order by default in accordance with OAR 137-003-0665.

(4) The agency or administrative law judge shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order.

(5) If a final order by default is entered because a party did not request a hearing within the time specified by the agency, the party may

make a late hearing request as provided in OAR 137-003-0528.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(6), 183.470, OL 1999, Ch. 849 & 2007 HB 2423

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0672

Default in Cases Involving an Agency Order that May Become Final Without a Request for Hearing

(1) This rule applies when the agency has issued a contested case notice containing an order that was to become effective unless a party requested a hearing, and has designated the agency file as the record.

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. The party may make a late hearing request as provided in OAR 137-003-0528.

(3) After a party requests a hearing, the agency or the administrative law judge will dismiss the request for hearing, and the agency order is final as if the party never requested a hearing if:

(a) The party that requested a hearing withdraws the request;

(b) The agency or administrative law judge notifies the party of the time and place of the hearing and the party fails to appear at the hearing; or

(c) In a matter in which only one party is before the agency, the agency or administrative law judge notifies the party of the time and place of the hearing, and the party notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agrees to reschedule the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(6) & 183.470

Hist.: DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06;

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DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0675

Reconsideration and Rehearing - Contested Cases

(1) Unless otherwise provided by statute, a party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule or order to receive notice of the proceeding.

(2) The agency may, by rule, require a party to file a petition for reconsideration or rehearing as a condition of judicial review. The agency may, by rule or in writing, require any petition for reconsideration or rehearing to be filed with the administrative law judge.

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

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0690(3).

(5) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

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

(a) If the agency determines that reconsideration alone is appropriate, the agency shall enter a new final order in accordance with OAR 137-003-0665, which may be an order affirming the existing order.

(b) If the agency determines that rehearing is appropriate, the agency

shall decide upon the scope of the rehearing. The agency shall request the administrative law judge to conduct further hearing on such issues as the agency specifies and to prepare a proposed order as appropriate. The agency shall issue a new final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order prepared by the administrative law judge as the final order, or modify the proposed order and issue the modified order as the final order.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) Unless otherwise provided by law, a final order remains in effect during reconsideration or rehearing until stayed or changed.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.482 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

137-003-0690

Stay Request - Contested Case

(1) Unless otherwise provided by law, any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The agency may, by rule or in writing, require the stay request to be filed with the administrative law judge.

(3) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney or representative, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address and telephone number of each other party to the

agency proceeding. When the party was represented by an attorney or representative in the proceeding, then the name, address and telephone number of the attorney or representative shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (3)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0695 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

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

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

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

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(h) A description of additional procedures, if any, the petitioner believes should be followed by the

agency in determining the appropriateness of the stay request; and

(i) An appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (3)(f) and (g) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(4) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (3)(d) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS

183.341, 183.482(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04; DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06

137-003-0695

Intervention in Stay Proceeding

(1) Any party identified under OAR 137-003-0690(3)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The agency may, by rule or in writing, require the response to be filed with the administrative law judge.

(3) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-003-0690(3)(f) in the petitioner's stay request; and

(d) A statement accepting, rejecting, or

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proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(4) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (3)(c) and (d) of this rule.

(5) The response must be delivered or mailed to the agency and to all parties identified in the stay request within 10 calendar days of the date of delivery or mailing to the agency of the stay request.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341,
183.482(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00;
DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

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

(d) Grant or deny the stay request as otherwise required by law.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS
183.482(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0700

Stay Proceeding and Order

(1) The agency may conduct such further proceedings pertaining to the stay request as it deems desirable, including taking further evidence on the matter. Agency staff may present additional evidence in response to the stay request. The agency shall commence such proceedings promptly after receiving the stay request.

(2) The agency shall issue an order granting or denying the stay request within 30 calendar days after receiving it. The agency's order shall:

(a) Grant the stay request upon findings of irreparable injury to the petitioner and a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to, a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable

DIVISION 60 OFFICE OF ADMINISTRATIVE HEARINGS

471-060-0005

Request for Change of Administrative Law Judge

(1) The purpose of this rule is to establish uniform procedures for the change of assignment of administrative law judges.

(2) The words and terms used in OAR 471-060-0005 have the following meanings:

(a) An administrative law judge is “assigned” when a written notice is sent to a party or agency naming the administrative law judge to preside over a contested case, or the date a party or agency has actual notice of the assignment, whichever is earlier.

(b) “Good cause” is any reason why an administrative law judge's impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

(3) Every party and agency in a contested case is entitled to request a change of administrative law judge. The first request of that party or agency shall be automatically granted. If that party or agency makes a subsequent request, it must show good cause why the administrative law judge should not preside over the hearing. The Chief administrative law judge or designee shall decide all requests.

(4) Notwithstanding section (3), no request shall be granted if a party or agency had a reasonable opportunity to request a change of administrative law judge but did not do so. “Reasonable opportunity” is determined under the totality of circumstances. All requests must be in writing and sent or delivered to the Chief Administrative Law Judge or designee at the mailing address, telephone number, or electronic

mail address indicated in the notice of assignment of administrative law judge. Requests may be sent by mail, facsimile transmission, or electronic mail.

(5) The Chief Administrative Law Judge may exempt an agency or a class of cases from this section. All requests must be in writing.

(6) For all contested cases pending on January 1, 2000, the Chief Administrative Law Judge shall not assign or change assignments of administrative law judges unless the agency on whose behalf the hearing is conducted requests assignment of a administrative law judge from the Office of Administrative Hearings to continue the conduct and conclude the proceedings of a pending case.

Stat. Auth.: ORS 657.610 & Ch. 849, Sec. 11, OL 1999 (HB 2525)

Stats. Implemented: Ch. 849, Sec. 11, OL 1999 (HB 2525)

Hist.: ED 8-1999(Temp), f. 12-29-99, cert. ef. 1-1-00 thru 6-28-00; ED 3-2000, f. 6-23-00, cert. ef. 6-25-00; ED 2-2001, f. 1-26-01, cert. ef. 1-28-01; ED 18-2003, f. 12-31-03, cert. ef. 1-4-04

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, 471.710, 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 ORS 471.030, ORS 471.730(1) & (5)

Stats. Implemented: ORS 471.710(5)

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 34, f. 1-23-70, ef. 2-26-70; LCC 17-1979, f. 9-24-79, ef. 10-1-79; LCC 13-1980(Temp), f. & ef. 4-25-80; LCC 24-1980, f. 9-30-80, ef. 10-1-80; Renumbered from 845-010-0155(9); LCC 3-1981, f. & ef. 9-18-81; LCC 6-1982, f. 7-30-82, ef. 8-1-82; OLCC 7-1989, f. 7-28-89, cert. ef. 8-1-89; OLCC 1-2003, f. 1-27-03, cert. ef. 2-1-03; OLCC 17-2003, f. 10-27-03, cert. ef. 12-1-03

845-004-0015

Signing of Orders

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

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

Stats. Implemented: ORS 471.720

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

845-004-0020

Fees for Certain Services

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

(2) The Commission charges the following fees for lists of license or compliance actions:

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

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

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

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

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

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

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

(a) 0-999 Records -- \$25;

(b) 1,000-2,999 -- \$40;

(c) 3,000-4,999 -- \$55;

(d) 5,000-6,999 -- \$70;

(e) 7,000-8,999 -- \$85;

(f) 9,000 and up Records -- \$100.

(g) The following lists are available:

(A) Complete list of all licensees;

(B) List of licensees by license type;

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

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

(h) The Commission may make other

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lists available if the Commission, in its discretion, determines that the list fills a public need, can be produced using current computer programs, and warrants the dedication of staff time necessary to produce the list. The Commission may provide electronic copies of its records. The fee is the cost of the time and material needed to produce the copy.

(4) The Commission may provide electronic or paper copies of its license and compliance records for licensed businesses. The Commission will only provide copies of documents that are not exempt from public disclosure, and may redact social security numbers and other protected information from copies of documents in the file record before making them available for review. The Commission may make microfiche copies of records available to a licensee or a licensee's legal representative, if the licensee or their representative is requesting a copy of the records for a business that the licensee owns or operates. Requests for Commission license and compliance records must be received in writing, on forms prescribed by the Commission. Except as described in sections (10) and (11) of this rule, the Commission charges the following fees for locating, researching, assembling, organizing, reviewing, redacting confidential information, copying, collating, and making records available for public viewing:

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

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

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

of the storage media.

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

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

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

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

(9) Except as described in sections (10) and (11) of this rule, the Commission charges the following fees for photocopying records not specified elsewhere in this rule: \$13 for each hour of staff time to locate, research, assemble, organize, copy or collate the records, plus 25 cents per page. The Commission may require payment of the amount of the photocopying fees at the time the request is received.

(10) The Commission may not include in a fee charged under sections (4) or (9) 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.

(11) If a fee charged under sections (4) or (9) of this rule is estimated to be greater than \$25, 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.

(12) The Commission may furnish copies without charge or at a substantially reduced fee if the Commission determines that the waiver or

reduction of fees is in the public interest because making the record available primarily benefits the general public.

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

Stats. Implemented: ORS 192.440(3)

Hist.: LCC 11-1980, f. 3-3-80, ef. 4-1-80; Renumbered from 845-0010-355; LCC 30-1980, f. 12-22-80, ef. 1-1-81; LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 3-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 16-1991, f. 10-31-91, cert. ef. 1-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 10-2005, f. 12-19-05, cert. ef. 1-1-06

845-004-0022

Annual License Fee Definition and Refund

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

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

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

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471-040, ORS 471.730(1) & ORS 471.730(5)

Stats. Implemented: ORS 471.311

Hist.: LCC 6-1986, f. & ef. 4-1-86; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-004-0060

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

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

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

- (a) Reason for the sale;
- (b) List of merchandise to be sold and approximate quantities;

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

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

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

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

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

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

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

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

845-004-0065

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

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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); & ORS 471 & 472, including ORS 471.030, 471.730(1) & (5)

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

Hist.: LCC 2-1981, f. 7-1-81, ef. 1-1-82; OLCC 14-1991, f. 9-30-91, cert. ef. 1-1-92; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-004-0070

Screening and Selection Procedures for Personal Service Contracts

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

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

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

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

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

(d) Contracts for services as a consultant;

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

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

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

(a) Develops written justification for the contract based on OAR 122-020-0015(3) which says: "An agency may contract for consultant services when the specialized skills, knowledge and resources to be provided by consultant are not available within the agency; when the work cannot be done in a reasonable time with the agency's own work force; when an independent and impartial evaluation of a situation is required by a consultant with recognized professional expertise and stature in a field; or when it will be less expensive to contract for the work";

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

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

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

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

to meet schedules;

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

(c) Selects appropriate contractor response format such as request for proposal, written bid, telephone bid. The Commission requires a minimum of three bids for contracts in amounts of \$1,000 or more;

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

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

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

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

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

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

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

(e) The Department of General

Services must approve architectural or engineering service contracts;

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

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

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

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

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

Stats. Implemented: ORS 291.021

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

845-004-0075

Public Contracting

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

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

Stats. Implemented: ORS 279.049

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

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845-004-0100

Production of Alcohol for Fuel

ORS 471.403 prohibits the distilling of alcoholic liquor without a license. Producers of alcohol for fuel will not violate ORS 471.403 if they comply with the following requirements:

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

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

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

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: LCC 14-1979, f. 8-27-79, ef. 8-29-79; Renumbered from 845-010-0785; LCC 1-1984, f. & ef. 4-3-84; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

845-004-0101

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

(1) ORS 471.730(8) 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 & 472, including 471.030, 471.730(1)&(5), 472.030 & 472.060(1)&(2)(d)

Stats. Implemented: ORS 471.335 & 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

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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, Service 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
CRITERIA FOR ISSUANCE AND
MAINTENANCE OF LICENSES**

471.730(1) & ORS 471.730(5)
Stats. Implemented: ORS 471.292 & ORS
471.730(5)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0301

Purpose and Interpretation

(1) ORS 471.313 is the primary statute that gives the reasons for which the Commission may deny an alcoholic beverage license application. The rules in this Division describe how the Commission applies these and other licensing-related statutes in granting, denying, modifying or renewing alcoholic beverage licenses and related privileges.

(2) The Commission liberally applies these rules to:

- (a) Minimize health or safety problems caused by the use and abuse of alcoholic beverages;
- (b) Encourage moderation in the use of alcoholic beverages;
- (c) Ensure that qualified persons obtain available licenses and operate in compliance with alcoholic beverage laws;
- (d) Prevent access to alcoholic beverages by minors;
- (e) Provide the opportunity for public participation in license decisions;
- (f) Provide guidelines for local governments in making recommendations to the Commission;
- (g) Ensure availability of alcoholic beverages to the public.

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

Stats. Implements: ORS 471.313

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

845-005-0302

Regular License

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

Stat. Auth.: ORS 471, including
471.030, ORS 471.040, ORS

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

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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 disturbances in or around the premises that are related to the sale or service of alcoholic beverages;
- (e) Any change for which OAR 845-006-0480 requires Commission

approval where the Commission determines that the potential exists for problems with unlawful activities, noise or disturbances in or around the premises that are related to the sale or service of alcoholic beverages.

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

- (a) Conspicuous notice posted on the premises proposed to be licensed;
- (b) Notice to licensed child care facilities, elementary or secondary schools, places of worship, hospitals, nursing facilities, convalescent homes, parks, children-oriented recreational facilities, and alcohol and other drug rehabilitation facilities within 500 feet of the premises in urban or suburban areas and 1,500 feet in rural areas; and
- (c) Notice to the neighborhood organization(s) for the area in which the proposed premises are located if the organization is recognized by the appropriate city or county and registered with the Commission. If there is no recognized organization, the Commission will notify any organization registered with the Commission that represents at least 25 households in the area.

(3) The written notice will include:

- (a) Name of applicant. If applicant is not an individual, the name(s) of the person(s) who will have primary responsibility for operating the business;
- (b) Address of premises proposed to be licensed;
- (c) Type of license;
- (d) Legal hours of operation; and
- (e) How to contact the Commission within 14 days for further information about:
 - (A) The application;
 - (B) Providing information to the Commission to help determine the applicant's eligibility for a license; and
 - (C) Participating in the Commission's licensing process.

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Stat. Auth.: ORS 471, including
471.030, 471.040, 471.730(1) & (5)
Stats. Implements: 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), ORS 471.313(5), OAR 845-005-0320, OAR 845-005-0325 or OAR 845-005-0326, or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.

(4) Organizations, facilities, government agencies, or individuals may give the Commission reliable factual information concerning whether there is a basis to grant or deny a license or to impose license restrictions under the laws specified in section (3) of this rule. Reliable factual information includes personal observations of activities in or around the proposed licensed location, as opposed to opinion, hearsay, feelings, beliefs or speculation.

Stat. Auth.: ORS 471, including
ORS 471.030, ORS 471.040, ORS
471.730(1) & ORS 471.730(5)
Stats. Implemented: ORS 471.166 & ORS
471.313
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0311

True Name on Application; Interest in Business

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

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

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

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

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

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

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

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

(E) Payment of dividends to corporate stockholders.

(b) A person who does not receive any of the profits but receives compensation that is out of the ordinary for the

services rendered. "Out of the ordinary" includes both over and under compensations;

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

(d) Any person who invests money or other property in the licensed business, other than a stockholder. Any stockholder who owns ten percent or more stock must receive Commission approval (OAR 845-006-0475). For purposes of this subsection, a bona fide loan that entitles the lender to a return of only the principal and interest on the principal is not an investment;

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

(4) ORS 471.757 allows the Commission to deny, cancel or suspend a license if an unlicensable person has any financial interest in the licensed business or place of business. For purposes of ORS 471.757, financial interest exists if a person may financially benefit or suffer based on the performance of the licensed business. Examples of persons having a financial interest in the business include:

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

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

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

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

(B) Is employed by the licensed business; or

(d) The spouse or domestic partner of the licensee or license applicant.

For purposes of this rule, domestic partners (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

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

Stats. Implemented: ORS 471.757

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

Stat. Implemented: ORS 471.311(1), ORS 471.155; 471.313 & ORS 471.168.

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

845-005-0320

License Refusal Reasons that Can Not be Overcome

The following criteria will preclude issuing a license:

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

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

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

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

(5) The applicant seeks a Full On-Premises Sales license as a private club as allowed by ORS 471.175(2)(a) and the applicant has fewer

than 200 members or has been chartered for less than one year. "Member" means an individual with voting rights and privileges in the private club equal to any other individual in the club whose club dues are fully paid on the date upon which membership is counted.

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

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

(8) The applicant has not paid an outstanding fine to the Commission. ORS 471.313(4)(g) allows the Commission to deny a license if the applicant had a poor compliance record when previously licensed. Nonpayment of a fine is one indicator of a poor compliance record.

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

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

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

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

Stats. Implemented: ORS 471.313 & ORS 471.168

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

845-005-0325

License Refusal Reasons: Applicant Qualifications

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

(1) The applicant has inadequate financial resources to build or operate the licensed premises as proposed, or has inadequate financial resources to meet the financial obligations of the

licensed business. This section does not apply to license renewal applications.

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

(3) The applicant can not or will not provide an employee who can communicate effectively with customers and Commission regulatory employees. This person must be on the licensed premises during the licensee's business hours. Communicate effectively means:

(a) Knowing how to lawfully sell and serve alcoholic beverages and communicating this to customers;

(b) Understanding Commission regulatory employees when the employees explain lawful sale and service of alcoholic beverages and responding in a way the employee understands.

(4) Alcohol or Controlled Substance History or Record:

(a) The applicant has a recent history or record of using alcohol or controlled substances to excess. Some of the types of records the Commission uses to establish a record of using to excess include court, Motor Vehicles Division, police, or medical records;

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

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fitness and the felony, the Commission considers any intervening circumstances since the commission of the crime in determining whether the applicant is an acceptable future compliance risk.

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

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

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

Stats. Implemented: ORS 471.313, ORS
183

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

845-005-0326

License Not Demanded by Public Interest or Convenience

ORS 471.313(1) allows the Commission to deny a license that public interest or convenience does not demand. The following are some of the public interest or convenience reasons for which the Commission may deny a license unless the applicant shows good cause to overcome the criteria:

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

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

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

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

private property; and public urination; and

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

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

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

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

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

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

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

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

(2) Proximity to Facilities:

(a) The licensed premises:

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

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

845-005-0327

Applicant not an Acceptable Future Compliance Risk

(1) ORS 471.313(1) allows the Commission to deny a license that public interest or convenience does not demand. ORS 471.313(4) and OAR 845-005-0325 specify license refusal bases related to the applicant's personal qualification for a license. The matrix at section (6) of this rule is the decision-making tool the Commission uses in lieu of using any of the following license refusal bases individually: ORS 471.313(4)(b) - false statements to the Commission. ORS 471.313(4)(d) - convicted of felony or violating a liquor law in Oregon. OAR 845-005-0325(4) - record or history of using alcohol or controlled substances to excess. OAR 845-005-0325(5) - felony conviction. OAR 845-

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005-0325(6) - false or misleading information to the Commission. An incident or conviction that is relevant under the matrix may also be relevant under a license refusal law or rule that is outside the matrix. In such a case, the Commission may choose to evaluate such an incident or conviction directly under the applicable provision that is outside the matrix.

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

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

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

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

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

(c) Where addiction to a substance is the basis of the disability, the individual

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

(5) As used in this rule,

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

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

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

(6) Matrix:

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

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

(c) Driving under the influence of intoxicants or while intoxicated or impaired unless found not guilty. Time passage is from date of incident. Points:

Under 2 years - 6 points; From 2 to 4 years - 5 points; From 4 to 6 years - 4 points; From 6 to 8 years - 3 points; From 8 to 12 years - 2 points; From 12 to 20 years - 1 point.

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

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

Stats. Implemented: ORS 471.311, 471.313 & 471.315

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

845-005-0331

Licensing Exterior Areas

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

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

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

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

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

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

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

845-005-0332

Tour Boat License

(1) ORS 471.182 allows the Commission to issue a Full On-Premises Sales license to a tour boat owner or operator. The statute also allows the Commission to waive a regulation for a tour boat

operator or owner that would otherwise apply to a commercial establishment.

(2) The Commission may allow more than one tour boat to be operated under one Full On-Premises Sales license if:

(a) The licensee owns or leases the tour boats. The Commission does not license a tour boat operator's agent or representative;

(b) Each boat is a "tour boat" as defined by ORS 471.182(2)(c);

(c) The licensee notifies the Commission in writing at least 10 days before adding an additional tour boat to be operated under the license;

(d) The licensee meets all applicable licensing criteria.

(3) Requirements for boats that will be in Oregon waters 90 days or less in a calendar year:

(a) Law Orientation. The applicant or legal representative must attend an OLCC Law Orientation Class.

(b) Server Education. The applicant or designee, as defined in OAR 845-009-0075, must successfully complete an approved Alcohol Server Education Course.

(c) Service Permits. Except for those covered by subsection (3)(b), the Commission waives the service permit requirement for alcohol servers and for those who supervise the sale or service of alcohol. However, the applicant, licensee or Server Education designee must ensure that all alcohol servers, and those who supervise the sale of service of alcohol, read the OLCC brochure, What Every Volunteer Alcohol Server Needs to Know.

(d) Minor Postings. The Commission generally does not assign minor postings. However, the Commission instructs tour boat licensees that minors must not be in areas with drinking environments during the hours that drinking predominates.

(4) Requirements for boats that will be in Oregon waters over 90 days in a calendar year:

(a) Law Orientation. The applicant or legal representative must attend an

OLCC Law Orientation Class.

(b) Server Education. The applicant or designee, as defined in OAR 845-009-0075, must successfully complete an approved Alcohol Server Education Course.

(c) Service Permits. The licensee, applicant, or Server Education designee must ensure that all employees engaged in the sale or service of alcohol, or supervising the sale or service of alcohol, have a service permit.

(d) Minor Postings. The Commission assigns minor postings according to the Minor Posting rule, OAR 845-006-0340.

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

Stats. Implemented: ORS 471.182

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

845-005-0336

Certificate of Authority Holder's Sales Employees

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

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

Stats. Implemented: ORS 471.162(3)

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

845-005-0340

Additional Criteria for Full On-Premises Licenses

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

- (a) Private clubs;
- (b) Certain public passenger carriers;
- (c) Commercial establishments;
- (d) Public locations, other than those

described in (a) to (c) of this section; and

(e) Caterers.

(2) To qualify for a Full On-Premises Sales license, the applicant must show in writing specifically how the applicant will comply with the food service rules of the Commission for the business type as stated in section (1) of this rule or, if the applicant will operate more than one such type of business at a business location, for the types of business the applicant will operate, and receive Commission approval of the proposal. Those food service rules are found at OAR 845-006-0460 through 006-0468.

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

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

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

Stats. Implemented: ORS 471.175

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

845-005-0355

Restricting License Privileges and Conduct of Operations

(1) The Commission may restrict a license or service permit when:

(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;

(b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s); or

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

(2) In determining public interest or convenience reasons to restrict a license or permit,

the Commission considers factors that include but are not limited to:

- (a) The character or environment of the neighborhood in which the licensed premises operate;
- (b) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor or criminal law violations by the licensee, patrons of the licensed premises or the public; or
- (c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.

(3) The Commission has determined that it is not in the public interest or convenience to issue or renew:

- (a) A license that allows off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;
- (b) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the Commission restricts the relative or associate from permitting the person from being on the premises;
- (c) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.

(4) When the Commission restricts a license or service permit, it notifies the licensee or permittee. If the licensee or permittee disagrees with the restriction, the licensee or permittee has the right to a hearing under the procedures in ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(5) A licensee or permittee who has a restricted license or permit must exercise license

or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a 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 OAR chapter 845, division 003.

(7) As used in subsections (2)(c) and (3)(a) of this rule, "street drinkers" means people who drink unlawfully in streets, alleys, parks and other similar public places.

(8) As used in subsection (2)(b) of this rule, "conditions" means conditions in the immediate vicinity of the premises that are related to the exercise of the license privileges and conditions in the premises or in the areas around the premises that the applicant/licensee controls.

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

Stats. Implemented: ORS 471.405(1) & 183

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

845-005-0360

License Renewal: Requirements for Applicants

(1) Filing a Renewal Application:

(a) Any licensee who files a completed renewal application with the Commission at least 20 days before the date the license expires may continue to operate as if the license were renewed, pending a decision by the Commission;

(b) Any licensee who does not file a completed renewal application at least 20 days before the existing license

expires must stop selling or serving alcoholic beverages when the license expires. However:

(A) If the Commission receives a completed license renewal application less than 20 days before the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee that ORS 471.311(3) requires, issue a letter of authority to operate beyond the expiration of the license, pending a decision by the Commission;

(B) A licensee must not sell or serve alcoholic beverages after the license expires; a violation of this subsection is a Category III violation. If the Commission receives a completed license renewal application within 30 days after the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee that ORS 471.311(3) requires, issue a letter of authority to resume operation, pending a decision by the Commission.

(c) The Commission will not renew a license if the Commission receives the renewal application more than 30 days after the license expires. A person who wants to resume selling or serving alcoholic beverages in this circumstance:

(A) Must submit a completed new application, including the documents and information required by the Commission.

(B) Must not sell or serve alcoholic beverages unless and until they receive authority to operate from the Commission after submitting the completed new application.

(d) A person relicensed under section (1)(c) of this rule who sold or served alcoholic beverages in violation of section (1)(b)(B) of this rule is subject to administrative sanctions.

(e) A person who sells or serves

alcoholic beverages without a liquor license is in violation of ORS 471.475, a misdemeanor, and is subject to criminal prosecution.

(f) For purposes of this rule, a completed application is considered filed or received according to its postmark date, if legible, or according to the date the Commission actually receives the completed application, whichever is earlier.

(2) Completed Application: As used in this rule, a completed application is one that is completely filled out, is signed by the applicant and includes the appropriate fee(s), the bond or equivalent that ORS 471.155 requires and the liquor liability insurance or bond that ORS 471.168 and OAR 845-005-0400 require.

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

(4) Late Renewal Fee:

(a) ORS 471.311(3) requires the Commission to charge a late fee for renewal applications received less than 20 days before the license expires or not more than 30 days after the license expires. In computing this 20 or 30 day period, the Commission does not count the day the license expires. For example, a license expires on the 31st. The 20 day period ends on the 11th unless the 11th is a Saturday, Sunday or legal holiday. If the 20th or 30th day is a Saturday, Sunday or legal holiday, the period ends at 5 p.m. on the first working day after the Saturday, Sunday or legal holiday;

(b) The Commission may waive the late renewal fee if the licensee fails to file a timely application due to unforeseen circumstances, such as a death or illness of the licensee or to a delay in Commission processing of the

application through no fault of the licensee.

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

Stats. Implemented: ORS 471.155, ORS 471.311(3), ORS 471.311(4), ORS 471.311(5), ORS 471.313, & ORS 471.168

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 1-2001, f. 2-14-01, cert. ef. 2-19-01 thru 8-17-01; OLCC 7-2001, f. 8-15-01, cert. ef. 8-18-01

845-005-0365

Change of Licensee; Change of Location

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

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

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

Stats. Implemented: ORS 471.313, ORS 471.292(1)(e) & ORS 471.292(2)(d)

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

845-005-0366

License Surrender

A licensee may ask the Commission to accept the surrender of a license. The license remains in effect until the Commission accepts the surrender. If the Commission accepts it, the Commission will notify the licensee of the date the Commission accepts the surrender. The licensee must stop selling or serving alcoholic beverages from this date through the remainder of the licensing period. If the licensee wants to sell or serve alcoholic beverages after this date, the licensee must apply for and receive a new license.

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

Stats. Implemented: ORS 471.030 & ORS 471.292

Hist.: OLCC 17-1991, f. 10-31-91, cert. ef. 1-1-92; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-005-0066

845-005-0400

Liquor Liability Insurance or Bond Requirement

(1) ORS 471.313(4)(i) requires applicants for a liquor license to demonstrate financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed. ORS 471.313(2) requires applicants listed in ORS 471.168 to maintain liquor liability insurance or bond. In addition to other requirements, the Commission has determined that licensees listed in ORS 471.168 must demonstrate financial responsibility for licensees' liability for damages to third parties caused by patrons off the licensed premises by meeting the requirements in section (1)(a) or (b) of this rule. ORS 471.168 requires certain licensees to provide coverage for injuries suffered because of the conduct of visibly intoxicated persons who were served in licensed premises by:

- (a) Maintaining liquor liability insurance of not less than \$300,000; or
- (b) Maintaining a bond with a corporate surety authorized to transact business in this state in the amount of not less than \$300,000.

(2) The requirement applies to the covered licenses issued or renewed on or after March 15, 1998.

(3) ORS 471.168 also requires licensees subject to the requirement to supply proof of compliance at the time the license is issued or renewed. For insurance, licensees must provide proof by naming the Commission as Certificate Holder on the policy and giving the Commission a copy of the certificate. For a bond, proof may be satisfied by identifying the name of the surety and providing the bond identification number.

(4) Failure to maintain insurance or a bond as required is a Category I violation and the Commission may cancel the license.

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

Stats. Implemented: ORS 471.313(4)(i) & ORS 471.168

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

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845-005-0405

Full or Limited Licensee Small-Scale Private Catering

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

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

- (a) There is a contract between a client and the licensee to provide food service for a specific number of guests or participants;
- (b) The licensee is not the client;
- (c) Beverage service is in conjunction with food service; and
- (d) The catered event must not be of more than one days duration unless it is a closed conference or seminar.

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

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

- (a) A plan for managing patronage by minors;
- (b) Identification of the counties and incorporated cities where the licensee will usually cater events authorized under this section;
- (c) Identification of any proposed catering location that is owned or controlled by the licensee; and
- (d) Menu or sample menu showing type of food service proposed to comply with OAR 845-006-0462;
- (e) Identification of premises proposed to be licensed if the request is for specific future events.

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

which the Commission may deny, cancel or restrict a regular license.

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

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

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

Stats. Implemented: ORS 471.184

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

845-005-0410

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

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

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

(3) Except for private, large-scale catered events, licensees must apply in writing, using the Commission form provided for this purpose. The Commission may reject any application which is not complete and accompanied by the documents or disclosures required by the form. The

Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

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

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

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

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

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

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

expected attendance, exact location, and a description of the type of event.

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

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

(11) The licensee's application shall include:

- (a) A control plan for managing patronage by minors and alcohol consumption by adults;
- (b) Identification of all individuals to be employed by the licensee to manage the premises proposed for license authority;
- (c) Identification of the premises proposed to be licensed;
- (d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;
- (e) If the applicant holds a Limited On-Premises Sales license, a statement of the type of food service to be offered and the proposed hours of food service;
- (f) If the applicant is a Full On-Premises Sales licensee, a written proposal showing compliance with the food service standards of OAR 845-006-0462;
- (g) The recommendation of the local governing body or police department where the licensee proposes to use license authority; and
- (h) Processing fee established by Commission rule.

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

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

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

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

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

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

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

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

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

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

(14) The Commission may authorize off-premises license use for no more than five days at a particular location. The Commission may grant additional authority for five or fewer days if the

licensees management of the event shows the licensee continues to be an acceptable compliance risk at the location.

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

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

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

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

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

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

Stat. Auth.: ORS 471, including

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

845-005-0415

Special Event Winery and Special Event Grower Sales Licenses

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

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

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

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

(4) Applicants must apply in writing using the Commission form provided for this purpose. The Commission may reject any application not

completed fully and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

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

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

- (a) The Commission may refuse to process any routine application not submitted at least five business days in advance of the proposed event date;
- (b) The Commission may refuse to process any non-routine application not submitted at least fifteen business days prior to the proposed event date if the applicant will operate a drinking environment as defined by OAR 845-006-0340;
- (c) The Commission may refuse to process any non-routine application not submitted at least twenty-five business days prior to the proposed event date if prior to the submission of the application Commission staff provide notice to the applicant or the applicant's representative that investigation of the application will require assessment of public safety or neighborhood impact matters, or the risk of disturbances or liquor law violations at the location proposed to be licensed.

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

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

Stat. Auth.: ORS 471, 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

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 Shipper Permit for Wine and 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 ORS 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 & 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

845-005-0420

Qualifications for Same-Day and Next-Day Retail Delivery of Malt Beverages to a Resident of Oregon

ORS 471.305 allows certain licensees of the

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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) 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 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 licensed 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) 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 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 ORS 471.030, ORS 471.040,

471.730(1) & (5)

Stats. Implemented: ORS 471.402

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thur 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 product to be sampled, and remove any remaining product at the end of the tasting;

(g) Provide only 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) though (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, sample tastings are limited to two free samples of one-quarter ounce each per customer per tasting session, or one free sample of no more than one-half ounce of alcohol per customer per tasting session. A distillery and its representatives, employees, contractors, and agents may not provide more than one-half ounce total of distilled spirits samples 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-

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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 845-006-0460 through 845-006-0468. 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 & 471.750

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

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 ORS 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

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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) 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 (12) of this rule.

(12) 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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 471.190

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 4-2001(Temp), f. & cert. ef. 8-15-01 thru 2-11-02; OLCC 13-2001, f. 12-18-01, cert. ef. 2-12-02; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 24-2007, f. 12-17-07, cert. ef. 1-1-08

845-005-0445

Temporary Authority

(1) ORS 471.302 and 471.297 allow the

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Commission to give certain applicants the authority to sell and serve alcoholic beverages while the Commission determines the applicant's eligibility. Temporary authorities to operate are not to exceed 90 days, unless an extension of up to an additional 30 days is granted under section (2) of this rule. The Commission may refuse to grant this temporary authority to operate when the Commission has reasonable basis to believe that the applicant may not be eligible for a license under ORS Chapter 471 and the Commission's Administrative Rules, OAR chapter 845.

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

- (a) The agency has not received a written recommendation from the local governing body as required by ORS 471.166 and OAR 845-005-0304; or
- (b) An extension of time is necessary for the agency to complete its investigation or processing of the application. An extension of the temporary authority will not be granted if the sole basis is the applicant's failure to provide timely documentation which was requested pursuant to OAR 845-005-0315.

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

Stats. Implemented: ORS 471.302 & 471.297

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

845-005-0450

Standards for Authority to Operate a Licensed Business as a Secured Party, a Trustee, a Receiver, a Debtor-in-Possession or an Administrator

(1) ORS 471.292(2)(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

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

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

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

845-006-0335**Age Verification; Minors on Licensed Premises**

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

(2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys,
is served or drinks an alcoholic

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beverage at the licensed premises (Category III violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for selling to or serving a minor, allowing a minor to drink or allowing a minor in an area prohibited to minors, the Commission will not also sanction the licensee or permittee for failure to verify age;

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To buy, be served or drink any alcoholic beverage on licensed premises;

(b) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482, and this rule. (The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0340, Minor Postings.)

(4) Minor Employee and Service Permittee:

(a) A minor employee may be in a Number II, III-A after 9 p.m., IV or V posted area only to restock supplies and do food service related activities such as setting and clearing tables and delivering food. In addition, a minor employee may be in a Number IV posted area to take orders for and serve food during the specified meal periods;

(b) A minor service permittee may do the duties described in subsection (a) of this section as well as the alcohol-related duties ORS 471.482 allow.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose, may be in the area of the licensed premises normally prohibited to

minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

(6) Minor Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted. If there is no break room, dressing room or patron area where minors are permitted, the licensee may, with prior Commission approval, designate space for minor entertainers in an area normally prohibited to them. At a minimum, the place must be within the bartender's sight but not at the bar, and there must be no alcoholic beverages in this place;

(b) If the minor is under 18 years old, 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, 471.430 & 471.730

Stats. Implemented: ORS 471.430

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03; OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 4-2004, f. & cert. ef. 4-9-04; OLCC 9-2005, f. 11-21-05, cert. ef. 1-1-06; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

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 Number IV posted area during happy-hours or similar reduced-price drink hours;

(c) 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.

(d) Subsections (4)(a) through (4)(c) of this rule do not apply to a minor in the immediate company of his/her spouse or Domestic Partner who is at least 21 years of age, if allowed by subsection (10)(e) 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 no more than one and a half ounces for wine or cider, three ounces for malt beverages, or one-quarter ounce for distilled spirits.

(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

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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)(c) 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, 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 ORS 471.223; a Special Events Grower license issued under ORS 471.227; and a temporary use of an annual license issued under OAR 845-005-0410.

(b) The Commission does not usually assign minor postings in:

(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 OAR 845-005-0410.

(c) However, the Commission may assign a minor posting to these businesses for the following reasons:

(A) To prevent violations from occurring or reoccurring; or

(B) In response to the licensee's request.

(d) Minor Postings apply 24 hours a day, including when the premises is closed to the public or the liquor license is suspended.

(e) 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 including ORS 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

845-006-0345

Prohibited Conduct

(1) Drinking on Duty: No licensee, permittee, employee or agent will drink or be under the influence of intoxicants while on duty. "On duty" means from the beginning of a work shift that involves the sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including coffee and meal breaks. "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who sell or serve, check identification or control the premises.

(2) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call.

(3) Evidence: No licensee or permittee will:

(a) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(b) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(c) Ask or encourage another person to do subsections (a) or (b) of this section.

(4) Access to Premises:

(a) No licensee or permittee will deny entrance to the licensed premises during regular business hours to a Commission regulatory employee or police officer who enters or wants to enter to conduct reasonable search to ensure compliance with alcoholic

beverage law. Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws;

(b) Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring. No licensee or permittee will refuse or fail to promptly admit a Commission regulatory employee or police officer to the licensed premises when the regulatory employee or officer identifies him/herself and asks to enter to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(5) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.178, 471.200 and 471.175 allow.

(6) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve.

(7) Drive-up Window: No licensee or permittee who sells alcoholic beverages for off-premises consumption will sell or deliver any alcoholic beverages through a drive-up window. This prohibition does not apply to licenses permitting distilled spirits by the drink which were in existence and operating with a food service drive-up window prior to November 1, 1998.

(8) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, or any competition of any kind on the licensed premises.

(9) "Good Faith Effort": ORS 471.315(1)(a)(G), and 471.412(2) prohibit a licensee or permittee from knowingly allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a

good faith effort to remove the alcoholic beverage does not violate these statutes:

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance.

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

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

(11) Promotions. Prohibited practices include:

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

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

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

Stat. Auth.: ORS 471, including 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)(G), 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

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 Commission 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 ORS 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 ORS 471.030, ORS 471.040, ORS 471.730(1) & ORS 471.730(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 Distillers 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, ORS 471.030, ORS 471.040, ORS 471.730(1) & (5)

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

845-006-0360

Maintenance of License Certificate, Restriction Document, Minor Posting Sign

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

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

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

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, ORS 471.730(1) & ORS 471.730(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 servant, agent, employee, or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges.

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

Stats. Implemented: ORS 471.030 & ORS 471.730
Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; Renumbered from 845-010-0075; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0025

845-006-0365

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

(1) No retail licensee will pay for malt beverages, cider, or wines purchased from a 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 ORS 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.398
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-006-0370**Financial Assistance; Retailer Responsibility**

(1) Manufacturer and wholesaler have the same meaning as in ORS 471.392.

(2) Retailer has the same meaning as in OAR 845-013-0001.

(3) The Commission interprets ORS 471.392 to also prohibit a retailer from soliciting from a manufacturer or wholesaler any item or service these statutes prohibit, except as OAR 845-013-0001 through 845-013-0110 allow.

(4) A retailer does not violate ORS 471.398 if the retailer accepts the items or services that OAR 845-013-0001 through 845-013-0110 allow.

(5) A retailer may not sell the samples a wholesaler or manufacturer gives the retailer under OAR 845-013-0060.

(6) No Full On-Premises Sales licensee or officer, director, manager, agent, or employee of a Full On-Premises Sales licensee will solicit or accept any gift, gratuity, special individualized discount, or other incentive from any retail sales agent of the Commission, or anyone representing the retail sales agent, if such may be reasonably construed to be an enticement to obtain, maintain or increase the recipients business with the retail sales agent.

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

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

Stats. Implemented: ORS 471.398

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

845-006-0390**Transportation by Licensed Retailer from Licensed Wholesaler Premises**

A licensed malt beverage or wine retailer may transport the malt beverages, cider, or wine the retailer purchases from a licensed wholesaler from the wholesaler's premises to the retailer's premises. The purchase price of such malt beverages, cider, or wine shall be the price listed pursuant to OAR 845-010-0210.

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

Stats. Implemented: ORS 471.305 & ORS 471.398

Hist.: LCC 40, f. 8-2-72, ef. 8-5-72; Renumbered from 845-010-0211; LCC 32-1980, f. 12-22-80, ef. 2-1-81; OLCC 7-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0090; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thur 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

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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 license 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 a Resident 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

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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

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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 section (2) of this rule, and OAR 845-015-0035, alcoholic liquor may be sold, dispensed, served, consumed on, or

removed from licensed premises only between the hours of 7 a.m. and 2:30 a.m.

(2) Licensees whose license privileges permit the sale and distribution of malt beverages and wines for resale may make deliveries to licensees at any time.

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

Stats. Implemented: ORS 471.030

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60;
LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC
30, f. 1-20-66; LCC 50, f. 12-18-74, ef. 1-15-75;
LCC 3-1979, f. 1-26-79, ef. 2-1-79; LCC 5-1979,
f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-
0005; LCC 7-1981, f. 11-2-81, ef. 1-1-82; LCC
4-1986, f. 3-3-86, ef. 4-1-86; OLCC 14-1987, f.
4-6-87, ef. 5-1-87; OLCC 19-2000, f. 12-6-00,
cert. ef. 1-1-01, Renumbered from 845-006-
0030

845-006-0426

Public Interest and Convenience Reasons for Cancellation or Suspension

(1) ORS 471.315(1)(d) allows the Commission to cancel or suspend a license for public convenience or necessity reasons. Under this authority, the Commission requires a licensee to have someone who can communicate effectively with customers and Commission regulatory employees. This person must be on the licensed premises during the 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
ORS 471.030, ORS 471.040, ORS
471.730(1) & ORS 471.730(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
ORS 471.030, ORS 471.040, ORS
471.730(1) & ORS 471.730(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 Commissions sanction schedule (OAR 845-006-0500).

(b) If a licensee holds a walk around event and violations related to the sale or service of alcoholic beverages to minors or visibly intoxicated persons occur, or a violation of Section (7)(d) occurs, the next time this event or similar event is held alcohol must be limited to a confined area unless the licensee get a variance under Section (9).

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

Stats. Implemented: ORS 471.030, 471.040, 471.115, 471.360, 471.410, 471.412, 471.430 & 471.730(1)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 3-2004, f. 3-17-04, cert. ef. 4-1-04; 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

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minors and recognizing the signs of visible intoxication.

(2) The licensee must not give a minibar key to minors or visibly intoxicated persons. The licensee may not give a minibar key to a guest if the licensee has reason to believe the guest is accompanied by a minor and is not the minor's parent or caretaker.

(3) Restocking:

(a) Any employee who is at least 18 years old may restock a minibar when restocking is not in response to guest request for immediate restocking;

(b) Only a service permittee may restock a minibar in response to guest request for immediate restocking (restocking is the same as selling/serving in this instance);

(c) In response to guest request for restocking, employees will not restock a minibar:

(A) If there are visibly intoxicated persons or minors unaccompanied by their parents in the room;

(B) After 2 a.m.;

(C) With amounts of alcohol that the people in the room cannot reasonably consume by 2:30 a.m.

(4) Limitations:

(a) On container size: The individual containers in a minibar may be no larger than 50 milliliters for distilled spirits, 12 ounces for malt beverages and 375 milliliters for wine or cider;

(b) On number of containers: The total number of alcoholic beverage containers in a minibar may not exceed 30.

(5) Each minibar will have a clearly visible sign on the outside or inside of the minibar. The sign will explain the following liquor laws: minors and visibly intoxicated persons may not drink alcohol from the minibar; guests/visitors may not drink alcohol from the minibar between 2:30 a.m. and 7 a.m.; and guests/visitors may not take alcohol from a minibar off the premises.

(6) Food: At a minimum, the licensee must have a variety of snacks available during the hours that a guest may lawfully access the minibar.

(7) The Commission will hold a licensee

responsible for liquor law violations that occur in guest rooms only if the licensee or employee permitted the violation.

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

Stats. Implemented: ORS 471.180

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thur 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 consuming alcohol in the suite. A service permittee must not restock after 10 p.m.

(f) Posted Signs: Each minibar must have a clearly visible sign on the outside or inside of the minibar. The sign must explain the following liquor laws and rules: minors and visibly intoxicated persons must not drink alcohol; the suite holder, suite holder's representative and suite guests must remove the alcohol from any visibly intoxicated person; and no alcohol may be consumed in the suite from one hour after an event in the arena has ended until 7:00 a.m., or if no event is occurring in the arena, between 12 midnight and 7:00 a.m.

(g) Food in Arena Suites: At a minimum, each suite must contain a variety of snacks for guests to eat during the hours the minibar is unlocked.

(4) Records:

(a) The licensee must keep records of all sales of alcohol and food for each suite during the license term and must maintain the records for a period of at least two years;

(b) The licensee must make available for inspection by Commission staff on an annual basis the average total food and total alcohol sales for all arena suites.

(5) Violations: Violation of the provisions of paragraph (3)(c)(C) (response to minor or visibly intoxicated person consuming) and subsection (3)(e) (restocking minibar) of this rule are Category III violations in the Commission's sanction schedule. All other violations of sections

(3) and (4) of this rule are Category IV violations under the Commission's sanction schedule:

(a) The licensee is responsible for knowing when minors and visibly intoxicated persons are present in arena suites and for taking reasonable steps to insure that they do not consume alcohol. If a minor or visibly intoxicated person consumes alcohol in an arena suite, the licensee is responsible for permitting the minor or visibly intoxicated person to consume alcohol in violation of liquor laws;

(b) Adherence to the provisions of this rule is not a defense to a charge of violating liquor laws. If the Commission determines that minibar use causes or creates liquor law violations or a public safety problem, the Commission reserves the right to require the licensee to use service permittees to serve all alcohol in arena suites.

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

Stats. Implemented: ORS 471.351 & ORS 471.760

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 65, Amended 8-30-71, ef. 9-1-71; LCC 43, f. 11-20-73, ef. 12-11-73; f. 9-22-77, ef. 10-4-77; Renumbered from 845-010-0165; LCC 65, f. 9-

22-77, ef. 10-4-77; LCC 69, f. & ef. 12-20-77; Renumbered from 845-010-0195; LCC 4-1984, f. 8-2-84, ef. 9-1-84; OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90; Renumbered from 845-008-0005 and 845-008-0010; OLCC 11-1998, f. 12-10-98, cert. ef. 5-1-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0435

845-006-0440

Deposits on Draft Malt Beverage and Wine Containers

(1) A brewery, importer, manufacturer, or wholesaler of malt beverages or wine may charge a deposit for the return of draft malt beverage and wine containers (kegs, barrels, half barrels, and quarter barrels). They must include the amount of the deposit, if any, in their price posting (OAR 845-010-0210).

(2) If the brewery, importer, or manufacturer charges a deposit, the wholesaler must then charge the retail licensee the amount of this deposit.

(3) The retail licensee must pay the deposit, if any, at the time he/she purchases the draft malt beverage or wine in cash or by valid check, money order, or voucher payable to the wholesaler.

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

Stats. Implemented: ORS 471.398

Hist.: LCC 51, f. 3-20-75, ef. 5-1-75; Renumbered from 845-010-0156; LCC 11-1986, f. 6-4-86, ef. 7-1-86; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0080

845-006-0441

Sale of Malt Beverages in Kegs

(1) Before selling a keg of malt beverages as ORS 471.478 allows, a licensee will:

(a) Complete a Receipt for Sale of Malt Beverages in Kegs to Unlicensed Group or Individual (Form 760);

(b) Have the purchaser read and sign the receipt;

(c) Give the purchaser a copy of the signed receipt;

(d) Make sure the information on the receipt is accurate; and

(e) Securely attach a Commission-issued, serially-numbered identification label (keg tag) to each keg.

(2) If the licensee has reason to question the purchaser's legal age or identity, the licensee will ask the purchaser for two additional pieces of identification. One of these pieces must include the purchaser's physical description or picture, date of birth, and signature.

(3) A licensee must keep the original of the receipt (Form 760) for one year.

(4) The licensee must allow an authorized representative of the Commission or any person authorized under ORS 471.605 to inspect receipts and keg tags at any time during the licensee's business hours.

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

(a) Name, address, date of birth and phone number of the purchaser, the driver's license number of the purchaser, license state of issue, and, if necessary under section (2) of this rule, other identification verifying the name, address, physical description and date of birth of the purchaser;

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.478

Hist.: LCC 66, f. 9-22-77, ef. 1-1-78; LCC 26-1979, f. 10-26-79, ef. 10-29-79; Renumbered from 845-010-0320; LCC 12-1986, f. 7-1-86, ef. 10-1-86; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; Renumbered from 845-006-0085; OLCC 19-2003, f. 11-24-03, cert. ef. 12-1-03

845-006-0445

Nonbeverage Food Products Containing Alcoholic Beverages

(1) ORS 471.038 authorizes any licensee whose license allows the sale of alcoholic liquor at retail and any retail liquor agent to sell nonbeverage food products containing alcohol, such as fruits preserved in brandy or candies filled with alcoholic liquor. This rule regulates the sale and delivery of those nonbeverage food products, and clarifies which licensees may sell nonbeverage food products containing alcohol.

(2) For this rule, licensee means any licensee authorized to sell alcoholic liquor at retail for consumption either on or off the licensed premises.

(3) ORS 471.038 requires licensees and retail liquor agents to clearly label:

(a) The product to show the alcohol content; and

(b) The front of the package to say that it may not be sold to persons under 21 years.

(4) Licensees may deliver nonbeverage food products containing alcoholic beverages to Oregon residents only under the following conditions:

(a) The product must be clearly labeled to show the alcohol content and clearly labeled on the front of the package to say the product may not be sold to minors or visibly intoxicated persons;

(b) Licensees must not deliver

nonbeverage food products containing alcohol to minors or visibly intoxicated persons;

(c) If the licensee delivers through a common carrier, the licensee may use only a common carrier who has a Commission-approved delivery plan. The Commission requires plan approval to assure appropriate alcoholic beverage delivery.

(5) This rule applies only to nonbeverage food products that contain not more than five percent alcohol by weight or 10 percent alcohol by volume, whichever is greater.

(6) Nonbeverage food products containing alcoholic beverages may not be sent from outside the State of Oregon to residents in the state.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.040, ORS 471.730(1), ORS 471.730(5) & ORS 471.730(6)

Stats. Implemented: ORS 471.038 & ORS 471.305

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01
845-006-0450

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

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

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

(2) Identified Tasting Area. Any Off-Premises Sales retailer who conducts tastings or who allows manufacturers to conduct tastings on the retail premises must identify a specific tasting area or areas. The area/s must be of a size and design such that the person/s conducting the tasting can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area or areas until they have finished consuming the sample. The retailer must keep on file at the premises a floor plan identifying the tasting area(s). If a retailer does not have an

identified tasting area or areas, the Commission may require prior approval of an area or areas before the retailer conducts any more tastings or allows any more manufacturer-conducted tastings on the premises.

(3) Number of In-Store Tastings.

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

(b) There is no limit on the number of tastings a retailer may conduct, but the retailer must not allow a manufacturer on the 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 licenses may conduct tastings on their licensed premises and may:

(a) Accept assistance from manufacturers, wholesalers and warehouse licensees, and from certificate of approval holders if:

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

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

(C) The retailer is responsible for any advertising.

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

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

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

Stats. Implemented: ORS 471.398 & ORS 471.402

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

845-006-0460

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

(1) Purpose: The Oregon Liquor Control Act allows licensed commercial establishments

with food service to sell distilled spirits by the drink. ORS 471.001(2) defines a commercial establishment as a place of business open to the general public, or else a private golf club or athletic club, where food is cooked and served, which has adequate kitchen facilities for the preparation and serving of meals and which has for that purpose proper dining space. This rule sets the food service requirements for businesses with commercial establishments with a Full On-Premises Sales license. The applicant has the burden of proving it meets the standards and qualifications of this rule and OAR 845-006-0466.

(2) Food Service Required at Meal Periods.

(a) A business open after 5:00 pm must make available to its patrons an offering of five distinctly different regular meals during its normal dinner meal period which must last at least three hours. The requirement of five distinctly different meals does not apply if the clearly dominant emphasis of the business after 5:00 pm is food service.

(b) A business not open after 5:00 pm must make available to its patrons an offering of five distinctly different regular meals during its normal lunch meal period which must last at least two hours.

(c) "Regular meal" means a combination of food items that are prepared and cooked on the licensed premises that includes one principal item and one side dish. Examples of principal items are fish, steak, chicken, pasta, and sandwich. Examples of side dishes are potatoes, potato salad, rice, french fries, beans and vegetables. If the clearly dominant emphasis of the business after 5:00 pm is food service, regular meals may consist of a principal item alone with two or more side dishes available to order separately.

(d) "Distinctly different" means meals that differ substantially in their principal item. For example, different kinds of sandwiches are not distinct from each other and different kinds of pizza are not distinct from each other.

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

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

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

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

(3) Minimum Food Requirements at Other Hours.

(a) At all other times alcohol service is available, businesses must make available to their patrons an offering of at least five different substantial minimum food items prepared on the licensed premises. Different means significantly differing ingredients. For example, a turkey sandwich differs from a salami sandwich. Different sizes of the same item do not count as different items under this rule. For instance, a large cheese pizza and a small cheese pizza do not differ.

(b) "Substantial minimum food item" means items such as sandwiches, appetizers, pizza, hot dogs, soup, and sausages. Snack items such as popcorn, peanuts, chips, and crackers do not qualify as substantial food items.

(4) Seating Requirements: Proper dining space is determined by the size of the business. The size of the business is determined by the number of indoor seats, excluding seats in banquet and meeting areas, spectator seating in public auditoriums, seating at gaming machines, and spectator seating in arenas where sporting events occur. Bar stools, seating at cocktail tables, seats at buddy-bar tables, banquet seating, and dining seating are included in determining the size of the business. Dining seating means indoor table seating that is designed to accommodate patrons for the purpose of consuming food, and located in areas of the premises regularly used by patrons daily during normal business hours. Such tables must provide a minimum of 288 square inches of surface for dining space for each seat at the table. Bars and tables seating only one patron and counters at entertainment areas do not qualify as

dining seating. Buddy-bar tables may be counted toward required dining seating only if they are set up for dining during meal periods by placement of flatware, glassware and napkins for each patron able to be accommodated under the minimum dining space requirements of this rule. Banquet and meeting areas are excluded from consideration as dining seating.

(a) If the business has seating for 60 or fewer patrons, at least 30 seats or 60 percent of all seats, whichever is greater, must be dining seating during regular meal periods. The requirement for at least 30 dining seats may be waived if the entire premises is suitable for minor patronage per OAR 845-006-0340.

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

(c) If the business has seating for 100 or more patrons, at least 40 seats or 30 percent of all seats, whichever is greater, must be dining seating during regular meal periods.

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

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

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

Stat. Auth.: ORS 471, including

Chapter 845 - Division 6

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

845-006-0461 Food Service Requirements for Private Clubs With a Full On-Premises Sales License

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

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

(3) Minimum Food Requirements.

(a) At all times alcohol service is available, the club must make available to its members and their guests an offering of at least three different substantial minimum food items prepared on the licensed premises. Different means significantly differing ingredients. For example, a turkey sandwich differs from a salami sandwich. Different sizes of the same item do not count as different items under this rule. For instance, a large cheese pizza and a small cheese pizza do not differ.

(b) Substantial minimum food item means items such as sandwiches, appetizers, pizza, hot dogs, soup, and sausages. Snack items such as popcorn, peanuts, chips, and crackers do not qualify as substantial food items.

(4) Seating requirements. The licensee must provide adequate dining space including seats at tables.

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

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

Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0462 Food Service Requirements for Off-Premises Events with a Full or Limited On-Premises Sales License

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

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

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

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

(5) If the event is not of a type that would qualify for general pre-approval under the standards of OAR 845-005-0410 and distilled spirits are not provided at the event, there must be available, at a minimum, two different substantial

snack food or appetizer items at least some of which is prepared and cooked in sufficient quantity to provide at least one serving for each person at the event.

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

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

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

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

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

Stats. Implemented: ORS 471.175

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

845-006-0463

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.175 & ORS
471.182

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

845-006-0464

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

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

(1) A public location operating as an auditorium, music, dance or performing arts

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

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

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

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

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

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

(b) If alcoholic beverage service is available between 11:30 am and 1:00 pm, the licensee must make available to guests during those hours an offering of

at least five different substantial lunch meals. "Different" and "substantial" have the same meaning as in OAR 845-006-0460(3);

(c) If alcoholic beverage service is available between 5:00 pm and 8:00 pm, the licensee must make available to guests during those hours an offering of at least five distinctly different regular meals as defined in OAR 845-006-0460(2);

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

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

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

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

satisfy appetite.

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

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

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

Stats. Implemented: ORS 471.175

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

845-006-0465

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

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

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

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

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

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

Stats. Implemented: ORS 471.190(4)

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

845-006-0466

General Food Service Requirements for Full On-Premises Sales Licenses

(1) Food preparation facilities: Except for public passenger carriers licensed under ORS

471.182, a Full On-Premises Sales licensee must have a food preparation area and equipment adequate to prepare, cook and serve food to meet the food service requirements of the Commission, and must meet the health divisions food preparation standards. The applicant can also meet this requirement by providing clear and convincing evidence that it provides significant food service. The food preparation area and equipment must be on the licensed premises except for locations catered by a licensee under authority of ORS 471.184. Required food preparation areas and equipment must be separate from any bar or dining area.

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

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

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

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

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

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

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

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Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0467

Food Service Requirements for Specified Operation Types

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

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

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

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

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

Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0468

Minimum Food Availability in All Areas

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

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

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

Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0469

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

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

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

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

Stats. Implemented: ORS 471.175
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-006-0475

License Changes Requiring Notice/Prior Approval

(1) As used in this rule:

- (a) "Manager" means any person who has decision making authority and whose primary duties include control over the operation of the licensed premises and its employees with respect to the sale/service of alcoholic beverages. This definition may apply to more than one person at a particular licensed premises;
- (b) "Partnership" means an association of two or more persons who carry on a business jointly and who demonstrate an intent to be treated as partners by signing a partnership agreement;
- (c) "Person" includes individuals, corporations, partnerships or other business organizations;
- (d) "Principal officer" includes the president, any vice president with responsibility over the operation of a licensed business, the secretary, the

- treasurer, or any other officer designated by the Commission.
- (2) All licensees:
- (a) Except as this rule allows, no person will obtain an interest in a licensed business as defined in OAR 845-005-0311 without prior Commission approval;
 - (b) Whenever a person named on the license wants to remove his/her name from the license, the licensee(s) must notify the Commission on the appropriate form and provide documentation that shows the person no longer has an interest in the licensed business;
 - (c) The Commission may suspend or cancel a license if the licensee fails to notify the Commission, obtain prior approval or to take corrective action as this rule requires. Where extraordinary circumstances make it impossible or impractical to obtain prior approval, the Commission may give conditional approval immediately. After investigation, the Commission may withdraw its conditional approval and give the licensee a reasonable deadline to rescind the action, prior to any hearing to contest the disapproval;
 - (d) The Commission may disapprove a manager, a change or acquisition described in this rule for any of the grounds for which it may deny a license. If the Commission disapproves a change, acquisition or manager, it will notify the licensee in writing and set a reasonable time for divestiture or for removal of the person;
 - (e) Any change in an investment interest in a business that holds a committed license and is not yet in operation may result in the Commission withdrawing that committed license.
- (3) Managers: The Commission may require a manager to complete an individual history if there is a violation or a compliance problem with the licensed premises.
- (4) Corporate licensees (not publicly

traded corporation):

- (a) The corporate licensee must obtain prior written approval from the Commission whenever a person intends to acquire or accumulate ownership or control of ten percent or more of any class of stock in a licensed corporation;
 - (b) The corporate licensee must notify the Commission immediately in writing when there has been a change in an officer or director.
- (5) Corporate licensees (publicly-traded):
- (a) The corporate licensee must notify the Commission within 60 days of the acquisition whenever a person acquires or accumulates ownership or control of ten percent or more of any class of stock;
 - (b) The corporate licensee must notify the Commission by July 1 of each year of changes in officers and directors. The Commission can take immediate action to disapprove a change that it learns of prior to the annual notification date.
- (6) Partnership licensees:
- (a) The licensee must obtain prior written approval from the Commission whenever a person intends to become a general partner in a partnership or intends to acquire or control ten percent or more of the total investment commitment in a licensed limited partnership;
 - (b) The licensee must notify the Commission in writing whenever an existing approved partner increases or decreases his/her investment interest.
- (7) Other legal entities: The Commission may require any legal entity other than a corporation, partnership or individual to provide notice and 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

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845-006-0480

Changes in Premises or Operation: Prior Approval or Notice Required

(1) The Commission issues licenses with the understanding that the licensee will operate the business as proposed at the time of licensing. The Commission also realizes that a licensee may need to change the business during the licensing year. This rule provides a way for a licensee to make changes, and for the Commission to be assured that the changes will meet the criteria for licensing. The Commission may cancel, suspend or refuse to renew a license if the licensee fails to get the approval or give the notice this rule requires.

(2) A licensee licensed to sell alcoholic beverages at retail for on-premises consumption must request and receive Commission approval before the licensee:

(a) Increases the area(s) in which the licensee sells or serves alcoholic beverages; or

(b) Changes the principal use of any room or area, other than to accommodate a particular activity on a one-time basis, including no longer using a room or area.

(3) A Full On-Premises Sales licensee must notify the Commission in writing before the licensee:

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

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

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

(4) A retail licensee must notify the Commission whenever the licensee changes the business trade name within 30 days of the change.

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

Stat. Auth.: ORS 471, including

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

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

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

845-006-0481

Notification When Premises Closed: Time Limit for Operation

A licensee must give the Commission written notice when the licensed premises are closed for more than 14 days. The notice must include the reason for closure and the estimated reopening date. The Commission must receive this notice within 21 days after closure began. Failure to give this closure notice may result in fine, suspension or refusal to renew.

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

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

Hist.: LCC 8-1978, f. 6-23-78, ef. 7-1-78; LCC 20-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0076; LCC 14-1986, f. 9-2-86, ef. 10-1-86; OLCC 11-1998, f. 12-10-98, cert. ef. 5-1-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0105

845-006-0482

Closure of Premises for Private Uses

(1) Limited On-Premises Sales licensees and Full On-Premises Sales licensees may close all or part of the licensed business for private use at any time. 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 OAR 845-005-0340, and comply with the food service standards of OAR 845-006-0463 if the license is a Full On-Premises Sales license.

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

advance written notice to the Commission before adding the train for operation under the existing license.

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

Stats. Implemented: ORS 471.175 & ORS 471.182

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

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. 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

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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 471.315, 471.316 & ORS 183.430(2)

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;

(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: previous lengthy history of compliance; good faith effort to prevent a violation; and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility. Some of the reasons the Commission may aggravate a sanction are: prior warning about compliance problems; repeated failure to comply with laws; efforts to conceal a violation; intentional violations; the violation involved more than one patron or employee; the violation involved a juvenile; and the violation resulted in injury or death. The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.

(8) The Commission increases sanctions based on successive violations in the same category within a two-year period. For example, if a licensee or permittee, who has committed one Category III violation and one Category IV violation within the past two years, commits another Category III violation, the Commission assesses the sanction at the second level for the pending Class III violation. Numerous violations within the two-year period, regardless of the type, may indicate such a disregard for the law or failure to control the premises so as to warrant cancellation of the license or permit.

(9) A licensee may not avoid the sanction for a violation or the application of the provision for successive violations by merely adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar.

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

Stat. Auth.: ORS 471, including
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

OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845
EXHIBIT 1
OAR 845-006-0500 (7)
(Effective 10/1/07)

CATEGORY	1st	2nd	3rd	4th	5th	6th	7th
I	Cancel						
II	30 days	Cancel					
II(a)	10 days	30 days	Cancel				
III	10 days or \$1650	30 days or \$4950	30 days	Cancel			
III(a)	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days or \$4950	30 days and \$4950	60 days	90 days
IV	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel		
V	3 days or \$495	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Cancel	

SANCTIONS

-- These are guidelines only. Commission can impose a different sanction where appropriate.

-- Amounts are retail, wholesale, and manufacturer licensee civil penalties (\$5000 maximum per violation). Service permittees: multiply days by \$25 (\$500 maximum per violation).

Categories for Most Common Violations

<u>Category I</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.155		Failed to maintain a bond (manufacturer/wholesaler)
	471.315(1)(a)(F)		Habit of using to excess
	471.315(1)(a)(I)		Convicted of a felony (Licensee)
	471.385(1)(b)		Convicted of a felony (Service Permittee)
	471.315(1)(c)		History of Serious and Persistent Problems
	471.365(2)		Allowed use of service permit by another
	471.405(1)		Sale of alcohol other than as license permits
		845-005-0355(5)	Restriction violation
		845-005-0400	Failed to maintain liquor liability insurance or bond (On-premises consumption)
		845-006-0475	Failed to notify prior to complete change of ownership/ Allowed interest in business without prior Commission approval

845-006-0481	Failed to notify when permanently ceased Full On- Premises Sales operation
845-006-0498(3)	Operating while suspended

<u>Category II</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.315 (1)(a)(B) 471.385(1)(a) 471.425(1)		Made false statement or representation to induce or prevent Commission action
	471.675		Interfered with investigation
		845-006-0345(1)	Under the influence of intoxicants while on duty
		845-006-0345(2)	Failed to call police at inspector's request
		845-006-0345(4)(a)	Denied inspector/ police officer access to premises (during regular business hours)
		845-006-0345(4)(b)	Failed to promptly admit inspector / police officer (premises is or appears closed)

<u>Category IIa</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.316	845-006-0348	Unlawful drug activity on the licensed premises

<u>Category III</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.315(1)(a)(I) 471.385(1)(b)		Convicted of a crime other than a felony (Licensee) Convicted of a crime other than a felony (Service Permittee)
	471.360(1)(b)		Permitted mixing/selling/serving, or supervising those who do, without a service permit
	471.410(1)		Knowingly sold/made alcohol available to a visibly intoxicated person (VIP)*
	471.410(2)		Knowingly sold/made alcohol available to a minor
		845-006-0335(1)	Failed to verify the age of a minor (sale/service)
		845-006-0335(3)(a)	Permitted minor to consume alcohol
		845-006-0345(1)	Drinking on duty
		845-006-0345(7)	Drive-up window (Off-premises license)
		845-006-0345(10)	Kegs where minor patronage
		845-006-0345(11)	Prohibited conduct: promotions
	471.425(2)	845-006-0347(2)	Permitted/maintained disorderly activity/establishment Permitted/maintained noisy activity/establishment
		845-006-0347(3)	Permitted unlawful activity
		845-006-0347(5)	Drinking alcohol in parking lot
		845-006-0396	Same day delivery with meal service
		845-006-0398	Next day retail shipment

	845-006-0426	Failed to effectively communicate
471.478	845-006-0441	Failed to comply with keg law (minors or VIPS involved)
	845-006-0460-0469	Food service violation
	845-009-0145(3), (4)	Off-Premises Sales clerk/liquor agent's employee did not complete required training and continued to sell alcohol

<u>Category IIIa</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	471.410(2)		Knowingly sold/made alcohol available to a minor (Responsible Vendors only)
		845-006-0335(1)	Failed to verify the age of a minor (sale/service) (Responsible Vendors only)

<u>Category IV</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
		845-006-0335(1)	Failed to verify the age of a minor (minor in prohibited area)
	471.351(1)		Failed to permit premises or records inspection
	471.305		Delivered malt beverages to an unlicensed location
		845-006-0335(3)(b)	Permitted minor to enter or remain in a prohibited area
		845-006-0335(4)	Permitted minor to work in prohibited area
		845-006-0335(6)	Permitted minor entertainer in a prohibited area
		845-006-0345(3)	Destroyed or concealed evidence
		845-006-0347(5)	Failed to evict patron
	471.394	845-006-0370	Accepted or provided financial assistance
	471.398	845-013-0001-0110	
		845-006-0425(1)	After hours operation (retail licensees)
		845-015-0140	After hours operation (retail sales agents)
		845-006-0435	Failed to keep required records
		845-010-0170	
		845-013-0001(4)	
		845-006-0450	Retail On-Premises Malt Beverage or Wine Sampling
		845-006-0498(1), (2)(b)	Removed, altered, or covered suspension notice sign
		845-007-0015	Advertising media, coupons
		845-009-0130(2), (5)	Failed to meet training brochure requirements for off-premises employees
		845-009-0145(5)(b), (5)(c)	Failed to notify whether Off-Premises Sales Clerk/liquor agent's employee completed clerk training course
	471.480(1)		Sale of alcohol by juvenile (Off-premises sales license)
	471.482(1)		Sale of alcohol by juvenile (all other sales licenses)

<u>Category V</u>	<u>Statute</u>	<u>Administrative Rule</u>	<u>Violations</u>
	459A.700 thru 720	845-020-0005 thru 0035	Beverage container violation
		845-006-0340(7)(c)	Failed to post or replace minor postings
		845-006-0345(5)	Unlawfully permitted an open container of alcohol to leave premises
		845-006-0345(6)	Permitted unauthorized liquor on premises
		845-006-0345(8)	Gave or permitted liquor as a prize
		845-006-0365	NSF check (licensee used or wholesaler failed to report)
		845-006-0475	Corporate licensee failed to advise of change (other than stock)
		845-006-0480(2), (3)	Changes in premises without prior Commission approval or notice
		845-006-0480(4)	Change of trade name without timely notification
		845-006-0481	Failed to notify Commission of temporary closure
		845-007-0020	Advertising restrictions
		845-007-0025	Advertising signs on licensed premises
		845-007-0035	Failed to remove objectionable and nonconforming advertising
		845-008-0045(2)	Private club sold to nonmember

*NOTE: 471.412(4) states that the penalty for the first three violations within a two year period of 471.412(1), allowing a VIP to consume, is a Letter of Reprimand. The fourth violation within a two-year period is treated as a fourth-level Category III violation.

DIVISION 7 ADVERTISING

845-007-0005

Purpose and Application of Rules

(1) The Commission serves the interests of the citizens of Oregon by regulating alcoholic beverage advertising for these purposes:

- (a) To minimize health or safety problems caused by the misuse of alcoholic beverages;
- (b) To encourage moderation in the use of alcoholic beverages;
- (c) To discourage the appeal of alcoholic beverages to minors;
- (d) To ensure accurate presentation of the product;
- (e) To ensure compliance with all laws relating to alcoholic beverages.

(2) The Commission also serves the interests of Oregonians by allowing competitive advertising for the purpose of informing the public of the availability and characteristics of alcoholic beverages.

(3) All alcoholic beverage advertising any licensee uses must conform to these rules. Prior approval of advertising material is not normally required. The Commission may, however, require a licensee who fails to comply with these rules to submit all advertising material for prior approval for a reasonable period specified by the Commission.

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

Stats. Implemented: ORS 471.730(7)
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0081; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0010

Definitions

As used in OAR 845-007-0005 through 845-007-0035:

- (1) "Advertising" is publicizing the trade

name of a licensee together with words or symbols referring to alcoholic beverages or publicizing the brand name of an alcoholic beverage.

(2) "Alcoholic Beverage" contains more than one-half of one percent alcohol by volume and is intended for human consumption.

(3) "Discount Coupon" means any cut out or detachable coupon, ticket, certificate or any other material that a person may use to obtain a price reduction or rebate on alcoholic beverages. This definition applies whether the coupon requires a purchase or not.

(4) "Handbill" is a flyer, leaflet, or sheet that advertises alcoholic beverages.

(5) "Point of sale" item is a display, sign, or other material that advertises alcoholic beverages at a licensed premises.

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

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0086; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0015

Advertising Media, 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 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.

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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 the redemption of any coupons. All rebate coupons offered in the State of Oregon must meet the following requirements:

- (a) Coupons must be redeemable only by mail;
- (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 the use of instantly redeemable and mail-in coupons for food, non-alcoholic beverages and non-food items. Coupons are prohibited for generic products (for example: "beef," "soda," "flowers," etc.) Use of coupons must conform with the principles of OAR 845-013-0001. Coupons are prohibited for items prepared or manufactured by the retailer, such as: deli trays, in-house bakery products, "ready to eat" foods, and private label products. A licensee who violates this section commits a Category IV violation under the Commission's sanction schedule (OAR 845-006-0500).

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

Stat. Auth.: ORS 471, 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

845-007-0020

Restrictions

(1) The Commission prohibits advertising if it contains:

- (a) False or misleading information;
- (b) Claims that the alcoholic beverage has curative or therapeutic effects;
- (c) Claims that any government agency endorses or supports the alcoholic beverage;
- (d) The requirement of purchasing an alcoholic beverage in order to receive a prize or merchandise unless the manufacturer or wholesaler donates the prize or merchandise to a charitable cause or community non-profit entity;
- (e) Material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages;
- (f) A person displayed drinking an alcoholic beverage;
- (g) Material that encourages the use of an alcoholic beverage because of its intoxicating effect;
- (h) Statements or illustrations that an alcoholic beverage causes athletic or artistic success;
- (i) Material that encourages excessive or rapid consumption.

(2) The Commission prohibits references to temporary price reductions for alcoholic beverages to be consumed on the licensed premises. These references include "happy hour," "dimers," "two-for-one," "social adjustment hour," "free," or similar terms. The licensee may make references to temporary price reductions inside the licensed premises if the reference is not visible from the outside.

(3) The Commission prohibits advertising that violates OAR 845-015-0130 (Advertising a retail liquor store).

(4) The Commission prohibits manufacturers and wholesalers from giving retailers point-of-sale items and advertising that the financial assistance laws prohibit (ORS 471.398 and 471.400 and OAR 845-013-0050).

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

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76;

Renumbered from 845-010-0096; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-007-0025

Advertising Signs on Licensed Premises

The Commission limits each licensed premises to four signs referring to alcoholic beverages that are visible from the outside. The Commission's financial assistance rule, OAR 845-013-0050, limits the size of the sign a wholesaler or manufacturer may give a retailer to 630 square inches.

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

Stats. Implemented: ORS 471.730(7)
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0101; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90

845-007-0035

Removal of Objectionable and Non-Conforming Advertising

(1) Licensees and retail sales agents must remove any sign, display, or advertisement if the Commission finds it violates these rules.

(2) The Commission will specify a reasonable time period in which to remove the objectionable advertisements.

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

Stats. Implemented: ORS 471.730(7)
Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0111; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

DIVISION 8 RETAIL LICENSEES

845-008-0030

Tap Labeling

Licensees retailing draught beer must disclose at all times the true brand name of the beer by attaching the brand name to the tap or pipe from which the beer is drawn, in such a manner as to make the brand name visible to the customer.

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

Stats. Implemented: ORS 471.445

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60;
LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC
31, f. 12-4-67, ef. 12-26-67; LCC 49, f. 7-26-74,
ef. 9-1-74; LCC 4-1979(Temp), f. & ef. 4-2-79;
LCC 9-1979, f. 5-24-79, ef. 5-25-79;
Renumbered from 845-010-0205(4) and (5);
OLCC 18-1990, f. 8-1-90, cert. ef. 9-1-90

845-008-0045

Service to Guests by Full On-Premises Sales Licensees

(1) Purpose. The Commission grants Full On-Premises Sales licenses to private clubs so that they may sell and serve alcoholic beverages to members and guests. The purpose of this rule is to define member and guest.

(2) Prohibited Sale of Alcoholic Liquor. Licensees holding a Full On-Premises license may not sell or make alcoholic beverages available except to members and guests, as defined in this rule.

(3) Member Defined. A member is a person or entity who pays dues and has full time membership privileges in the club or who is a full time member of an organization that has reciprocal privileges with the club. An auxiliary member is a person or entity defined by charter or bylaw of the private club as having certain limited membership privileges. Auxiliary members do not have to sign in as guests at the club.

(4) Guests of Member. A guest is an individual who enjoys a bona fide guest-host relationship with a member at the private club. A bona fide guest-host relationship exists only if the

individual:

(a) Is invited by a member and the member pays for all costs incurred by the guest, without reimbursement in whole or in part from anyone. The sponsoring member must be on the premises while the guest is on the premises. (Sign-in or guest list required);

(b) Is invited by the club and the club pays for all costs incurred by the individual without reimbursement in whole or in part from anyone. (Payment of standard membership fees and regular monthly dues by members does not constitute reimbursement);

(c) Is attending a family reunion of a member, or a wedding, wedding reception, or wedding anniversary of a member or of a person in a member's family;

(d) Was personally and individually invited by the member prior to arrival at the licensed premises, and is accompanied by the sponsoring member at all reasonable times while in the licensed premises. (Sign-in or guest list required). However, if a member invites more than ten individuals affiliated with the same company, firm, or organization, the Commission will consider the invitation to be based on that affiliation. The Commission will not recognize this to be a bona fide guest host relationship under this subsection, unless the company, firm, or organization:

(A) Is a sole proprietorship, and the hosting member is the sole proprietor;

(B) Is a partnership, and the hosting member is a general partner;

(C) Is a corporation, and the hosting member is a major stockholder;

(D) Is itself a member or has been paying the hosting member's dues for at least three consecutive

months prior to the activity. The member and a corporate officer or local general manager must sign an affidavit attesting to the fact that the corporation has been and will be paying all or part of the member's monthly dues. The club must keep the affidavit on file for at least one year after the activity;

(E) Is a fraternity, sorority, or alumni association, and the private club is organized primarily for members of those organizations;

(F) Is an organization made up of representatives of private clubs;

(G) Is another private club participating in an athletic exchange. (Sign-in or guest list required, unless prior approval is obtained);

(H) Is sponsoring a special activity, held no more than once per year, of the company, firm, or organization, if at least ten percent of the people attending the event are members of the private club. (Prior written authorization required).

(5) Guests of Club. In order to serve the public interest, an individual will be recognized as a bona fide guest of the club if the individual:

(a) Is participating in a special event specifically designed to provide significant economic benefit to a charity. (Prior written authorization required);

(b) Is participating in an activity that is being held in conjunction with a community-wide event or festival, such as Phil Sheridan Days and Junction City's Scandinavian Festival. (Prior written authorization required);

(c) Is participating in a sporting event that requires the special facilities of a private club. (Prior written authorization required).

(d) Is participating in an activity that no Full On-Premises Sales licensee in the area has facilities available to accommodate. (Prior written request required; sign-in or guest list required).

For an activity to qualify under this subsection, the private club must send the Commission's nearest regional office a written request to host the activity and sell alcoholic beverages to the participants. The request must contain facts that show that the private club has the only adequate facilities available to accommodate the activity within a ten mile radius of the club. The Commission will determine adequacy of the facilities based on factors such as size, seating, and the willingness to provide desired food or equipment necessary for the activity. The Commission will also consider whether the facilities are available for the date and hours of the activity at a price competitive with other commercial establishments;

(A) The Commission will deny the request if it receives the written request less than 20 days before the activity, unless it determines that extraordinary circumstances exist. Therefore, if the request is not mailed to the Commission more than 20 days before the activity, the private club must explain in the request why it could not have been mailed earlier;

(B) The Commission may disapprove sale of alcoholic beverages at the activity if the request does not comply with the rule or if the Commission determines that the private club facilities are not the only adequate facilities available.

(6) Duty to Investigate. Private clubs must investigate when group reservations are made to ensure that non-members in the group are eligible to be treated as guests and served alcoholic beverages under this rule.

(7) Prior Approval. Private clubs must obtain prior written authorization from the Commission to host any activity described in subsections (5)(a) (special event for charity), (5)(b) (community-wide event), (5)(c) (special facilities), and (4)(d)(H) (special activity one time per year) of this rule. The Commission's nearest regional office must receive the request for

approval at least 20 days before the activity, except in unforeseen circumstances. The Commission will notify the private club within ten working days after the receipt of the request whether the activity is approved or denied. Verbal notification shall be confirmed in writing.

(8) Guest List. Private clubs shall maintain a sign-in register or guest list showing the names of all guests, except those attending activities described in subsections (4)(c) (family reunions, wedding receptions), (5)(a) (special event for charity), (5)(b) (community-wide event), and (5)(c) (special facilities) of this rule. The register and list must also show names of sponsoring members and dates involved. They must be kept on the premises for at least one year. Guests attending activities described in subsection (4)(d)(G) (athletic exchange) of this rule must sign in unless the private club has received prior approval for the activity.

(9) Record Keeping. Private clubs shall keep on the premises for at least two years an accurate record of all activities, functions, or meetings hosted where more than ten guests were affiliated with the same company, firm, or organization. The record shall include the date, nature of activity, subsection of the rule under which the activity is authorized, name(s) of sponsoring member(s), if any, and number of people who attended. The record must be available for inspection by the Commission.

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

- (a) The licensee has proposed in writing to the Commission to comply with the food service standards for commercial establishments, OAR 845-006-0460, the Commission has approved the proposal, and the club complies with the proposal; or
- (b) The licensee's service to the general public is limited to hosting or holding an event that is alcohol-free.

Stat. Auth.: ORS 471, including 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

DIVISION 9 SERVICE PERMITS

845-009-0005

Return of Applications

The Commission may return an application and any accompanying fee if:

(1) Any of the following information is missing or illegible:

- (a) Applicant's name;
- (b) Applicant's mailing address;
- (c) Applicant's Social Security Number;
- (d) Applicant's date of birth;
- (e) Applicant's signature;
- (f) Applicant's response to conviction history questions;
- (g) Authorized Person's business name;
- (h) Authorized Person's business address; or
- (i) Authorized Person's signature.

(2) The applicant has not included at least the appropriate fee(s) with the application.

(3) The applicant used an outdated application form.

(4) The applicant is under 18 years of age.

(5) The applicant is under 21 years of age, but applying for a service permit at licensed premises where service permittees must be at least 21 years of age.

(6) The applicant has not provided valid 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, ORS
471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.375

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89;
OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC
10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01
thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef.
4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-
03

845-009-0010

Service Permit Requirements

(1) Who Needs a Service Permit. ORS 471.360 requires the following persons to have service permits:

(a) Any person who mixes, sells or serves alcoholic beverages for consumption on licensed premises;

(b) Any person who directly supervises persons who mix, sell or serve alcoholic beverages for consumption on licensed premises;

(c) The individual principals of a licensed corporation or partnership who mix, sell or serve alcoholic beverages for consumption on licensed premises or who directly supervise those who do;

(d) Any licensee's employee who delivers wine, cider, or malt beverages as OAR 845-005-0420, 845-005-0422, 845-006-0396, and 845-006-0398 allow.

(2) Exceptions. The following are exceptions to the service permit requirement:

(a) An individual named on the license as a licensee does not need a service permit;

(b) ORS 471.360 allows the Commission to waive the service permit requirement if the licensee's primary business is not the sale or service of alcoholic beverages or food. Under this authority, the Commission waives the service permit requirement for Public Passenger Carriers whose primary business is transportation (for example airlines, and most trains), and does not waive the requirement for Public Passenger Carriers whose primary business is touring (for example tour boats in Oregon waters more than 30 days per calendar year, and small excursion-type railroads). The Commission waives the service permit requirement for some temporary licenses (see OAR 845-005-0440(9), Temporary Sales Licenses). Employees must, however, be at least 21 years old to sell or serve alcoholic beverages on

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these licensed premises.

(3) Authority to Sell and Serve Based on an Application:

(a) ORS 471.375 allows some service permit applicants to begin selling or serving alcoholic beverages after the applicant completes an official service permit application and an authorized person as defined by ORS 471.375 endorses and sends the application to the Commission;

(b) The authority to sell or serve alcoholic beverages based on an application does not apply to any applicant:

- (A) Who has had a service permit denied or cancelled within the three years before the current application;
- (B) Who has had a service permit denied because they failed to complete the required alcohol server education program. When the applicant completes an alcohol server education course and passes the exam, the applicant may then sell and serve alcoholic beverages;
- (C) Whose service permit application meets the criteria in OAR 845-009-0005, Return of Applications;
- (D) Whose service permit is currently suspended.

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

Stats. Implemented: ORS 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

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 endorse 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 controlled substances to excess and on the applicant's law violation history. This rule describes how the Commission applies these statutory provisions.

(2) For this rule, references to a period of time mean a period of time ending on the date the Commission receives the application. For example, "within two years" means within two years of the date the Commission receives the application.

(3) To be qualified for good cause under this rule:

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

(A) Felony drug conviction(s)

(OAR 845-009-0020(4));

(B) A felony conviction involving the commission of a violent crime

where alcohol or controlled substances were involved (OAR 845-009-0020(5));

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

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

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

(4) Felony Drug Conviction:

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

(A) A felony conviction within 12 months for possession of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions;

(B) A felony conviction within two years for manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions (except possession of a controlled substance).

(C) Two controlled substance felony convictions, one of which was within three years;

(D) Three or more controlled substance felony convictions, any one of which was within six years.

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

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

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

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treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has completed all parole or probation requirements.

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

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

(A) A felony conviction within two years for the commission of a violent crime where alcohol or controlled substances were involved;

(B) Two felony convictions for the commission of violent crimes, any one of which was within three years;

(C) Three felony convictions for the commission of violent crimes, any one of which was within six years;

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

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

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified treatment or recovery program, and is following treatment

recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has completed all parole or probation requirements.

(c) "Violent crime" means crimes which cause, attempt to cause, or threaten physical injury or harm to another person. Examples are: Murder, rape, assault, sodomy, armed robbery.

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

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

(A) One felony DWS conviction within 12 months;

(B) Two felony DWS convictions, either one of which was within three years;

(C) Three felony DWS convictions, any one of which was within six years.

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

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

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified treatment or recovery program, and is following treatment

recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has completed all parole or probation requirements.

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

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

(A) Within three years the applicant has had two DUII

convictions or one diversion and one conviction, any one of which was within 12 months;

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

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

(D) Within five years the applicant has had a liquor license or service permit canceled for liquor law violations. The Commission may grant the permit in less than five years if the violations did not involve threats to public safety or demonstrate that the applicant would be a poor compliance risk as an alcohol server.

(b) If applicant has DUII convictions or diversions, good cause may apply. Good cause to overcome the criteria in subsection (a)(A) through (C) above is the applicant's sworn statement on a Commission-supplied form that:

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

(B) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified treatment or recovery program, and is following treatment

recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has completed all parole or probation requirements.

(8) Habit of Using to Excess. The Commission will deny a service permit if within

ten years the applicant has had a combination of four or more diversions or convictions for DUII or felony drug related convictions or diversions, if the most recent conviction/ diversion was within two years. The only good cause to overcome the criterion in this section is the applicant's sworn statement on a Commission-supplied form that:

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

(b) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified alcohol or drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(c) He/she has completed all parole or probation requirements.

(9) Pending Charges. If otherwise eligible, the Commission may grant a service permit to an applicant who has any drug/alcohol related charges pending on the date the Commission receives the application. The Commission will issue the permit with a restriction that the permittee must notify the Commission, in writing, of the disposition of the charge(s).

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

Stats. Implemented: ORS 471.380

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

845-009-0075

Licensee Requirements

(1) ORS 471.542 requires applicants to complete an approved alcohol server education course to qualify or requalify for certain licenses. After an applicant completes an approved alcohol server education course and passes the exam, the applicant has met the alcohol server education

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requirement for any license issued within five years from the completion date. The licensee must again complete an approved course and pass the exam before the Commission will issue any license for a licensing period that begins after the date this five year period expires.

(2) When the Commission issues a license in the name of a corporation, limited partnership or business entity other than individual persons, the licensee must designate a person or persons (depending on business structure) to take the course and pass the exam on the licensee's behalf. The designee must have the authority to set, implement or change the licensee's practices for selling and serving alcoholic beverages. The licensee may change its designee. If the designee no longer qualifies to act on the licensee's behalf, the licensee must appoint a new designee within 20 days. The licensee must give the Commission written notification within ten days of the appointment. The new designee must take the course and pass the exam within 45 days of appointment.

(3) A license applicant must include the alcohol server education administrative fee with each initial application and with each renewal application. The alcohol server education administrative fee for annual licenses is \$2.60.

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

Stats. Implemented: ORS 471.542

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

845-009-0080

Extensions and Exemptions

(1) ORS 471.542 allows the Commission:

- (a) To extend the time limit for completing the course and passing the exam for hardship reasons; and
- (b) To exempt licensees who do not participate in the management of the business.

(2) The Commission may grant an extension to an applicant or licensee for a length of time less than the licensing period but no more than 360 days if:

- (a) An applicant or licensee is seriously ill or injured;

(b) A member of an applicant or licensee's family is seriously ill, injured or has died;

(c) There is no course available within 100 miles of an applicant or licensee's residence;

(d) The Commission approved the applicant as a security interest holder within 30 days before the license expiration; or

(e) An applicant or licensee shows other good cause to grant a hardship extension.

(3) The Commission may exempt an applicant or licensee who:

(a) Does not participate in the sale or service of alcoholic beverages;

(b) Does not participate in setting, implementing or changing the business alcoholic beverage sales or service practices; and

(c) Has a co-licensee or manager who meets the alcohol server education requirement.

(4) An applicant or licensee must send the Commission a written request for an extension or exemption that explains the reason for the request. Requests for extensions should include the amount of time needed. The Commission will notify the applicant or licensee in writing of its approval or denial. Extension approval notices will include the length of the extension.

(5) The Commission may deny, cancel or suspend the license:

(a) If the applicant or licensee fails to complete an approved alcohol server education course and pass the exam by the date the extension expires; or

(b) If the licensee fails to complete an approved alcohol server education course and pass the exam within 45 days of the date the exemption no longer applies.

(6) If the applicant or licensee requests a contested case hearing:

(a) The Commission will not deny, cancel or suspend the license if the applicant or licensee completes an approved alcohol server education course before the hearing;

(b) The Hearing Referee will consider whether the length of the extension the Commission granted was appropriate if the extension granted was less than the applicant or licensee requested.

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

Stats. Implemented: ORS 471.542

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

845-009-0085

The Examination (Licensees and License Applicants)

(1) A passing grade on the exam is 70 percent.

(2) After the license applicant or licensee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A license applicant or licensee who does not pass this exam may retake the exam at a Commission field office up to two times within 90 days of the date the license applicant or licensee took the course. If he/she does not take and pass the exam as this section requires, he/she must complete a course again and pass the exam before the Commission will issue or renew his/her license.

(4) The license applicant or licensee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

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

Stats. Implemented: ORS 471.542

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-009-0090

Oral Option

An applicant or licensee may take the exam either in writing or orally at the completion of the course. He/she may also take the retake exams either in writing or orally. The applicant or licensee must make arrangements with the provider or field office for an oral exam.

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

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0125; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-005-0215 Alcohol Server Education Program Service Permittee Requirements

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

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45 days.

(4) A hardship extension may not exceed 75 days from the date the Commission received the applicant's completed service permit application. An applicant must submit an extension request within 45 days from the date the Commission received the application. The request must include:

(a) The name of the county that the applicant lives in, and a statement that the population of the county is under 100,000; and

(b) A detailed description of the unusual circumstances that keep the applicant from completing the course and exam within 45 days; the description must demonstrate that the circumstances are beyond the applicant's ability to control or prevent. The applicant must also include the amount of time needed, and the time requested may not exceed 75 days from the date the Commission received the person's completed service permit application. The Commission will notify the applicant in writing of its approval or denial; an approval will include the length of the hardship extension.

(5) A service permittee:

(a) May complete the course and exam anytime within two years before his/her service permit expires to qualify for renewal; or

(b) May complete the course and exam at anytime and apply for a new service permit.

(6) A service permit applicant must include \$13 alcohol server education administrative fee with the service permit application. An application that does not include this administrative fee is incomplete. The Commission may return the application. The applicant must also include the \$10 service permit application fee.

(7) Sections (3) and (4) apply to all completed service permit applications received by the Commission on or after March 1, 1999. The rest of the rule applies to all completed service permit applications received by the Commission.

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

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 7-1988, f. 9-13-88, cert. ef. 10-1-88; OLCC 8-1988(Temp), f. 11-8-88, cert. ef. 12-1-88; OLCC 5-1989, f. 5-24-89, cert. ef. 5-29-89; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0110; OLCC 1-1999, f. 1-25-99, cert. ef. 3-1-99; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-009-0105

The Examination (Service Permittees and Service Permit Applicants)

(1) A passing grade on the exam is 70 percent.

(2) After the service permit applicant or permittee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A service permit applicant, who does not pass this exam, may retake the exam at a Commission field office up to two times within 90 days of the date the applicant took the course. If the applicant fails to pass both retake exams, he/she must retake the server education course and exam.

(4) If the applicant does not take and pass the exam within 45 days of the date their application was received, the Commission will deny the application. When the applicant receives the denial letter, the applicant must stop selling and serving alcoholic beverages immediately. If the applicant still wants a service permit, he/she must:

(a) Retake the server education course and pass the exam, if it has been 90 or more days since the date the person took the course or if the person has failed both exam retakes at a Commission field office; or

(b) Retake the exam at a Commission field office, if it is within 90 days of the date the person took the course and the person has not taken or failed the two exam retakes; and

(c) First, pass the server education course, and then complete and file a new application along with the appropriate fee.

(5) The applicant, or permittee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

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

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0125

845-009-0115

Server Education Hearings: Licensees, Service Permittees, and Applicants

(1) If the Commission denies a license or service permit because the applicant, licensee, or permittee fails to meet the alcohol server education requirement, the applicant, licensee, or permittee is entitled to a hearing under the procedures in OAR chapter 137, division 003 and OAR chapter 845, division 003.

(2) Despite section (1) of this rule, the applicant, licensee, or permittee is not entitled to a hearing if the applicant, licensee, or permittee fails to pass the alcohol server exam.

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

Stats. Implemented: ORS 471.542 & ORS 183

Hist.: OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0130; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-009-0130

Training Brochure Requirement for Off-Premises Sales Employees

(1) Purpose. The Commission is charged with regulating the sale of alcoholic beverages in a manner which protects the safety and welfare of the citizens, and ensures that alcoholic beverages are used legally. One of the ways the Commission accomplishes this is to educate Off-Premises Sales employees about liquor laws and the risks involved in violating those laws. The purpose of this rule is to help Off-Premises Sales licensees educate their employees to help ensure that they do not sell alcoholic beverages to minors and visibly intoxicated persons.

(2) Before allowing an employee to sell alcoholic beverages, the licensee must have the employee read, sign and date the Commission-provided brochure, What Every Store Clerk Needs to Know About Selling Alcohol. The licensee must retain a record according to section (6) of this rule.

(3) To help ensure legal alcohol sales, the brochure explains:

- (a) Why it is important not to sell to minors and visibly intoxicated persons;
- (b) How to recognize minors and visibly intoxicated persons;
- (c) How to check identification; and
- (d) How to refuse a sale to a minor or visibly intoxicated person.

(4) As an added tool to help licensees, the Commission provides a test of the material covered in the brochure. Licensees may choose to give the test to an employee to help determine if the employee is qualified to sell alcoholic beverages.

(5) Despite section (2) of this rule, the Commission does not require a licensee to have each employee read and sign the Commission-

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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.

Statutory Authority: ORS 471, including ORS 471.030, ORS

471.949, ORS 471.730(1) & ORS 471.730(5)

Stats. Implemented: ORS 471.730(1)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-009-0135

Responsible Vendor Program

(1) Purpose. ORS 471.344 requires the Commission to establish a Responsible Vendor Program for retail licensees, including the positive measures a licensee must take to participate in the program. The purpose of this rule is to set standards and procedures for program participation.

- (2) Definitions. For purposes of this rule,
- (a) "Retail licensee" and "licensee" mean a retail licensee as defined in ORS 471.392;
 - (b) "Program" means "Responsible Vendor Program;"
 - (c) "Alcohol" means alcoholic beverages;
 - (d) "Employee" means any employee, corporate officer, volunteer, or other person whose responsibilities include the sale or service of alcohol.

(3) Application Process. Any retail licensee who meets the program standards may participate. To apply for the program, the licensee must complete and submit a Commission-provided application form. Commission staff will review the application for completeness, and will:

- (a) Approve a completed application that clearly indicates the licensee has all program standards in place; put the application in the licensee's file; and send a certificate to the licensee acknowledging the licensee as an approved Responsible Vendor. The Responsible Vendor Program is a self-certifying program. The approval means only that staff has reviewed the application to confirm that it is complete and that the licensee states in writing that he/she has all the program standards in place. The Commission may take administrative action if it learns that the licensee did not meet all the standards at the time of application;

or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will include a letter highlighting the reason/s the application is being returned.

(4) Program Standards. To qualify as a Responsible Vendor, a licensee must:

(a) Train each employee in alcohol sales. Except for an on-premises employee who has a valid service permit, each employee must:

(A) Before selling alcohol, read and sign the Commission-provided off-premises brochure or, at the licensee's discretion, meet the alternative requirements of OAR 845-009-0130, Training Brochure Requirement for Off-Premises Sales Employees. Licensees must comply with the record keeping requirements of OAR 845-009-0130; and

(B) Within three days of beginning to sell alcohol, receive training that covers at a minimum the topics listed in Section (5) of this rule. Licensees may train their employees themselves; licensee's trainings do not require Commission approval. Licensees may also choose to use any clerk training course approved by the Commission under OAR 845-009-0145, Clerk Training Courses. Additionally, servers who have not completed a Server Education course must do so within the time required in OAR 845-009-0100, Service Permittee Requirements.

(b) Accept only identification allowed in ORS 471.130.

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(A) A list of valid types of

identification which are accepted at the premises;

(B) Directions for properly checking identification, including the requirement to check anyone who appears to be under the age of 26 years. A licensee may have a house policy to check customers who appear to be older than 26 years; and

(C) Consequences for selling alcohol to a minor.

(d) Permanently post signs reminding patrons and employees of the legal requirements for selling alcohol. The signs must include:

(A) A list of valid types of identification which are accepted at the premises;

(B) A notice that anyone who appears to be under the age of 26 years must show valid identification. A licensee may post that their house policy is to check customers who appear to be older than 26 years.

(e) At a minimum, provide four employee trainings spaced at regular intervals within each 12-month period. The licensee must ensure that employees attend the trainings. The licensee must keep a record of each training which includes the date of the training, names of the employees who participated, and a summary of the training. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, each training must cover the topics listed in Section (5) of this rule.

(f) Have no prior Category I or II violation within the last five years for the licensee personally.

(g) Have no significant aggravating circumstances surrounding a violation by the licensee personally within the last year for selling alcohol to a minor. Aggravating circumstances include, but

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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 that verifies the age of customers who purchase alcoholic beverages. The equipment must trigger an age verification process or the equipment itself must verify the age. In either case, the equipment must indicate to the licensee or employee if the customer is of legal age to purchase alcoholic beverages.

(2) 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.

(3) 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.

(4) 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.

(5) The licensee must notify the Commission within 15 days of receiving the Commission’s Notice of Violation of their intention to obtain and use the equipment. The licensee must be using the equipment within 30 days of receiving the Notice of Violation.

(6) The licensee must use the equipment at every point of sale used to sell alcoholic beverages.

Stat. Auth.: ORS 471, including 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

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

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time specified in this rule as a condition of continuing to make alcohol sales. Based on ORS 471.030, 471.040, and 471.750, the Commission requires a liquor store clerk to complete a Commission-approved training course within the time frames specified in this rule if the clerk sold alcohol to a minor or failed to properly verify identification, and requires a liquor agent to comply with the requirements of this rule if a clerk sold alcohol to a minor or failed to properly verify identification. ORS 471.341 requires the Commission to establish timelines for completing the training and to approve all training courses offered for purposes of this rule. This rule establishes notice requirements and times for completing the training, sets standards and approval procedures for training courses, and sets an administrative fee for the expenses incurred by the Commission.

(2) As used in this rule,

- (a) "Clerk," "Off-Premises Sales clerk," "liquor store clerk," or "employee" means an Off-Premises Sales or liquor store employee, corporate officer, manager, or any other person whose job includes selling packaged alcohol, but does not include an individual named on the license or on the liquor agent contract;
- (b) "Alcohol" means alcoholic beverages;
- (c) "Clerk Training Courses," "course," or "approved training course" means a course approved by the Commission for the purposes of ORS 471.341.

(3) Clerk Responsibilities. If the Commission determines that a clerk sold alcohol to a minor or failed to properly verify identification, the clerk must complete a Commission-approved Clerk Training Course within 45 days of the date the Commission notifies the licensee or liquor agent of the clerk's act. If the clerk does not complete the training within 45 days, the clerk may not continue to sell alcohol.

(4) Licensee and Liquor Agent Responsibilities. If the Commission determines that an Off-Premises Sales licensee's employee or a liquor agent's employee sold alcohol to a minor or failed to properly verify identification, the licensee or liquor agent may not allow that

employee to sell alcohol if the employee has not completed an approved training course within the required time.

(5) Notice and Reporting Requirements.

(a) When the Commission determines that a clerk sold alcohol to a minor or failed to properly verify identification, the Commission will notify the licensee or liquor agent in writing that the clerk must complete a Commission-approved training course within 45 days of the notice as a condition of continuing to sell alcohol.

(b) When the clerk has completed the required training, the licensee or liquor agent must:

- (A) Notify the Commission within seven days on a Commission-provided form that the employee has completed the training;
- (B) Attach a copy of written certification of course completion; and
- (C) Include a \$10 administrative fee.

(c) The licensee or liquor agent must notify the Commission using the Commission-provided form if:

- (A) The clerk does not complete the training; or
- (B) The clerk is no longer employed by the licensee or liquor agent to sell alcohol.

(d) The Commission will put the notification from the licensee or liquor agent in the licensee or liquor agent's Commission file.

(6) Administrative Fee. The Commission assesses a \$10 administrative fee for each employee who completes an approved Clerk Training Course.

(7) Course Approval Standards and Process. A licensee or liquor agent may use a Commission-approved course, or may apply for Commission approval of their own course.

(a) For a course to be approved, a Clerk Training Course applicant must:

- (A) Submit a completed application packet provided by the Commission;

(B) Have a course that meets the Commission's Clerk Training Course Minimum Standards (published December 21, 1999, and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR);

(C) Explain in writing how the course will provide written certification of course completion to each student who completes the course.

(b) Commission staff will review the application, and will:

(A) Approve a completed application that meets the requirements in Section

(7)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course; or

(B) Return an incomplete application or one that does not meet the requirements of Section (7)(a).

(8) Penalties.

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

(b) Violation of Section (4) of this rule is a Category III violation. For a liquor agent, violation of Section (4) may result in a Notice of Violation.

(c) Violation of Section (5)(b), (5)(c)(A), or (5)(c)(B) of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5) & 471.750

Stats. Implemented: ORS 471.341 & ORS 471.750

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

845-009-0200

Uniform Standards for Minor Decoy Operations

(1) Purpose. ORS 471.346 directs the Oregon Liquor Control Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the

Commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages. It is the Oregon Liquor Control Commission's intention that decoy operations are to be an impartial test of a licensee or agent's ability and willingness to obey laws on preventing sale or service of alcoholic beverages to minors.

(2) Uniform standards for minors used in minor decoy operations:

(a) The minor must be under 21 years of age; and

(b) The minor may not use false identification; and

(c) The minor must look under the age of 26 years; and

(d) The minor may not lie about their age.

(3) Uniform standards for operations. In cities with populations of 20,000 or more, minor decoy operations must be conducted on either a random or targeted basis.

(a) "Random" decoy operations. Selection of the agent(s) or licensee(s) to be visited will be done using simple random sampling which ensures to the greatest extent possible that each licensee or agent has an equal chance of being selected. The simple random sampling may be performed using a variety of generally accepted simple random sampling tools, such as a random number table, a random number generator, or other method.

(b) "Targeted" minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance problem with the specific licensee or agent that is the target of the operation.

(4) Uniform standards for coordination with law enforcement agencies. The Oregon Liquor Control Commission will coordinate with law enforcement agencies to ensure, to the greatest extent possible, that:

(a) Law enforcement agencies are informed of the Commission's uniform standards for minor decoy operations; and

(b) Law enforcement agencies provide the Commission with copies of their

minor decoy policies;

(c) In order for the Commission to process violation cases in a timely manner, law enforcement agencies will be encouraged to provide the Commission with the results of their minor decoy operation(s).

(5) DEFINITIONS: Documented compliance problem. For purposes of this rule, “documented compliance problem” means:

(a) OLCC 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, 471.730(1) & (5)

Stats. Implemented: ORS 30.960, 165.805 & 471.430

Hist.: OLCC 11-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; OLCC 8-2002, f. 6-12-02 cert. ef. 6-30-02; 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

845-010-0166**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

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

Stats. Implemented: ORS 474.115
Hist.: LCC 5-1986(Temp), f. & ef. 3-26-86; LCC 24-1986, f. 10-30-86, ef. 11-1-86; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

845-010-0170

Maintaining Records: Manufacturers, Wholesalers, Importers

(1) The Commission requires every manufacturer, wholesaler, or importer of wine or malt beverages, including wineries and brewery public houses, to keep certain records so the Commission can assure appropriate privilege tax payment and compliance with financial assistance laws.

(2) A manufacturer, wholesaler or importer must keep a record of:

(a) Wine and malt beverage 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, 472 & 473,

including 471.030, 471.392 - 402, 472.030 & 473.140 - 160

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 65, f. 9-22-77, ef. 10-4-77; OLCC 11-1989, f. 10-31-89, cert. ef. 1-1-90; OLCC 9-1991, f. 5-24-91, cert. ef. 7-1-91; 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 ORS 471.030, ORS 471.730(1) & ORS 471.730(5)

Stats. Implemented: ORS 471.398

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 43, f. 11-20-73, ef. 12-11-73; LCC 29-1980, f. 12-22-80, ef. 2-1-81

845-010-0205

Malt Beverage Labeling Requirements, Analysis of Malt Beverages

(1) "Label" means all information-bearing material attached to or a part of a malt beverage container (including the cap).

(2) All malt beverage labels must comply with the requirements of the Commissions advertising rules (OAR chapter 845, division 007), the Bottle Bill (ORS 459A.700 to 459A.740 and OAR chapter 845, division 020), ORS 471.220,

471.235, OAR 845-010-0206 and this rule and must be approved by the Bureau of Alcohol, Tobacco and Firearms. If a manufacturer or wholesaler sells a malt beverage in Oregon that does not comply with the labeling requirements, the Commission may, in addition to any other sanction, require the licensee to stop selling and recall the malt beverage.

(3) Any licensee dealing in malt beverages will give the Commission an analysis of the 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 ORS 471.030, ORS 471.040, ORS 471.730(1) & ORS 471.730(5)

Stats. Implemented: ORS 471.445, ORS 471.446(2) & ORS 471.448

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67, ef. 12-26-67; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 4-1979(Temp), f. & ef. 4-2-79; LCC 9-1979, f. 5-24-79, ef. 5-25-79; OLCC 20-1991, f. 12-4-91, cert. ef. 1-1-92; OLCC 10-1995, f. 12-4-95, cert. ef. 1-1-96; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-010-0206

Private Labels

(1) A manufacturer or wholesaler may produce or sell wine or malt beverages under a private label under the following conditions:

(a) The retailer pays all costs associated with the development, production and application of the private label;

(b) Although both an Oregon and an out-of-state manufacturer may produce

a private label product, the out-of-state manufacturer must sell the private label product to a retailer only through an independently owned and controlled wholesaler. ORS 471.220 and 471.223 allow Oregon manufacturers (breweries and wineries) to sell products directly to retailers;

(c) The manufacturer or wholesaler does not develop a new malt beverage or wine product for the private label. The private label product must be the identical malt beverage or wine product the manufacturer or wholesaler sells under another label. The manufacturer or wholesaler must sell the private label product for at least the wholesale-listed price of the product sold under this other label. The purpose of this requirement is to prohibit manufacturers and wholesalers from offering private labels at a discount;

(d) The manufacturer or wholesaler receives Commission approval of the private label before the manufacturer or wholesaler sells any of the private label product;

(e) The manufacturer or wholesaler receives Commission approval of the private label agreement before the manufacturer or wholesaler sells any of the private label product. The private label agreement may not include a guaranteed quantity, a guaranteed price, credit sales, orders more than ten days in advance of delivery, product storage by the manufacturer or wholesaler or any other terms that violate financial assistance or tied-house statutes (ORS 471.394, 471.396, 471.398 and 471.400) or the rules adopted under these statutes;

(f) The identical product sold under another label must be reasonably available to all the manufacturer or wholesaler's customers. The manufacturer or wholesaler may, however, make the private label product available only to a retailer who pays the costs associated with the

private label; and

(g) The manufacturer keeps a record of all private label sales for two years. The record must include:

(A) The name of the retailer or wholesaler buying the product;

(B) For each transaction, the quantity of product and the date of sale and delivery;

(C) The price of the product and the total cost of each transaction; and

(D) A list of the quantity of private label products sold to each retailer during each calendar year.

(2) For private label products produced for a special event:

(a) The manufacturer or wholesaler must meet all the conditions in section (1) of this rule;

(b) The special event must be prominently featured on the private label; and

(c) The retailer must receive all the private label product needed for the special event within ten days of the date the retailer placed the private label order.

(3) As used in this rule:

(a) "Label" means all information-bearing material attached to or a part of a wine or malt beverage package;

(b) "Private Label" means a wine or malt beverage label that contains a retailer's trade name, trademark or other words or symbols identifiable with a retailer;

(c) "Special event" means an event for which the Commission issues a temporary license pursuant to OAR 845-005-0415 or, for a regular licensee, an event that is not part of the licensee's usual business operation.

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

471.730(5)

Stats. Implemented: ORS 471.398
 Hist.: OLCC 8-1990(Temp), f. 3-16-90 & cert. ef. 3-15-90;
 OLCC 15-1990(Temp), f. 6-5-90, cert. ef. 6-4-90; OLCC 23-
 1990, f. 10-30-90, cert. ef. 11-1-90; OLCC 10-1991(Temp), f.
 & cert. ef. 7-1-91; OLCC 20-1991, f. 12-4-91, cert. ef. 1-1-92;
 OLCC 3-1995, f. 4-27-95, cert. ef. 5-15-95; OLCC 19-2000, f.
 12-6-00, cert. ef. 1-1-01

845-010-0207

Pasteurization of Malt Beverages

(1) "Pasteurized malt beverages" means malt beverages which have been subjected to such process or processes in manufacture and packaging which effectively inhibit continuing microbiological activity by the inactivation, destruction, or removal of organisms capable of such growth, activity or decomposition.

(2) The following methods for pasteurization of malt beverages are acceptable:

- (a) Heating the malt beverage after bottling or canning; or
- (b) Heating the malt beverage, then bottling or canning under aseptic conditions.

Stat. Auth.: ORS 471, including ORS 471.030, ORS 471.730(1) & ORS 471.730(5)
 Stats. Implemented: ORS 471.345
 Hist.: LCC 22-1979, f. 9-24-79, ef. 10-1-79; LCC 26-1980, f. 9-30-80, ef. 10-1-80

845-010-0210

Price Lists

(1) Any wholesale licensee of the Commission must maintain price lists at the licensed business premises for two years. Licensees must have these price lists available for Commission inspection at all times during business hours.

(2) A licensee must charge all retailers the same price excluding any transportation costs.

(3) The price list must show:

- (a) Every brand and type of product offered for sale;
- (b) The price for each size container;
- (c) The effective date of each price;
- (d) Any allowance granted for a returnable container;
- (e) Any handling fee on wine sold in less than the smallest multiple-package

case available for sale; and

(f) Any transportation costs. Since ORS 474.115 prohibits quantity discounts, a wholesaler may not base transportation costs on quantity. The licensee must also show the amount of any transportation cost on the retailer's invoice.

(4) A price list becomes effective on the date the wholesaler indicates on the list.

(5) Once a licensee decreases a price, the licensee must not increase the price for 14 days. Whenever a licensee changes a price, the licensee must prepare a new price list.

(6) After a price becomes effective, the licensee must sell only at that price. If a licensee sells malt beverages or wine at any other price, the Commission considers the sale to be giving financial assistance within the meaning of the Oregon Liquor Control Act and the Commission's administrative rules.

(7) The Commission does not require price lists for dock sales to consumers.

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

Stats. Implemented: ORS 471.398

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 33, f. 6-12-69; LCC 55, f. 10-20-76, ef. 12-1-76; LCC 31-1980, f. 12-22-80, ef. 2-1-81; OLCC 15-1987, f. 4-6-87, ef. 7-1-87; OLCC 9-1989(Temp), f. 10-2-89, cert. ef. 10-15-89; OLCC 10-1990, f. 4-18-90, cert. ef. 4-19-90; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

Wine

845-010-0280

Standards of Identity and Prohibited Practices Concerning Wine

The 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, OAR 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 ORS 471.030,

ORS 471.730(1) & ORS 471.730(5)

Stats. Implemented: ORS 471.335(1)(b)

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 11-1985, f. 12-3-85, ef. 1-1-86

845-010-0310

Seizure of Substandard Wine

The Commission at its discretion will pick up samples of wine to determine whether or not such wine is in conformity with analysis furnished the Commission and for the further purpose of determining whether the wine meets the standards set by law and the regulations of the Commission. When wine is found to be not in conformity with the standards set by law and the regulations of the Commission, the bottler shall hold or repossess forthwith all wine of such lot covered by release permit under which the particular wine so found to be substandard was released for sale in the State of Oregon. Such wine will be placed in detention and unless within a period of 30 days from the date of such detention application is made for the return of such merchandise to the point of origin, or permission is granted by the Commission for the restabilization or reconditioning of the wine so that it conforms to the aforementioned standards, the wine shall be destroyed under the supervision of the Commission.

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

Stats. Implemented: ORS 471.735

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64

Wine Produced or Bottled in Oregon from *Vitis Vinifera* or its Hybrid Grades

845-010-0905

Definitions

As used in OAR 845-010-0905 through 845-010-0930:

(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 American 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 (OAR 845-013-0060), and services of nominal value (OAR 845-013-0070) described in these rules:

- (A) Only for the manufacturer's or wholesaler's alcoholic beverage products; and
- (B) To all retailers without discrimination. Without discrimination means the manufacturer or wholesaler makes all allowable point of sale material, items of nominal value, and services of nominal value available to all the manufacturer's or wholesaler's retailers upon request subject to availability. The Commission will not consider it discrimination if a manufacturer or wholesaler gives allowable material, items or services based on the type of business or in proportion to the size of the account;

(c) In addition to the requirements of subsection (3)(b) of this rule, when manufacturers and wholesalers give the services of nominal value (OAR 845-013-0070) described in these rules, they must not alter or disturb another manufacturer's or wholesaler's alcoholic beverage products. This limitation does not apply when a retailer decides to rearrange all the alcoholic beverage products his/her business carries (a general reset). For a general reset, manufacturers and wholesalers may move each other's products as long as the retailer has notified all the manufacturers and wholesalers whose products are being

moved and the retailer moves or helps move the products of any manufacturers or wholesalers who are not present;

(d) Manufacturers and wholesalers may not customize point of sale material (OAR 845-013-0050) or items of nominal value (OAR 845-013-0060). Despite this prohibition, a manufacturer or wholesaler may, on items of nominal value and interior point of sale material:

- (A) Add the retailer's name or logo;
- (B) Add the retailer's price for the advertised product(s); or
- (C) Leave a blank space for the retailer to add only the retailer's price for the advertised product(s).

(4) Records. Manufacturers and wholesalers must keep accurate and complete records of any gratuities the manufacturer or wholesaler gives a retailer and of all activities described in OAR 845-013-0010 (Substantial Gratuities), any credit that OAR 845-013-0020(1)(a) and (b) allow and all exchanges and returns that OAR 845-013-0070 (Services of Nominal Value) allows. These records must include dates, times, amounts and names of all persons and premises involved; be kept for two years; and be available for Commission inspection.

(5) Retailer Purchase of Items/Services: A manufacturer or wholesaler may, for a reasonable fee, sell to a retailer items, labor, or services that ORS 471.398 prohibits. As used in this section, a reasonable fee for labor or service is one that covers at least the manufacturer's or wholesaler's cost; a reasonable fee for the item is at least the cost to the manufacturer or wholesaler who initially purchased or produced the item. The manufacturer or wholesaler and the retailer must keep a record of the sale.

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

Stats. Implemented: ORS 471.398

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0121; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-013-0010

Substantial Gratuities

(1) ORS 471.398(1) prohibits a manufacturer or wholesaler from providing a substantial gratuity to a retailer. This rule lists the only gratuities a manufacturer or wholesaler may give to a retailer and not violate ORS 471.398(1).

(2) Food and Beverages. A manufacturer or wholesaler may give a retailer food and beverages for immediate consumption:

- (a) At a meeting at which the primary purpose is the discussion of business;
- (b) At a convention when the food and beverages are offered to all participants;
- (c) At a sports or entertainment event that the manufacturer or wholesaler attends with the retailer. See section (4) of this rule.

(3) Items at a Convention. A manufacturer or wholesaler may give item(s) to retailers who are participants at a convention as long as the manufacturer or wholesaler offers the item(s) to all the convention participants.

(4) Tickets/Admission Fees:

- (a) A manufacturer or wholesaler may pay for a retailer's ticket or admission fee including green, court and lane fees for a sports or entertainment event;
- (b) Payment is allowed as long as the manufacturer or wholesaler accompanies the retailer to the event and does not pay associated costs like the retailer's airfare and costs of a similar type.

(5) Campaigns for Responsible Use. A manufacturer or wholesaler may:

- (a) Give a retailer inexpensive items that function only to promote responsible use of alcoholic beverages. These items may be for retailer use on the premises or for customer use. They may include an inconspicuous reference to a manufacturer or wholesaler but no reference to the retailer. Examples of allowable items: buttons, posters and static-cling stickers. Examples of non-allowable items: glasses, T-shirts and coasters;
- (b) Provide a person as a part of a campaign to promote responsible use of

alcoholic beverages on a 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 chapter 845, division 013 regulate. For example, OAR 845-013-0050 limits exterior point of sale material to a 630 square inch maximum. A manufacturer or wholesaler may not use this gift section to expand allowable point of sale material in order to give a retailer a larger exterior sign.

(7) Winery or Brew-Pub Festivals for the Public Held on a Retailers Premises:

- (a) With a Special Events Winery License, one or more wineries may hold and promote a wine-tasting festival (the Timberline Wine Festival, for example) or similar event on a retailers premises. With a Temporary Sales License, one or more brewery-public houses (Brew-Pubs) may hold and promote a malt beverage tasting festival or similar event on a retailers premises;
- (b) The purpose of this section is to allow wineries and brew pubs, not retailers, to make any allowable sales of alcoholic beverages at the festival. To accomplish this, the requirements for these festivals are:

- (A) Space is all the retailer provides;
- (B) At the festival, only the winery(s) or brew-pub(s), not the retailer, makes all the sales, if any, of the products offered for tasting;
- (C) A winery or brew-pub participates in no more than two festivals per calendar year per licensed retail premises;
- (D) Anyone who sells or serves alcoholic beverages at these tastings must have a service permit except the Special Events Winery or Temporary Sales licensee.

(8) Holding Conventions. Like other businesses, a manufacturer or wholesaler may want to hold and promote a convention or similar function. A manufacturer or wholesaler may use a retailers facility for a convention under the following conditions:

- (a) The manufacturer or wholesaler holds no more than one convention per calendar year per retail license premises;
- (b) The manufacturer or wholesaler pays a reasonable fee for rental of the retailers facility and anything else the retailer provides.
- (c) The manufacturer or wholesaler may include the retailers name and location in any advertising only as necessary to give directions to the event. The retailer must not pay or receive payment from the manufacturer or wholesaler for any part of the advertising cost.

(9) Donations of Prizes: A manufacturer or wholesaler may donate prize money or prizes to an organization for a public event, at which a retailer licensee sells or serves alcoholic beverages. He/she may do this only under the following conditions:

- (a) The organization must not exist solely for the benefit of a single retailer;
- (b) The manufacturers or wholesalers donation must go to the participants in the events;
- (c) The retailer must make all alcoholic beverages usually sold on the premises

readily available and at the comparable prices charged on non-event days;

(d) The retailer must not solicit donations; and

(e) An individual manufacturer or wholesaler may donate to only one event per retailers premises each calendar year. The donation does not exceed \$2,000. The event lasts no longer than seven consecutive calendar days. The Commission may extend the limitations in this subsection if the manufacturer or wholesaler shows that the retailer will not receive a direct or indirect substantial benefit as a result of the donation or if the facility is the only one available that can reasonably accommodate the event.

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

Stats. Implemented: ORS 471.398(1)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-10-122, 10-124 & 10-126; OLCC 7-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0020

Money, Credit, Discounts; ORS 471.398(2) and 471.400(3)(a)

(1) "Money, Credit": ORS 471.398(2) prohibits a manufacturer or wholesaler from providing money or credit to a retailer. A manufacturer or wholesaler may, however:

(a) Give credit or cash, with the Commissions prior written approval, for malt beverage or wine that a retailer returns:

(A) When the retailer terminates the business or seasonal license;

(B) When the retailer temporarily stops operating due to unforeseen circumstances like fire, flood or other natural disasters;

(C) When the retailer temporarily stops operating for more than 29 days; or

(D) After holding a Temporary

Sales license event except for Full On-Premises Sales licenses.

(b) Give credit for wine or malt beverages that the retailer cannot exchange as allowed in OAR 845-013-0070(3)(d) and (3)(e) because the manufacturer or wholesaler has no saleable product available. However, the manufacturer or wholesaler must:

(A) Apply the credit to the retailers next purchase;

(B) Get the Commissions prior written approval if the credit is for more than one case; and

(C) Limit the amount of the credit to the retailers original purchase price for the product.

(2) "Non-Alcoholic Product Credit Sales": ORS 471.400 (3)(a) allows a manufacturer or wholesaler licensee to sell non-alcoholic products in the manner in which non-licensee manufacturers and wholesalers sell them. With regard to credit, the Commission has determined that the usual industry practice allows credit sales with full payment within 45 days of delivery. Therefore, a manufacturer or wholesaler may sell non-alcoholic products on credit. The retailer must, however, pay for these credit purchases in full within 45 days of the delivery date. If the retailer does not, both the manufacturer or wholesaler and the retailer have violated ORS 471.400(3)(a). The manufacturer or wholesaler has not given financial assistance under this section if he/she gives the Commission written notification by no later than the 37th day that the retailer has not paid for the product. He/she will also send the retailer a copy of the notice.

(3) "Discounts": ORS 471.398(2) and 474.115(4)(a) prohibit a manufacturer or wholesaler from giving discounts to a retailer. The manufacturer or wholesaler and the retailer have violated these prohibitions if the manufacturer or wholesaler contracts with the retailer for delivery of alcoholic beverages more than ten days in the future.

(4) Despite section (3) of this rule: A manufacturer or wholesaler may sell existing vintage-dated wines for future delivery by written contract prior to winery release if the manufacturer or wholesaler:

- (a) Offers this opportunity to all their retail license customers at the same general time subject to availability;
- (b) Keeps a copy of the contract;
- (c) Keeps a record of the offering that includes the names of the retail licensees who were given the opportunity to participate in the offering and an explanation of the method used to make the offering.

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

Stats. Implemented: ORS 471.398(2) & ORS 471.400(3)(a)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 20-1990, f. 9-28-90, cert. ef. 10-1-90; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0123; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0030

Fixtures, Furniture, Furnishings, ORS 471.465(1)(c)

(1) ORS 471.398(3) prohibits a manufacturer or wholesaler from providing any fixtures, furniture or furnishings to a retailer. A manufacturer or wholesaler does not violate this prohibition if he/she provides a display bin or rack under the following conditions:

- (a) The manufacturer or wholesaler provides no more than one bin or rack per trade name per retailer at any given time;
- (b) The manufacturer or wholesaler has permanently marked the bin or rack with a brand name or trade name of the manufacturer or wholesaler's alcoholic beverage product; and
- (c) The retailer uses the bin or rack to display only products from the brand name or trade name permanently marked on the bin or rack;
- (d) For purposes of this rule, "trade name" means the operating trade name and associated business names filed by a manufacturer or wholesaler as part of the Federal Bureau of Alcohol, Tobacco and Firearms basic permit; "brand names" means the various wines,

distilled spirits and malt beverages sold under a particular trade name.

(2) In addition to the requirements in section (1) of this rule, if the cost of the display bin or rack exceeds \$30 (cost is the cost to the manufacturer or wholesaler who initially purchased or produced the bin or rack), the manufacturer or wholesaler must:

(a) Invoice the retailer for the bin or rack upon delivery and issue a credit upon manufacturer or wholesaler removal;

(b) Loan the bin or rack to the retailer for a period not to exceed 45 days. At least 45 days must elapse before the manufacturer or wholesaler loans the same or another display bin or rack to the retailer for products from the same trade name.

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

Stats. Implemented: ORS 471.398(3)

Hist.: OLCC 8-1992, f. 8-25-92, cert. ef. 10-1-92; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

845-013-0040

Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer. The only advertising a manufacturer or wholesaler may provide under this statute is generic, off-premises references to the manufacturer or wholesaler's alcoholic beverage products that mention no specific retailer. Some examples include radio and television commercials and billboards.

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

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

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124

845-013-0050

Point of Sale Material, ORS 471.398(4)

(1) Wine Manufacturers and Wholesalers.

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NOTE: Bureau of Alcohol, Tobacco and Firearms (BATF) rules differ from Commission rules, particularly with regard to subsection (2)(b) of this rule. Be sure to check with BATF before applying this rule.

(2) ORS 471.398(4) allows a manufacturer or wholesaler to provide point of sale material to a retailer. Manufacturers and wholesalers may provide point of sale material only for display at the retailer's premises. The only point of sale material a manufacturer or wholesaler may provide is:

(a) Material that functions only to advertise the manufacturer or wholesaler's alcoholic beverage products. Some examples of this material include table tents, case cards, danglers, static-cling stickers, display mirrors, inflated plastic beer or wine bottles and neon beer or wine signs;

(b) Material that has another function in addition to advertising the manufacturer or wholesaler's alcoholic beverage products that meets the following conditions:

(A) The cost of the material in any one display does not exceed \$30

(cost is the cost to the manufacturer or wholesaler who initially purchased or produced the item);

(B) The manufacturer or wholesaler loans but does not give the material to the retailer for a period not to exceed 45 days;

(C) The manufacturer loans this type of material for no more than four displays per year per retail premises;

(D) The manufacturer or wholesaler invoices the material upon delivery, describes on the invoice how the retailer will use the material and issues the retailer a credit upon manufacturer or wholesaler removal;

(E) The retailer uses the material only as a part of a promotional display for the manufacturer or wholesaler's products on the

retailer's licensed premises; and

(F) The retailer makes no minimum purchase in order to have the material at his/her premises.

(c) Material that predominantly advertises the manufacturer or wholesaler's alcoholic beverage products but also advertises a generic food product. This section does not prohibit cross-promotions of the manufacturer or wholesaler's alcoholic beverage product with a specific food product or brand when food product producer is not a retail licensee; the food product producer pays at least half the cost of the cross-promotion; and any retailer who receives the material pays none of the costs. For example, a cheese manufacturer and a wine manufacturer jointly produce a poster to promote their products. As long as the cheese manufacturer is not a retail licensee, the cheese manufacturer pays at least half the costs and the retail licensee pays none of the costs, the Commission treats the poster as alcoholic beverage/generic food product material;

(d) Material that predominantly advertises the manufacturer or wholesaler's alcoholic beverage products but also has generic words or symbols for activities the manufacturer or wholesaler wants to associate with his/her alcoholic beverage products. Exterior material may, however, have only generic symbols relating to activities, not words.

(3) Exterior point of sale material given or loaned under this rule must not exceed 630 square inches. This means that inflatables or any point of sale material cannot be displayed in a retailer's parking lots or other outside areas if the material exceeds 630 square inches.

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87;

OLCC 7-1992, f. & cert. ef. 7-1-92;
Renumbered from 845-010-0124

845-013-0060

Items of Nominal Value, ORS 471.398(4)

(1) In addition to advertising and point of sale material, ORS 471.398(4)) allows a manufacturer or wholesaler to provide items of nominal value to a retailer. This rule describes the two categories of items of nominal value a manufacturer or wholesaler may give to a retailer.

(2) A manufacturer or wholesaler may give basic items that support the manufacturer or wholesaler's products at the retailer's premises such as:

- (a) Tavern Heads:
 - (A) One tavern head per calendar year per retail licensee;
 - (B) A trade-in of a tavern head at the fair market value as partial payment for a new one when the retailer replaces an existing draft system.
- (b) Washers or Thomas valves necessary for proper operation of draft equipment;
- (c) New and used empty shells or bags in sufficient quantity for returning the manufacturer or wholesaler's empty containers;
- (d) Samples and Tastings:
 - (A) Tastings or samples of distilled spirits that the retailer does not carry but only in an amount not to exceed 50 ml.;
 - (B) Tastings or samples of wine and malt beverages that the retailer does not carry. the sample must not exceed a one gallon container of malt beverage or a five liter container of wine. It must be clearly and permanently marked "sample - not for resale";
 - (C) Distilled spirits, wine and malt beverage tastings for retailer educational seminars that are not open to the public.

(3) A manufacturer or wholesaler may give items that are made of paper or other similar

inexpensive material that provide information to a retailer's customers but do not promote the retailer's business. The following are some examples of these items:

- (a) Items that have the manufacturer or wholesaler's alcoholic beverage brand name prominently displayed, are intended for use by the retailer's customer off the premises and are made available to the retailer's customers. Some examples include sports schedules, schedules for concerts, theatre, operas and other entertainment series, calendars, recipes and informational pamphlets. Examples do not include napkins, coasters and other paper products a licensee uses in the normal course of business;
- (b) Schedules of entertainment events (sports, music, theatre, etc.) for the retailer to display at the licensed premises;
- (c) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limit items of nominal value to the manufacturer or wholesaler's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite OAR 845-013-0001(3)(d) that prohibits customization, the manufacturer or wholesaler may add generic food references to the list. For example, the list may indicate that a particular alcoholic beverage goes well with chicken but may not refer to a chicken dish on the retailer's menu.

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126

845-013-0070

Services of Nominal Value; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer

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any services except those described in ORS 471.398(5) and the two categories of services of nominal value described in this rule.

(2) A manufacturer or wholesaler may give basic services that support products on draft such as:

- (a) Inspecting draft equipment, coolers and cooling equipment for sanitation and quality control;
- (b) Performing emergency repairs on draft equipment;
- (c) Instructing retail licensees in the proper use, maintenance and care of draft and cooling equipment;
- (d) Tapping kegs during regular delivery calls.

(3) A manufacturer or wholesaler may give basic marketing support services for the manufacturer's or wholesaler's alcoholic beverage products such as:

- (a) Delivering to the designated place on the retailers premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;
- (b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;
- (c) Pricing packages and containers of the manufacturer's or wholesaler's brands but not repricing packages and containers. Repricing includes entering the Uniform Price Code (UPC) or pricing information in the retailer's system but does not include changing shelf tags;
- (d) Promptly exchanging alcoholic beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;
- (e) Exchanging products that are leaking, deteriorating, near or past their shelf date, have damaged or missing labels, or have damaged containers for an equal quantity of identical product (See also OAR 845-013-0020(1)(b)). If

the amount exchanged is one case or less of malt beverages, the manufacturer or wholesaler may substitute another malt beverage product of similar value. A manufacturer or wholesaler may not exchange product that the retailer or retailer's customer damaged;

(f) Installing, cleaning and repairing point of sale materials allowed in OAR 845-013-0050;

(g) Providing an employee to assist in educational seminars and wine or malt beverage tastings that a retailer conducts for the public as long as each licensee complies with OAR 845-006-0353, 845-006-0427, and 845-006-0450.

NOTE: ORS 471.186(4) prohibits a manufacturer or wholesaler from providing or paying for a person to serve samples at package stores except as provided in ORS 471.402.

(h) Providing celebrities or performers to promote the manufacturer's or wholesaler's product on a retailer's premises as long as:

- (A) Neither the manufacturer/wholesaler nor retailer advertise or promote the celebrity or performer's visit;
- (B) The celebrity or performer does only a brief performance, if any;
- (C) The manufacturer or wholesaler provides no alcoholic beverages to the retailer's customers;
- (D) The manufacturer or wholesaler provides the celebrities no more than once per year per retail premises.

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

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 8-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 8-1997, f. 2-28-97, cert. ef. 3-15-97; OLCC 17-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-013-0075**Schematics; ORS 471.398(5)**

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except services of nominal value.

(2) OAR 845-013-0070 limits services of nominal value to those which fall into one of two categories.

(3) The category described in OAR 845-013-0070(3) allows a manufacturer or wholesaler to give basic marketing support services for the manufacturer or wholesaler's alcoholic beverage products. When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the Commission considers that to be a basic marketing support service.

(4) When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the retailer remains responsible for deciding what products are actually sold.

(5) The Commission holds licensees accountable for the acts of their agents and employees. (See OAR 845-006-0362). Accordingly, any licensee who provides schematics through another person or business is responsible for the actions of the party. If a person or business that provides schematics on behalf of a licensee violates any liquor law or rule, the Commission takes the appropriate compliance action against the licensee.

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

Stats. Implemented: ORS 471.398(5)
Hist.: OLCC 3-1994, f. 8-3-94, cert. ef. 10-1-94;
OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-013-0090**Wholesale-Retail Relations: Non-Profit Temporary Sales Licenses**

(1) ORS 471.400(1) permits the Commission to allow manufacturers and wholesalers to provide products and services to non-profit Temporary Sales licensees without violating financial assistance laws. These products and services are allowed in addition to the gratuities, point of sale material, items of nominal value and services of nominal value that OAR 845-013-0001 through 845-013-0070 allow.

(2) Federal Law May Differ. Although

Oregon law allows manufacturers and wholesalers to provide the products and services described in this rule, federal laws regarding wine may not. When dealing with wine, a federal law that is more strict than an Oregon law takes precedence over the Oregon law. Therefore, manufacturers and wholesalers should check with the Bureau of Alcohol, Tobacco, and Firearms before applying this rule to their wine business.

(3) Products and Services. A manufacturer or wholesaler may provide the following to a non-profit Temporary Sales licensee:

(a) Any product the manufacturer or wholesaler normally sells. The manufacturer or wholesaler may give the product free, sell the product at a discount or sell the product at the regular price. The manufacturer or wholesaler may pick up excess malt beverage product at the end of a special event held by a non-profit Temporary Sales licensee, and if the product was sold to the Temporary Sales licensee, may give a credit or cash refund for the returned product;

(b) Any services to support the alcoholic beverage product. This includes providing employees to sell or serve alcoholic beverages at the Temporary Sales license event as long as the employee has successfully completed an approved alcohol server education course within the last five years or has a valid service permit; and

(c) Banners for interior or exterior display at the licensed premises that advertise a special event and prominently display the manufacturer's or wholesaler's alcoholic beverage brand name. These banners may be displayed before and during the Temporary Sales license event and may exceed 630 square inches.

(4) Limitations. A manufacturer or wholesaler may provide the products and services that this rule allows only if:

(a) The Temporary Sales licensee is a non-profit or charitable organization that is registered with the state, a political committee that has a current

statement of organization filed under ORS 260.039 or 260.042, an agency of the State, or a local government or an agency or department of a local government; and

(b) The Temporary Sales license is not for more than 72 hours.

(5) Equipment. ORS 471.400(1) also allows a manufacturer or wholesaler to provide the following equipment to any retail licensee: picnic pumps, cold plates, tubs, refrigerated trailers, refrigerated vans and refrigerated draft systems. The manufacturer or wholesaler may provide this equipment only for a period not to exceed ten days and for a reasonable rental or service fee. The statute allows a manufacturer or wholesaler to provide this equipment to any retail licensee for a reasonable fee. A manufacturer or wholesaler does not have to require a reasonable fee when providing this equipment to a non-profit temporary sales licensee.

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

Stats. Implemented: ORS 471.400(2)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0129; OLCC 11-1997, f. 5-12-97, cert. ef. 6-1-97; Administrative correction 5-23-97; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-013-0100

Wholesale-Retail Relations; Sale at Both Wholesale and Retail

(1) Except as provided in ORS 471.396, ORS 471.394(1) prohibits licensees from selling or engaging in the business of selling alcoholic beverages both at wholesale and retail. For purposes of this statute, the direct consumer sales that ORS 471.235 allows a wholesale malt beverage and wine licensee to make are wholesale sales.

(2) As used in ORS 471.394(1):

(a) "Licensee" includes retailers, wholesalers, and manufacturers of any alcoholic beverages and their managers, officers and directors;

(b) "Licensee" also includes retailers', wholesalers', and manufacturers' agents

and employees who sell or engage in the business of selling alcoholic beverages. This means that a retailer and manufacturer or wholesaler may employ the same person to provide janitorial service. A manufacturer or wholesaler may not, however, hire a retailers checker as a trucker since the checker/trucker would be engaged in the business of selling alcoholic beverages at both retail and wholesale.

Stat. Auth.: ORS Chapter 471, including ORS 471.030, ORS 471.040, ORS 471.730(1) & ORS 471.730(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 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471, including ORS 471.398

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0131

DIVISION 15 RETAIL SALES AGENTS

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

845-015-0101

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 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-

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 Distiller 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, including 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 OAR

845-015-0125. From the finalists, the Commission appoints a retail sales agent using the criteria in OAR 845-015-0125. A public presentation at a Commission meeting may be required. Advance notice of the public meeting date will be given to all finalists.

(4) An appointed retail sales agent must submit retail liquor store arrangements for approval, enter into an Agency Agreement, purchase fixtures and equipment at the Commission-established price 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

Advertising a Liquor Store:

(1) The Commission allows a retail sales agent to place:

(a) A public notice about a retail liquor store in a general readership local publication, with prior approval;

(b) An exterior sign on a retail liquor store, with prior approval for sign and contents. Subject to prior approval for sign and contents, retail liquor stores located within another retail business or building may place an exterior sign at the immediate entrance to the retail liquor store, and place an exterior sign on the outside of the main building within which the retail business and the retail liquor store are located;

(c) A "mixer shop" sign on an exclusive

retail liquor store if it is in smaller size and different color; and

(d) A retail liquor store listing on a shopping center directory, map and roadside tenant reader board.

(2) A retail sales agent may support a local, non-profit community event and receive recognition for that support if the recognition given is the same as the minimum allowed for other supporters.

(3) Agents may not use or refer to specific brand names of distilled spirits in their advertising.

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

Stats. Implemented: ORS 471.750(1) & 471.750(2)

Hist.: LCC 26-1986, f. 11-20-86, ef. 1-1-87; OLCC 16-1990, f. 6-29-90, cert. ef. 7-1-90; OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03; Renumbered from 845-015-0090; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

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

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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

845-015-0140

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. 2-1-0; 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. 2-1-0; 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

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requirements and limits described in this rule.

(2) Sample Sizes, Number of Samples per Customer. The size of each distilled spirits sample must not exceed one-quarter ounce per sample. Tastings are limited to two samples per customer per tasting session. A sponsor may not provide more than one-half ounce total of distilled spirits samples per customer per day.

(3) The product(s) provided for sample tastings must be available for sale at the retail sales agency where the sample tasting occurs at the time of the sample tasting.

(4) Identified Tasting Area. Retail sales agents who allow tastings at their retail liquor store must identify a specific tasting area. The area must be of a size and design such that the person(s) conducting the tasting can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area until they have finished consuming the sample(s). In exclusive retail liquor stores, the tasting area may be the entire retail liquor store. In non-exclusive retail liquor stores, the retail sales agent must identify a tasting area, and keep on file at the retail liquor store a floor plan sketch identifying the tasting area.

(5) Duration of Tastings Allowed. Tastings are limited to a maximum of three consecutive hours per sponsor per retail sales 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 product to be tasted, and remove any remaining product at the end of the tasting;
- (b) Provide or pay for a person to serve the distilled spirits being tasted. The server must be a sponsor or an employee or agent of the sponsor;
- (c) Not compensate the retail sales

agent, or any employee or agent of the retail sales agent to participate in the tasting; and

(d) Not advertise the tasting outside of the retail liquor store.

(9) Retail Sales Agent Responsibilities.

Retail sales agents:

(a) Must not advertise the sample tasting outside the retail sales agency; and

(b) Are responsible for liquor law violations occurring in the retail sales agency which are not related to the sample tasting.

(10) Violations Associated with the Sample Tasting. In the case of a liquor law violation associated with sample tasting (for example, service of a sample to a minor or a visibly intoxicated person), both the server and the sponsor may be held responsible for violations of Oregon liquor laws which occur due to or during the tasting. Violations which occur due to a sponsor or server violating the law will not be charged to the retail sales agent.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 27-1986, f. 11-20-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0095; OLCC 9-2004, f. 6-29-04 cert. ef. 7-1-04

845-015-0160

Sale of Lottery Tickets

Despite OAR 845-015-0143(1) (sale of related items), retail sales agents may contract with the Oregon State Lottery Commission to sell Oregon State Lottery Tickets in retail liquor stores.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 5-1985, f. 3-28-85, ef. 4-1-85; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0065

845-015-0165

Supplier Rebates on Distilled Spirits

(1) The Commission allows suppliers to give consumer rebates on distilled spirits.

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), 472.030, 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 13-1996, f. 9-30-96, cert. ef. 10-7-96; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0091; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03; OLCC 17-2004, f. 12-22-04, cert. ef. 1-1-05

845-015-0177

Specific Requirements for Signs and Displays in a Retail Liquor Store

If a retail sales agent chooses to allow signs and displays in the retail liquor store, the agent must allow each distillery representative who wants to advertise his/her products in the store a reasonable opportunity to do so.

- (1) The Commission allows signs that:
 - (a) Are made of paper or similar inexpensive material that function only to advertise or display the distillery's alcoholic beverage products in the retail liquor store. Some examples of signs include case cards, shelf talkers both price and informational, posters, pole toppers and low voltage lighted signs. Signs may not be placed in the window(s) of a retail liquor store;
 - (b) Are placed in front of or in close proximity to the product the sign advertises;
 - (c) Are not larger than 15 square feet in size.
- (2) The Commission allows displays that:
 - (a) Contain a distillery's products and material that functions only to advertise or display the distillery's alcoholic beverage products in the retail liquor store. A cardboard product bin is an example of this material;
 - (b) Contain a distillery's products and material that has another function besides advertising or displaying a distillery's product. The Commission

allows this material only under the following conditions:

- (A) The distillery representative loans but does not give the material to the retail sales agent and clearly indicates on the display that it is the property of the distillery; and
- (B) The retail sales agent uses the material only as a part of a promotional display for the distillery's products and not for the retail sales agent's personal use.

(c) Display the related items described in OAR 845-015-0143 that bear a distilled spirits brand name or trademark that are for sale in the retail liquor store.

(3) Nothing in this rule requires a retail sales agent to order distilled spirits for use in a display. Empty case boxes may be used, if necessary.

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

Stats. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 5-1994, f. 10-31-94, cert. ef. 11-1-94; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0092; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

845-015-0180

Distilled Spirits Samples Offered 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, ORS 472, ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 21-1991, f. 12-19-91, cert. ef. 1-1-92; OLCC 5-1992, f. 4-30-92, cert. ef. 5-1-92; 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.

Chapter 845 - Division 15

(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-competes 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, ORS 472, ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 14-1978, f. & ef. 10-26-78; LCC 24-1979, f. 10-26-79, ef. 10-29-79; Renumbered from 845-010-0341; LCC 5-1981, f. 9-25-81, ef. 1-1-82; LCC 16-1983, f. 12-27-83, ef. 1-1-84; LCC 22-1986, f. 10-16-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0010

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, ORS 472, ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1), & ORS 472.060(2)(d)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 15-1978, f. 11-30-78, ef. 12-1-78; Renumbered from 845-010-0347; LCC 16-1986, f. 10-16-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0030

845-015-0196

Appointment of a Temporary Agent

(1) When the Commission decides that a

**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
ORS 471.030; 471.730 (1) & (5)

Stats. Implemented: ORS 471.542 & ORS
471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;
OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 10-
1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-
2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0005**Definitions**

As used in OAR chapter 845, division 16:

(1) "Advertising" means any form of notice used in recruiting and promotion, however disseminated, such as publications, signs, mailings, radio, television and audiovisual materials.

(2) "Authorized Representative" means a person who meets the minimum qualifications in OAR 845-016-0020(1) and makes decisions on behalf of the provider that include hiring instructors, evaluating instructor qualifications and supervising instructor performance 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

Chapter 845 - Division 16

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

Chapter 845 - Division 16

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 Chapter 845, Division 3, and will refund any

instructor fee(s) the provider included as a part of the recertification application.

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

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 4-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0045

Certification and Recertification Denial

1) The Commission may deny certification or 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

Chapter 845 - Division 16

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

Stats. Implemented: ORS 471.542 & ORS
471.547

Hist.: OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92;
OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0055

Record Keeping

(1) Each provider will keep course presentation information including the location, date and number of students attending each class. The provider will give the Commission this information upon request.

(2) Each provider will keep enrollment records for two years and three months. Enrollment records include the name of each student enrolled in the provider's program and the date and location of the class the student took. The provider will give the Commission copies of

these enrollment records if the provider is no longer certified. The Commission may inspect records at any time during normal business hours.

(3) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & ORS
471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;
OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-
1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992,
f. 6-5-92, cert. ef. 7-1-92

845-016-0060

Changes in Course, Instructor or Provider

(1) A provider or instructor will not change program content or method of presentation without the provider receiving the Commission's prior approval.

(2) Selling the Business: If the provider sells the business, the purchaser must apply for and receive certification before the purchaser gives any course.

(3) Adding an Instructor:

(a) When the provider adds an instructor, the provider must mail or deliver to the Commission, no later than 36 hours after the instructor's first course, a completed Provider Staff Certification form for each instructor and the non-refundable instructor fee. Holidays and weekends are not included in counting the 36 hours. If the provider adds an instructor during the first six months of the certification period, the instructor fee is \$100. If the provider adds an instructor during the last six months of the certification period, the fee is \$50;

(b) Despite subsection (3)(a) of this rule, if a provider adds an instructor who teaches another Oregon Alcohol Server Education Course, the Commission will not require another instructor fee if the fee has been paid for the certification period. However, the provider must send the Commission

a completed Provider Staff Certification form before the instructor teaches the provider's course.

(4) Changing a Corporate Officer or Authorized Representative.

(a) A provider must notify the Commission within 20 days whenever a corporate officer changes;

(b) Whenever the provider changes the authorized representative or adds a person to train instructors, the provider must mail or deliver to the Commission a Provider Staff Certification form for the new authorized representative or trainer. The provider must do this no later than 36 hours after the provider makes the change or 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 ORS 471.030; 471.730(1) & (5)

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0065

Provider Advertising and Promotion Standards

(1) Provider advertising related to the course must include:

(a) The provider's telephone number and cancellation policy;

(b) The total amount of course time which includes instruction, exam and break time;

(c) A statement that students must attend the entire course before taking the exam.

(2) Advertising will not suggest that the State of Oregon, the Commission or any state

agency endorses or recommends the provider's course.

(3) The provider will give the Commission copies of course publications, brochures, pamphlets, tear sheets, scripts or any other representation of advertising materials related to the course upon use.

(4) A provider must have records available to support any claims or representations the provider makes in advertising.

(5) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0068

Alcohol Server Education Renewal Requirements for Service Permittees and Licensees; Examination; Approval Standards and Process

(1) ORS 471.542(1) requires applicants for any license that authorizes the sale or service of alcoholic beverages for consumption on the premises and service permits to complete an approved alcohol server education course and examination in order to qualify for a license or permit. ORS 471.542(3) requires the Commission to establish by rule the requirements that licensees and permittees must comply with as a condition of requalifying for a license or permit every five years.

(2) Once every five years after completing the initial alcohol server education course and examination required in ORS 471.542(1), licensees and permittees may satisfy the requirement of ORS 471.542(3) by:

(a) Repeating the initial alcohol server education course and examination; or

(b) Completing a renewal alcohol server education course and examination.

(3) Renewal Course Examination

(a) Despite OAR 845-009-0085(1) and 845-009-0105(1), a passing grade on a

renewal course exam is 80 percent.
(b) Despite OAR 845-009-0085(3) and (4) and 845-009-0105(3), a student who does not pass a renewal course exam must repeat the initial alcohol server education course and examination to meet the renewal requirement.

(4) Renewal Course Approval Standards and Process

(a) For a course to be approved, an applicant must:

- (A) Submit a completed application packet provided by the Commission; and
- (B) Have a course that meets the Commission's Minimum Curriculum and Instruction Standards for an Alcohol Server Education Renewal Course (published June 22, 2000, and available at the Commission's main office at 9079 SE McLoughlin Blvd., Portland, Oregon).

(b) Commission staff will review the application and will:

- (A) Approve a completed application that meets the requirements in section (4)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course, or;
- (B) Return an incomplete application or one that does not meet the requirements of section (4)(a).

Stat. Auth. ORS 471, including 471.030, 471.040, and 471.730(5)

Stats. Implemented: ORS 471.542

Hist. OLCC 13-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2001, f. 6-11-01, cert. ef. 7-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0070

Provider Responsibility for Acts of Employees

The Commission may hold a provider responsible for any act or omission of the provider's course instructor, personnel or representative that

violates any law or administrative rule affecting provider privileges.

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

Stats. Implemented: ORS 471.542 & ORS 471.547

Hist.: OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0075

Prohibited Conduct

No provider or instructor will:

(1) Administer the exam to a person who has not 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 in this rule are available from the agency.]

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

Stats. Implemented: ORS 471.322(3), ORS
471.542, 471.547 & 471.549

Hist.: OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92;
OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98 ;
OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

DIVISION 20 BEVERAGE CONTAINERS AND REDEMPTION CENTERS

845-020-0005

Definitions

(1) The terms defined in ORS 459A.700 have the same meaning in OAR 845-020-0005 through 845-020-0030, unless the context requires otherwise.

(2) The definition of beverage in ORS 459A.700(1) includes "similar carbonated soft drinks." "Soft drinks" means any non-alcoholic drink except 100 percent coffee, tea, milk, cocoa and fruit or vegetable juices. "100 percent coffee, tea, milk, cocoa and fruit or vegetable juices" means the natural product with no water added, or concentrate that has been reconstituted to full strength, to which no flavorings have been added.

(3) As used in OAR 845-020-0005 through 845-020-0030, unless the context requires otherwise: "Person" includes individuals, corporations, associations, firms, partnerships, and joint stock companies.

Stat. Auth.: ORS 459A, ORS 459.992(4), ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)

Stats. Implemented: ORS 459A.725

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0600; OLCC 8-1989, f. 7-28-89, cert. ef. 8-1-89

845-020-0010

Certification of Containers

(1) A beverage container may be certified by the Commission if:

(a) It is reusable as a beverage container by more than one manufacturer in the ordinary course of business; and

(b) More than one manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(2) The Commission shall withdraw certification of a beverage container which it determines is no longer qualified for certification under section (1) of this rule.

(3) The Commission shall refuse to certify or shall withdraw certification of:

(a) A beverage container which by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting, or other permanent method, is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name;

(b) Each beverage container, in excess of one, for beer and other malt beverages, having a liquid capacity of 16 fluid ounces or less;

(c) Each beverage container, in excess of one, for beer and other malt beverages, having a liquid capacity of more than 16 fluid ounces; or

(d) Any beverage container which would tend to disrupt the orderly return and reuse of beverage containers.

Stat. Auth.: ORS 459A.725(1), ORS 459A.725(3), ORS 459A.730(1) & ORS 459A.730(2)

Stats. Implemented: ORS 459A.725

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; LCC 44, f. 11-20-73, ef. 12-11-73; Renumbered from 845-010-0605

845-020-0015

Application for Certification of Containers

Any manufacturer desiring certification of a beverage container shall make application to the Commission upon forms to be furnished by the Commission. The application shall state the name and address of the manufacturer requesting the container certification and the name and addresses of each other manufacturer, known to the applicant, who will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container. The application shall include such additional information as the Commission may require. Each application for certification will be

accompanied by the following:

- (1) Sample of the container to be considered for certification.
- (2) Container manufacturer's print of the container design and specifications.
- (3) Two color photographs (5" x 7") of container.
- (4) Statement of applicant and of one other manufacturer that each will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

Stat. Auth.: ORS 459A.725(1),
ORS 459A.725(3), ORS
459A.730(1) & ORS 459A.730(2)

Stats. Implemented: ORS 459A.730

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72;
Renumbered from 845-010-0610

845-020-0020

Redemption Centers

The Commission shall approve a redemption center if it finds the redemption center will provide a convenient service to consumers for the return of empty beverage containers.

Stat. Auth.: ORS 459A.735(1),
ORS 459A.735(3) & ORS
459A.735(4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72;
Renumbered from 845-010-0615

845-020-0025

Application for Approval of Redemption Center

(1) Any person desiring approval of a redemption center shall make application to the Commission upon forms to be furnished by the Commission. The application shall include the following and such additional information as the Commission may require:

- (a) Name and address of each person to be responsible for the establishment and operation of the redemption center;
- (b) Exact location and mailing address of redemption center;
- (c) Kinds and brand names of the beverage containers which will be accepted at the redemption center;
- (d) Names and addresses of the dealers

- to be served by the redemption center;
- (e) Distances from the redemption center to the dealers to be served;
- (f) Days and hours of operation of the redemption center;
- (g) Description of parking facilities to serve the redemption center;
- (h) Information as to the approval or non-approval of the redemption center by the city council if the redemption center is located within an incorporated city or by the county court or board of county commissioners if the redemption center is located outside an incorporated city.

(2) A copy of the agreement between the person or persons to be responsible for the establishment and operation of the redemption center and each dealer to be served by the redemption center must be submitted with the application.

Stat. Auth.: ORS 459A.735(1),
ORS 459A.735(3) & ORS
459A.735(4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72;
Renumbered from 845-010-0620

845-020-0030

Standards of Sanitation and Cleanliness for Redemption Centers

All persons responsible for the establishment and operation of the redemption center shall at all times keep the redemption center premises, including the parking facilities serving the redemption center, in full compliance with law and with the orders and regulations of the Oregon State Board of Health, the State Health Division, the State Department of Agriculture, and other regulatory agencies. Such persons shall keep such redemption center premises in good repair, painted, clean, well lighted, free of litter and trash, and free of rodents, vermin, insects, and their harborage or breeding places.

Stat. Auth.: ORS 459A.735(1),
ORS 459A.735(3) & ORS
459A.735(4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72;
Renumbered from 845-010-0625

845-020-0035

When Dealer Not Required to Accept Containers

(1) The Commission does not interpret ORS 459A.710 to require a dealer to accept an empty beverage container, if the dealer:

- (a) Has not offered the product in the specific container size for sale within the past six months;
- (b) Has reasonable grounds to believe the container was sold at retail outside Oregon;
- (c) Has reasonable grounds to believe that container was obtained from or through a distributor without paying the refund value. The primary goal of this subsection is to prevent distributors, recyclers or others from putting containers through the refund/return system more than once without paying the refund value.

(2) Dealers must not use this rule to frustrate the requirement of the Beverage Container Act that dealers accept return of:

- (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

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