

For your information

The Oregon Liquor Control Commission has:

Amended
 Adopted
 Repealed

OAR 845-013-0001

Effective: January 1, 2014

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

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.

(f) "Supplier" includes manufacturers, wholesalers and their respective agents.

(3) General Limitations:

(a) Although Oregon law allows manufacturers and wholesalers to provide the items and services described in these rules, federal laws regarding wine may not. When the federal law is more strict, wine manufacturers and wholesalers must follow the federal law rather than Oregon law. Therefore, manufacturers and wholesalers should check with the Alcohol and Tobacco Tax and Trade Bureau (TTB) before applying these rules to their wine business;

(b) Manufacturers and wholesalers may give or loan the point of sale material (OAR 845-013-0050), items of nominal value (845-013-0060), and services of nominal value (845-013-0070) described in these rules:

(A) Only for the manufacturer's or wholesaler's alcoholic beverage products; and

(B) To all retailers without discrimination. Without discrimination means the manufacturer or wholesaler makes all allowable point of sale material, items of nominal value, and services of nominal value available to all the manufacturer's or wholesaler's retailers upon request subject to availability. The Commission will not consider it discrimination if a manufacturer or wholesaler gives allowable material, items or services based on the type of business or in proportion to the size of the account;

(c) In addition to the requirements of subsection (3)(b) of this rule, when manufacturers and wholesalers give the services of nominal value (OAR 845-013-0070) described in these rules, they must not alter or disturb another manufacturer's or wholesaler's alcoholic beverage products. This limitation does not apply when a retailer decides to rearrange all the alcoholic beverage products his/her business carries (a general reset). For a general reset, manufacturers and wholesalers may move each other's products as long as the retailer has notified all the manufacturers and wholesalers whose products are being moved and the retailer moves or helps move the products of any manufacturers or wholesalers who are not present;

(d) Manufacturers and wholesalers may not customize point of sale material (OAR 845-013-0050) or items of nominal value (845-013-0060). Despite this prohibition, a manufacturer or wholesaler may, on items of nominal value and interior point of sale material:

(A) Add the retailer's name or logo;

(B) Add the retailer's price for the advertised product(s); or

(C) Leave a blank space for the retailer to add only the retailer's price for the advertised product(s).

(4) Records. Manufacturers and wholesalers must keep accurate and complete records of any gratuities the manufacturer or wholesaler gives a retailer and of all activities described in OAR 845-013-0010 (Substantial Gratuities), any credit that 845-013-0020(1)(a) and (b) allow and all exchanges and returns that 845-013-0070 (Services of Nominal Value) allows. These records must include dates, times, amounts and names of all persons and premises involved; be kept for two years; and be available for Commission inspection.

(5) Retailer Purchase of Items/Services: A manufacturer or wholesaler may, for a reasonable fee, sell to a retailer items, labor, or services that ORS 471.398 prohibits. As used in this section, a reasonable fee for labor or service is one that covers at least the manufacturer's or wholesaler's cost; a reasonable fee for the item is at least the cost to the manufacturer or wholesaler who initially purchased or produced the item. The manufacturer or wholesaler and the retailer must keep a record of the sale.

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

Stats. Implemented: ORS 471.398

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