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**DIVISION 1
PROCEDURAL RULES**

845-001-0005

Notice of Rulemaking

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

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

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

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

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

(a) The Associated Press; and

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

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

Stats. Implemented: ORS 183.335 & 183.341

Hist.: LCC 19-1980, f. 6-4-80, ef. 6-5-80; OLCC 6-1994, f. & cert. ef. 11-22-94; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 8-2009, f. 7-13-09, cert. ef. 8-1-09

845-001-0007

Attorney General's Model Rules of Procedure

(1) The Attorney General's "Model Rules for Rulemaking," effective May 1, 2014, are hereby adopted by reference as permanent rules for rulemaking

procedure. The Attorney General's "Model Rules for Rulemaking" are set forth in OAR 137-001-0005 to 137-001-0100.

(2) The Commission's administrative rules for contested case proceedings, miscellaneous proceedings, and orders in other than contested cases are set forth in Division 003 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 Liquor Control Commission.]

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; OLCC 5-2012, f. 5-14-12, cert. ef. 6-1-12; OLCC 9-2014, f. 9-10-14. cert. ef. 10-1-14

845-001-0008

Confidentiality and Inadmissibility of Mediation Communications

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

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

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

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided

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in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

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

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

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

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

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

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

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

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

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

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

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

(9) Exceptions to confidentiality and inadmissibility.

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

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

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

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

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

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

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

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

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

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

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

(A) A request for mediation;

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

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

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

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

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

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

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

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

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

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

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency administrator determines that disclosure of the communication is necessary to

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prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 17.095 or state or federal law requires the terms to be confidential.

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

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

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

Stat. Auth: ORS 36.224

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

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

845-001-0009

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

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

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

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

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

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

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

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

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

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

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

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

(B) Is designated by the agency to authorize confidentiality 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

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the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility.

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 36.224

Stat. Implemented: ORS 36.230(4)

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

**DIVISION 2
CRIMINAL RECORDS CHECK AND
FITNESS DETERMINATION**

845-002-0200

Statement of Purpose and Statutory Authority

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0210

Definitions

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

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

(2) "Authorized Designee" means a Commission employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to

conduct a fitness determination in accordance with these rules.

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

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

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

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

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

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

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

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

(8) "Denied" means that, pursuant to a preliminary fitness determination under OAR 845-002-0240 or a final fitness determination under 845-002-0260, an authorized designee has determined that the subject

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individual is not fit to be an employee, volunteer, contractor or vendor in a position covered by 845-002-0220.

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0220

Subject Individual

(1) “Subject Individual” means a person from whom the Commission may require fingerprints for the

purpose of conducting a criminal records check because the person:

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0230

Criminal Records Check Process

(1) Disclosure of Information by Subject Individual.

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

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

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

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the

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Commission in order to resolve an issue hindering the completion of a criminal records check, e.g., providing additional proof of identity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0240

Preliminary Fitness Determination

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

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

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

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

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

(c) Is being investigated for, or has an outstanding warrant for a crime listed or described under OAR

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845-002-0270;

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0250

Hiring or Appointing on a Preliminary Basis

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0260

Final Fitness Determination

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

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

(a) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a

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crime listed or described under OAR 845-002-0270;

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

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

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

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

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

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

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

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

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

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

(F) A recommendation of an employer;

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

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

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

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

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

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

(M) Periods of incarceration of the subject individual;

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

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

(3) Possible Outcomes of a Final Fitness Determination:

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

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

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

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

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

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

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(c) Restricted Approval.

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

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

(d) Denial.

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0270

Potentially Disqualifying Crimes

(1) FELONIES AND MISDEMEANORS. A conviction of any of the following crimes is potentially

disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565). No crimes are considered automatically disqualifying under these rules.

(a) Any federal crime.

(b) Any U.S. military crime.

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

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845-002-0280

Incomplete Fitness Determination

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0290

Notice to Subject Individual of Fitness Determination

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

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

(b) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual’s right to request a contested case hearing to appeal

the Commission’s determination and containing the information required by OAR 137-003-0505.

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0300

Appealing a Fitness Determination

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

(2) Process:

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

(b) When a timely request is received by the Commission under subsection (a), a contested case hearing shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings, pursuant to the Attorney General’s Model Rules for Contested Cases, “Rules for the Office of Administrative Hearings” OAR 137-003-0501 to 137-003-0700, as supplemented by the provisions of this rule.

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

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

(3) Discovery:

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

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

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

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

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

(5) Proposed and Final Order:

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

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

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

(6) Alternative Process. A subject individual currently employed by the OLCC may choose to appeal a

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

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

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0310 Record Keeping and Confidentiality

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

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

(a) Records the Commission receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to

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LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15).

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

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

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

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

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

(3) Other Records.

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

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

(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized

designee has a demonstrated and legitimate need to know the information contained in the records.

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0320 Authorized Designees

(1) Appointment.

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

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

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

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

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

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

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were

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determined to exist.

(4) Termination of Authorized Designee Status.

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

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

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

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

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

(a) Every three years; or

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Commission by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

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

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

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

Stats. Implemented: ORS 181.534 & 471.695
Hist.: OLCC 10-2008, f. 8-18-08, cert. ef. 9-1-08

845-002-0330

Fees

(1) The Commission may charge a fee for acquiring criminal offender information for use in making a

**DIVISION 3
CONTESTED CASE PROCEDURES**

845-003-0200

Statement of Purpose

(1) The purpose of these rules is to implement the statutory policies set forth in ORS 183.411 to 183.470, to provide all contested case participants with clear guidelines, 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.

(3) These rules apply to all contested case proceedings pending with or received by the Commission on or after the effective date.

Stat. Auth.: ORS 183.341(2) & 471.730(5) & (6)
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 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC
9-2014, f. 9-10-14. cert. ef. 10-1-14

845-003-0210

Model Rules of Procedure

(1) The Attorney General's "Model Rules of Procedure for Contested Cases Office of Administrative Hearings," effective May 1, 2014, are hereby adopted by reference as permanent rules of procedure for contested case hearings conducted on behalf of the Liquor Control Commission. The Attorney General's "Model Rules of Procedure for Contested Cases Office of Administrative Hearings" are set forth in OAR 137-001-0005 and OAR 137-003-0501 to 137-003-0700.

(2) The Attorney General's Model Rules for "Miscellaneous, Orders in Other Than Contested Cases," effective May 1, 2014, are hereby adopted by reference as permanent rules of procedure for miscellaneous proceedings and orders in other than contested cases. The Attorney General's Model Rules for "Miscellaneous, Orders in Other Than Contested Cases" are set forth in OAR 137-004-0010 to 137-

004-0092. (The Commission declines to adopt the remaining model rules in this sequence.)

[ED. NOTE: The full text of the Attorney General's "Model Rules of Procedure for Contested Cases Office of Administrative Hearings" and "Miscellaneous, Orders in Other Than Contested Cases" is available from the Office of the Attorney General or the Oregon Liquor Control Commission.]

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

Stats. Implemented: ORS 183.341(1) & (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 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC
9-2014, f. 9-10-14. cert. ef. 10-1-14

845-003-0220

Definitions

The following definitions apply to these rules,

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

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

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

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

(5) "Good cause" means, the factors set forth under OAR 137-003-0501(7). Good cause does not include failure to perform a required act due to the press of business or ignorance of the law, including ignorance of these rules.

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(6) “Non-Participant” means any person who is not a participant.

(7) “Participant” means the party, the party’s attorney, the expert witnesses, the agency representative, one agency officer or agency employee, and any persons authorized by statute or administrative rule to attend the contested case hearing.

(8) “Party” means any person or entity named in the charging document or granted party status by statute or administrative rule.

Stat. Auth.: ORS 183.341(2) & 471.730(5) & (6)
Stats. Implemented: ORS 183.310 & 183.341(2)
Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99;
OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru
7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00;
OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC
9-2014, f. 9-10-14. cert. ef. 10-1-14

845-003-0270

Request for a Contested Case Hearing and Response to Charging Document

(1) Any party who wants to contest a charging document must request a contested case hearing. The request for hearing must be in writing and filed within the time limit established in the charging document. 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) In cases involving Category I or II violations, licensing actions, or retail sales agent agreements, a party must file a written Answer with the party’s request for a hearing. In these types of cases, a general denial is not sufficient to constitute an Answer. The Answer must specify:

(a) An admission or denial of each factual matter alleged in the charging document; and

(b) What defense or defenses the party will rely upon.

(3) When an answer is required under section (2):

(a) Factual matters alleged in the charging document and not denied in the answer shall be presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and

(d) Evidence shall not be taken at the contested case hearing on any issue not raised in the charging document or answer.

(4) When an answer is required under section (2), the party or party’s attorney may amend the answer, except when doing so would be unduly prejudicial.

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; OLCC 6-2012, f. 8-14-12,
cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14. cert. ef.
10-1-14

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, employees are allowed to

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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 in the following classes of cases:

(a) Violations of OLCC statutes or rules described in ORS Chapters 471 and 473, statutes related to the Oregon Bottle Bill in ORS Chapter 459A, 474.115, 459.992, and OAR Chapter 845;

(b) License or service permit applications and denial, non-renewal, suspension, revocation or cancellation of licenses or service permits;

(c) Retail Sales Agent Agreement violations or disputes, except for suspensions or terminations;

(d) Privilege Tax disputes under ORS 473.060(4); and

(e) Applications for certificates of approval (ORS 471.244 and 471.251), wine self-distribution permits (471.274), direct shipper permits (471.282), and importation permits and open purchase orders (471.404(1)(e) and 471.730(8)), and suspension, revocation, or cancellation of these endorsements.

(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 administrative law judge 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 administrative law judge will provide reasonable opportunity for the employee representative to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 183.341(2), 183.452 & 471.730(5) & (6)

Stats. Implemented: ORS 183.341(2) & 183.452
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; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12;
OLCC 9-2014, f. 9-10-14. cert. ef. 10-1-14

845-003-0345

Public Attendance and Representation of Parties

(1) Contested case hearings are closed to non-participants and may only be attended by participants.

(2) Representation of parties is governed by OAR 137-003-0550. The Commission does not allow the use of authorized representatives described in 137-003-0555 in its contested case hearings.

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6)
Stats. Implemented: ORS 183.341(2)

Hist.: OLCC 9-2014, f. 9-10-14. cert. ef. 10-1-14

845-003-0460

Exchange of Exhibits and Witness Lists

(1) Prior to any contested case hearing, the administrative law judge may order the participants to exchange exhibits and witness lists.

(2) Each participant must file exhibits and a list of witnesses with the administrative law judge and provide a copy to the other participant(s) by the date established by the administrative law judge. If there is no order by the administrative law judge, the exhibits and witness lists must be filed and exchanged no later than 14 days before the hearing date. If a participant fails to timely file and exchange the documents, a prehearing conference will be convened upon request.

(3) Following the filing and exchange of the witness lists and exhibits and before the start of the hearing, participants shall immediately provide to the other participants and the administrative law judge any newly discovered matter, such as a document or name of a witness.

(4) The requirements in sections (1)–(3) of this rule do not apply to service permit refusal and revocation cases. In these matters, prior to any contested case hearing, the administrative law judge may issue a discovery order directing the participants to file and exchange exhibits and witness lists by a date established by the administrative law judge.

Stat. Auth.: ORS 183.341(2), 183.425(2) & 471.730(5) & (6)
Stats. Implemented: ORS 183.341(2) & 183.425(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 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14. cert. ef. 10-1-14

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 or by mutual agreement. 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; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12; OLCC 9-2014, f. 9-10-14. cert. ef. 10-1-14

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 grant or deny late hearing requests (frequently called Requests for Relief From Default) as provided in OAR 137-003-0528.

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

(4) The Commissioners delegate to the Administrator the authority to grant or deny a petition for an order to take a deposition of a party pursuant to OAR 137-003-0572. This authority includes, but is not limited to, the ability to designate the terms of the deposition such as the location, manner of recording, time of

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day and persons permitted to be present during the deposition.

(5) The Commissioners delegate to the Administrator the authority to grant or deny discovery motions pursuant to OAR 137-003-0568 submitted prior to referral of the contested case to the Office of Administrative Hearings and, if applicable, after the assigned administrative law judge issues a proposed order.

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

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

(8) The Commissioners delegate to the Administrator the authority to adopt a Final Order by Default when the default is the result of a party's failure to request a hearing or withdrawal of a hearing request; or when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.

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

(10) The Commissioners delegate to the Administrator the authority to adopt a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.

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

(12) The Commissioners delegate to the Administrator the authority to grant or deny a motion to postpone oral argument to the Commissioners on any comments or exceptions to a proposed order.

(13) The Commissioners delegate to the Administrator the authority to grant or deny requests

for reconsideration or rehearing and any stay request based on these requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.

(14) The Commissioners delegate to the Administrator the authority to grant or deny a request to stay the enforcement of a Final Order pending judicial review and in cases where judicial review has not been requested.

Stat. Auth.: ORS 183.341(2) & 471.730(5) & (6)

Stats. Implemented: ORS 183.341(2)

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

OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru

7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00;

OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC

18-2003, f. 11-24-03, cert. ef. 12-1-03; OLCC 2-2005,

f. 4-21-05, cert. ef. 5-1-05; OLCC 1-2008, f. 1-16-08,

cert. ef. 2-1-08; OLCC 16-2010, f. 12-22-10, cert. ef.

1-1-11; OLCC 6-2012, f. 8-14-12, cert. ef. 9-1-12;

OLCC 9-2014, f. 9-10-14. cert. ef. 10-1-14

**CHAPTER 137
DEPARTMENT OF JUSTICE**

**DIVISION 3
MODEL RULES OF PROCEDURE FOR
CONTESTED CASES**

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

Non-Hearing Panel Rules

137-003-0001

Contested Case Notice

(1) The agency's contested case notice issued pursuant to ORS 183.415 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 agency's authority and jurisdiction to hold a hearing on the matters asserted or charged; and

(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 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.

(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 the party, automatically becomes 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

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resolved through the collaborative process.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.341(1), 183.413,
183.415(7) & 183.502, HB 2423 (2007)
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef.
11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986,
f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD
7-1991, f. & cert. ef. 11-4-91; JD 1-1997, f. 3-28-97,
cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-
97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ
11-2005, f. 10-31-05, cert. ef. 1-1-06; DOJ 9-2007, f.
10-15-07 cert. ef. 1-1-08

137-003-0002

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, 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. This information may be given in writing or orally.

(2) Unless otherwise precluded by law, the agency and the parties 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.

(3) 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. 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 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 & 183.502
Stats. Implemented: ORS 9.320, 183.341(1), 183.413,

183.415 & 183.502, HB 2423 (2007)
Hist.: 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. &
ef. 1-27-86; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; JD
1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-
97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert.
ef. 1-1-00; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0003

Late Filing

(1)(a) When a party requests a hearing after the time specified by the agency but before entry of a final order by default or, if a final order by default is entered, on or before 60 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rule provides a different timeframe or standard.

(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 and may conduct such further inquiry, including holding a hearing, as it deems appropriate.

(d) The agency by rule or in writing may provide a right to a hearing on whether the late filing of a hearing request should be accepted.

(e) If the late hearing request is allowed by the agency, it shall enter an order granting the request and schedule a hearing on the underlying matter. If the late hearing request is denied, the agency shall enter an order setting forth its reasons for the denial.

(f) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during the agency's consideration of a late hearing request unless the final order is stayed under OAR 137-003-0090.

(g) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency 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.

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(2)(a) Unless otherwise provided by law, when a person fails to file any document, other than a hearing request, within the time specified by agency rules or these model rules of procedure, the late filing may be accepted if the agency or presiding officer determines that the cause for failure to file the document timely was beyond the reasonable control of the party.

(b) The agency may require a statement explaining the reasons for the late filing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 9-2001, f. & cert. ef. 10-3-01

137-003-0005

Participation as Party or Limited Party

(1) 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.

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

(3) The petition shall include the following:

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

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

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

(d) If the petitioner seeks to protect a personal interest in the outcome of the 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 (3)(d) or (e) of this rule.

(4) 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.

(5) If the agency determines under OAR 137-003-0003 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.

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

(7) 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.

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

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

(10) An agency ruling on a petition to participate as a party or as a limited party shall be by written order

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and served promptly on the petitioner and all parties. If the petition is allowed, the agency shall also serve petitioner with the notice of rights required by ORS 183.413(2).

Stat. Auth.: ORS 183.341 & ORS 183.390
Stats. Implemented: ORS 183.341(1), ORS 183.415(4) & ORS 183.450(3)
Hist.: 1AG 17, f. & ef. 11-25-77; 1AG 4-1979, f. & ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0007

Agency Participation as Interested Agency or Party

(1) When an agency gives notice that it intends to hold a contested case hearing, it 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 initiative or upon request by that other agency.

(2) Each party shall have seven days from the date of personal service or mailing of the notice to file objections.

(3) The agency decision to name an agency as a party of as an interested agency shall be by written order and served promptly on the parties and the named agency.

(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 180, ORS 183.341 & ORS 183.390
Stats. Implemented: ORS 180.060, 180.220, 183.341(1) & 183.415(4)
Hist.: JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91

137-003-0008

Authorized Representative in Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, State Department 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 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 196.800 to 196.825; 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 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, or an authorized officer or employee of a governmental authority other than a state agency;

(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;

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(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 appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the presiding officer with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The presiding officer 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 presiding officer 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 presiding officer 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 183.457

Stats. Implemented: ORS 183.341(1), & 183.457 & OL 1999, Ch. 448 & Ch. 599

Hist.: JD 4-1987(Temp), f. & ef. 7-22-87; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0010

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 hold a hearing on the emergency suspension order as soon as practicable.

(b) The agency may combine the hearing on the emergency suspension order with any underlying agency proceeding affecting the license.

(c) At the hearing regarding the emergency suspension order, the agency shall consider the facts and circumstances including, but not limited to:

(A) Whether the acts or omissions of the licensee pose

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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.

Stat. Auth.: ORS 183.341 & ORS 183.390
Stats. Implemented: ORS 183.341(1) & ORS 183.430
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0015

Use of Collaborative Dispute Resolution in Contested Cases Hearing

(1) When an agency issues a contested case notice, the agency and a party may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither the 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) If the agency agrees to participate in a collaborative DR process, the agency may establish a deadline for the conclusion of the process.

(3) The agency and the party 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 agency has agreed to participate in a collaborative DR process and the party makes a timely request for a contested case hearing:

(a) 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.

(b) The agency shall proceed to schedule the contested case hearing if the collaborative DR process terminates without settlement of the contested case, unless the party withdraws the hearing request.

(5) Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0002(4).

Stat. Auth.: ORS 183.341, ORS 183.502
Stats. Implemented: ORS 183.502

Hist.: JD 1-1997, f. 3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0025

Discovery in Contested Cases Hearing

(1) Discovery by the agency or any party may be permitted in appropriate contested cases at the discretion of the agency. Any party may petition the agency pursuant to the requirements in this rule for an order allowing discovery. Before requesting a discovery order, a party must seek the discovery through an informal exchange of information.

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

(a) Depositions of a material witness;

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

(c) Production of documents, which may but need not be limited to documents that the party producing the documents plans to offer as evidence;

(d) Production of objects for inspection;

(e) Permission to enter upon land to inspect land or other property;

(f) Requests for admissions;

(g) Written interrogatories;

(h) Prehearing conferences, as provided in OAR 137-003-0035.

(3)(a) A party seeking to take the testimony of a material witness by deposition shall file a written request with the agency, with a copy to all other parties. The request must include the name and address of the witness, a showing of the materiality of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request that the witness's testimony be taken before an individual named in the request for the purpose of recording testimony.

(b) For all other forms of discovery, a request for a discovery order must be in writing and must include a description of the attempts to obtain the requested discovery informally. The request must be mailed or delivered to the agency, with a copy to other parties.

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(4) Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the agency may require the party requesting discovery to explain how the request is likely to produce relevant information. If the request appears to be unnecessary, the agency may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

(5) The agency may, but is not required to, authorize the requested discovery. In making its decision, the agency shall consider any objections by the party from whom the discovery is sought. The agency shall issue an order granting or denying a discovery request in whole or in part.

(6) If the agency does authorize discovery, the agency shall control the methods, timing and extent of discovery. The agency may limit discovery to a list of witnesses and the principal documents upon which the agency and parties will rely;

(7) Only the agency may issue subpoenas in support of discovery. The agency may apply to the circuit court to compel obedience to a subpoena.

(8) The agency may delegate to a presiding officer its authority to order and control discovery. The delegation must be in writing, and it may be limited to specified forms of discovery.

(9) The presiding officer may refuse to admit evidence that was not disclosed in response to a discovery order, unless the party 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 183.417(8). If the presiding officer admits evidence that was not disclosed as ordered, the presiding officer may grant a continuance to allow an opportunity for the agency or other party to respond.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1), ORS 183.415,
ORS 183.425

Hist.: JD 7-1991, f. & cert. ef. 11-4-91; JD 3-1997, f.
9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f. 12-23-99,
cert. ef. 1-1-00

137-003-0035

Prehearing Conferences

(1) Prior to hearing, the agency may, in its discretion, conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The agency may convene the conference on its own initiative or at a party's request.

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

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

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant issues;

(d) To obtain stipulations of fact;

(e) To provide to the presiding officer, 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 discuss the use of a collaborative dispute resolution process in lieu of or preliminary to holding the contested case hearing; and

(i) To discuss settlement or other resolution or partial resolution of the case.

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

(4) The agency must make a record of any stipulations, rulings and agreements. The agency may make an audio or stenographic record of the pertinent portions of the conference or may 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.

(5) After the hearing begins, the presiding officer may at any time recess the hearing to discuss any of the matters listed in section (2) of this rule.

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(6) The agency may delegate to the presiding officer the discretion to conduct prehearing conferences.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), ORS
183.415(9), ORS 183.462
Hist.: JD 7-1991, f. & cert. ef. 11-4-91; JD 1-1997, f.
3-28-97, cert. ef. 4-1-97; JD 3-1997, f. 9-4-97, cert. ef.
9-15-97; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

137-003-0036 **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 hearing officer 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

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137-003-0037

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 to the presiding officer;

(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 presiding officer 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 presiding officer 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 presiding officer in performing the duties of the presiding officer.

(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 presiding officer in performing the duties of the presiding officer. 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 presiding officer 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 presiding officer 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 presiding officer deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The presiding officer may not appoint any person as an interpreter if the person has a conflict

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of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the presiding officer, party or witness, or is unable to work cooperatively with the presiding officer, 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 presiding officer, 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 presiding officer, 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 presiding officer 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 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 listening device for an individual with a disability, must notify the agency or presiding officer 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 shown, the agency or presiding officer may waive the 14-day advance notice.

(b) Notification to the agency or presiding officer 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; Or Laws 1999, ch 1041 (SB 38), ch 849; Or Laws 2001, ch 242 (SB 76)

Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01

137-003-0040

Conducting Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.

(2) If the presiding officer or any decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (14), that officer shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).

(3) The hearing shall be conducted, subject to the discretion of the presiding officer, 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;

(d) Any closing arguments.

(4) Presiding officers or decision makers, agency representatives, interested agencies, and parties 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.

(5) The hearing may be continued with recesses as

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determined by the presiding officer.

(6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(7) Exhibits shall be marked and maintained by the agency as part of the record of the proceedings.

(8) If the presiding officer or any decision maker receives any written or oral ex parte communication on a fact in issue during the contested case proceeding, that person shall notify all parties and otherwise comply with the requirements of OAR 137-003-0055.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), ORS
183.415(9) & ORS 183.462
Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. &
ef. 12-3-79; JD 2-1986, f. & ef. 1-27-86; JD 7-1991,
f. & cert. ef. 11-4-91; JD 6-1995, f. 8-25-95, cert. ef.
9-9-95

137-003-0045 Telephone Hearings

(1) Unless precluded by law, the agency may, in its discretion, hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes an agency from allowing some parties or witnesses to attend by telephone while others attend in person.

(2) The agency may direct that a hearing be held by telephone upon request or on its own motion.

(3) The agency shall make an audio or stenographic record of any telephone hearing.

(4) If a hearing is to be held by telephone, each party and the agency shall provide, before commencement of the hearing, to all other parties and to the agency and hearing officer copies of the exhibits it intends to offer into evidence at the hearing. 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 and to the agency and hearing officer a copy of each document about which the witness will be questioned.

(5) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (4) during the telephone hearing and the presiding officer 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.

(6) The agency may delegate to the presiding officer the discretion to rule on issues raised under this rule.

(7) As used in this rule, “telephone” means any two-way electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1)
Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD
3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f.
12-23-99, cert. ef. 1-1-00

137-003-0050 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 presiding officer.

(3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer’s power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility, if not made at the hearing, shall be made on the record at or before the time a final order is issued.

(5) The presiding officer shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The presiding officer 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 presiding officer 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.

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Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), ORS 183.415,
ORS 183.450

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef.
11-25-77; 1AG 4-1979, f. & ef. 12-3-7; 1AG 1-1981,
f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD1-
1988, f. & cert. ef. 3-3-88; JD 5-1989, f. 10-6-89, cert.
ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD
3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 10-1999, f.
12-23-99, cert. ef. 1-1-00

137-003-0055

Ex Parte Communications

(1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer 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 facts in the record.

(2) If an agency decision maker or presiding officer receives an ex parte communication during the pendency of the proceeding, the officer 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 at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.

(3) The agency's record of a contested case proceeding shall include:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency or presiding officer's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 173.341(1), ORS
183.415(9) & ORS 183.462
Hist.: JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. &
cert. ef. 3-3-88

Contested Cases - Orders and Default Orders - Rehearing and Reconsideration

137-003-0060

Proposed Orders in Contested Cases, Filing Exceptions

(1) If a majority of the officials who are to render the final order in a contested case have neither attended the hearing nor reviewed and considered the record, and the order is adverse to a party, a proposed order including findings of fact and conclusions of law shall be served upon the parties.

(2) When the agency serves a proposed order on the parties, the agency shall at the same time or at a later date notify the parties:

(a) 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 officials who will render the final order.

(3) After receiving exceptions and argument, if any, the agency may adopt the proposed order or prepare a new order.

(4) Nothing in this rule prohibits the staff of a non-party agency from commenting on the proposed order.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341(1), ORS 183.460
& ORS 183.464

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef.
11-25-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981,
f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83;
JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef.
11-4-91; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97

137-003-0070

Final Orders in Contested Cases

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (3) of this rule, final orders in contested cases shall include the following:

(a) Rulings on admissibility of offered evidence when the rulings are not set forth in the record;

(b) Findings of fact -- those matters that are either agreed as fact or that, when disputed, are determined by the factfinder, on substantial evidence, to be facts

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over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based;

(c) Conclusion(s) of law -- applications of the controlling law to the facts found and the legal results arising therefrom;

(d) Order -- the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom; and

(e) A citation of the statutes under which the order may be appealed.

(3) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0002(3), 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 the stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(4) The date of service of the 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(1), 183.415 & 183.470, HB 2423 (2007)

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 4-1979, f. & ef. 12-3-79; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; JD 3-1997, f. 9-4-97, cert. ef. 9-15-97; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0075

Final Orders by Default

(1) The agency 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 a 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 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 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 that the party will not appear at the hearing, unless the agency 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 finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency may not issue a final order by default under section (1)(c) of this rule but shall schedule a new hearing.

(3) The agency may issue a final order that is adverse to a party by default only after making a prima facie case on the record. The agency must find that the record, including all materials submitted by the party, contains evidence that persuades the agency of the existence of facts necessary to support the order. If the record on default consists solely of an application and other materials submitted by the party, the order shall so note. The record shall be made at a scheduled hearing on the matter or, if the hearing is canceled or not held, at an agency meeting or at the time the final order by default is issued, unless the agency designates the agency file as the record at the time the contested case notice is issued in accordance with OAR 137-003-0001(1). The record includes all materials submitted by the party.

(4) The record may consist of transcribed, recorded or reported oral testimony or written evidence or both oral testimony and written evidence.

(5) The agency shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order. If the contested case notice contained an order that was to become effective unless a party requested a hearing, and designated the agency file as the record for purposes of default, that order becomes a final order by default if no hearing is requested, and no further order need be served upon any party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341(1), 183.415(6) & 183.470, HB 2423 (2007)

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Hist.: JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; 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; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

137-003-0080

Reconsideration and Rehearing -- Contested Cases

- (1) 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 petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.
- (3) A rehearing may be limited by the agency to specific matters.
- (4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).
- (5) 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.
- (6) 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.
- (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) A final order remains in effect during reconsideration or rehearing until stayed or changed.
- (9) Following reconsideration or rehearing, the

agency shall enter a new order, which may be an order affirming the existing order.

Stat. Authority: ORS 183.341
Stats. Implemented: ORS 183.341(1) & ORS 183.482(1) & (3)

Hist.: 1AG 14, f. & ef. 10-22-75; 1AG 17, f. & ef. 11-25-77; 1AG 1-1981, f. & ef. 11-17-81; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

Contested Cases -- Stay Proceedings

137-003-0090 Stay Request

- (1) 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 stay request shall contain:
 - (a) The name, address and telephone number of the person filing the request and of that person's attorney, 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 in the proceeding, then the name, address, and telephone number of the attorney 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 (2)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0091 within ten 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

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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;

(i) In a request for a stay of an order in a contested case, 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 (2)(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;

(j) In a request for stay of an order in other than a contested case, an appendix containing evidence relied upon in support of the statement required under subsections (2)(f) and (g) of this rule.

(3) 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 (2)(d) of this rule.

Stat. Auth.: ORS 183.341 & ORS 183.390
Stats. Implemented: ORS 183.341(1) & ORS 183.482(3)

Hist.: JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 9-2001, f. & cert. ef. 10-3-01

137-003-0091

Intervention in Stay Proceeding

(1) Any party identified under OAR 137-003-0090(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) 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 137-003-0090 (2)(f) in the petitioner's stay request;

(d) A statement accepting, rejecting, or 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.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (2)(c) and (d) of this rule.

(4) The response must be delivered or mailed to the agency and to all parties identified in the stay request within ten days of the date of delivery or mailing to the agency of the stay request.

Stat. Auth.: ORS 183.341 & ORS 183.390
Stats. Implemented: ORS 183.341(1) & ORS 183.482(3)

Hist.: JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 7-1991, f. & cert. ef. 11-4-91

137-003-0092

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.

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(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 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(1), ORS 183.482(3)

Hist.: JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 1-1988, f. & cert. ef. 3-3-88; JD 7-1991, f. & cert. ef. 11-4-91; DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00

Office of Administrative Hearings

NOTE: Oregon Administrative Rule 471-060-0005 (Request for Change of Administrative Law Judge) explains how to ask for a different administrative law judge.

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, after consultation with the Chief Administrative Law Judge, has exempted the

agency or a category of the agency's cases, by order, 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.

(3) An agency may have rules specifying the time for requesting a contested case hearing, the permissible scope of the hearing and timelines for issuance of a proposed or final order. A request for hearing will be deemed to be a general denial of the matters alleged in the notice, unless a more specific response is

required by statute or by agency rule. An agency rule establishing a different requirement for the response must be based on the agency's determination that, due to the complexity of the program or category of cases, a more specific response is warranted. Such rules should also provide parties the opportunity to amend their responses except when doing so would be unduly prejudicial. The amendments to this subsection apply to all hearing requests filed after January 31, 2012.

(4) 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.

(5) The agency's substantive rules, including those allocating the burden of proof, shall apply to all of its hearings.

(6) 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.

(7) 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, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

(8) OAR 471-060-0005, Request for Change of Administrative Law Judge, applies to contested cases conducted by the Office of Administrative Hearings.

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Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
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; DOJ 1-2012, f.
1-11-12, cert. ef. 1-31-12

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;

(h) If the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, a statement that the party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise;

(i) If the agency proposes a sanction, the sanction that the agency proposes based on the facts alleged in the

notice. If the proposed sanction is not the maximum potential sanction, the agency may also state the maximum potential sanction for each violation and that the agency may impose up to the maximum potential sanction provided in the notice, without amending the notice; and,

(j) 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.

(3) The notice requirements imposed in subsections (1)(h) and (1)(i) apply to all notices issued after January 31, 2012.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.413, 183.415,
183.630 & 183.675
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;
DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12; DOJ
4-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14;
DOJ 6-2014, f. & cert. ef. 4-1-14

137-003-0510 Rights of Parties in Contested Cases

(1) 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) before the commencement of the hearing. The administrative law judge shall provide any such written notice personally or by mail.

(2) Unless otherwise precluded by law, the party 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

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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.

(3) 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.

(4) 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,
183.630 & 183.675
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; DOJ 1-2012, f.
1-11-12, cert. ef. 1-31-12

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 Providing Copies of 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 filed for the record in the contested case shall be filed as follows:

(a) Before the case is referred by the agency to the Office of Administrative Hearings, with the agency;

(b) After the case is referred to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order, with the administrative law judge;

(c) After the assigned administrative law judge issues a proposed order, with the agency, or with the administrative law judge if the administrative law judge will issue the final order or if the document is required to be filed with the administrative law judge pursuant to OAR 137-003-0650.

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(3) The agency and the Office of Administrative Hearings shall refer any document to the correct entity.

(4) Filing may be accomplished by hand delivery, facsimile or mail or by any other method permitted by the agency or administrative law judge.

(5) A party or agency filing any document for the record shall at the same time provide copies of the documents to the agency and the parties, or their counsel if the agency or party is represented.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) In computing any period of time prescribed or allowed by OAR 137-003-0501 through 137-003-0700, 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 scheduled day of office closure,

in which event the time period runs until the end of the next day that the office is open. Scheduled days of office closure include, but are not limited to, Saturdays and the legal holidays identified in ORS 187.010 and 187.020, including Sundays.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
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; DOJ 1-2012, f. 1-11-12, cert. ef.
1-31-12

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, except that, in accordance with OAR 137-003-0560(5), emergency suspension hearings shall not be consolidated with any related agency proceedings affecting the license, unless the party agrees to the consolidation.

(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 & 183.630
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;
DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

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137-003-0528

Late Hearing Requests

(1)(a) The agency must accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing, unless any of the following applies:

(A) A statute prohibits the agency from accepting it;

(B) The agency has adopted an administrative rule exempting itself from this requirement based on operational conflicts; or

(C) The agency receives the request 60 calendar days or more after the entry of the final order by default or other deadline established by applicable statute or agency rule.

(b) The agency may accept any other late hearing request only if:

(A) There was good cause for the failure to timely request the hearing, 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.

(c) 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.

(d) 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.

(e) 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.

(f) The requirement imposed in subsection (1) of this rule and the good cause standard adopted in subsection (2) shall apply to hearing requests on notices issued after January 31, 2012.

(2) If a party files a request for a hearing that the agency finds is untimely and the party disputes the agency finding of the date that the request was received or postmarked or that the agency mailed or delivered the

notice, then the agency will refer the matter to the Office of Administrative Hearings to 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 & 183.630
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; DOJ 1-2012, f. 1-11-12, cert. ef.
1-31-12

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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, after the notice required by ORS 183.415 is issued:

(a) An agency may issue an amended notice:

(A) Before the hearing; or,

(B) During the hearing, but before the evidentiary record closes, if the administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties.

(b) If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to respond to any new material contained in the amended notice. This subsection ((4)(b)) does not apply to implied consent proceedings conducted pursuant to ORS chapter 813. The amendments to subsection (4) of this rule apply to all notices issued after January 31, 2012.

(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 & 183.630

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 1-2012, f. 1-11-12, cert. ef.

1-31-12

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;

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(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 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.

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(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.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.452 &
183.630

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
1-2012, f. 1-11-12, cert. ef. 1-31-12

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.

(4) Even if section (2) applies, a request for hearing will not be deemed to be invalid solely because it was not

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signed by a person licensed to practice law in Oregon as long as an attorney ratifies the request, in writing, within 28 days of the date that the request was received by the agency. The filing date will be determined by the date the hearing request was received, not by the ratification date. This requirement applies to hearing requests received after January 31, 2012.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 9.320, 183.341, 183.458 &
183.630

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; DOJ 1-2012, f. 1-11-12,
cert. ef. 1-31-12

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 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 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 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 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.

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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.

(6) An authorized representative must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.457 &
183.630

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
1-2012, f. 1-11-12, cert. ef. 1-31-12

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) If the licensee files a timely request, the matter shall be referred to the Office of Administrative Hearings, the hearing on an emergency suspension held, and the order issued as soon as practicable, and, unless a delay is explained in the final order as required by subsection (7) of this rule, in no event later than:

(a) Within seven calendar days of receiving a timely request for hearing, the agency shall refer the matter to the Office of Administrative Hearings to hold a hearing on the emergency suspension order;

(b) Within 30 calendar days of receiving a referral for a hearing on an emergency suspension order, the Office of Administrative Hearings shall complete the hearing and close the evidentiary record;

(c) Within 15 calendar days of the close of the evidentiary record in the hearing, the Office of Administrative Hearings shall issue a proposed order or a final order, if the agency has delegated authority to issue a final order;

(d) Within 15 calendar days of receiving a proposed order from the Office of Administrative Hearings, the agency shall issue a final order.

(4) The time limits established in section (3) of this rule may be waived or extended with the agreement of the agency and the licensee.

(5) The hearing on the emergency suspension order may be combined with any related agency proceeding affecting the license only with the agreement of the party.

(6) 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 health or safety; and

(b) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

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(7) 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 137-003-0665 and shall be based upon the criteria in section (6) of this rule. If any of the deadlines specified in section (3) of this rule are not met, the final order shall state the reason.

(8) The amendments to this rule apply to all emergency suspension orders issued after January 31, 2012.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, ORS 183.430 &
183.630
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
1-2012, f. 1-11-12, cert. ef. 1-31-12

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 183.417(3) 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

137-003-0566

Discovery in Contested Case Hearing — Methods

(1) Before the hearing, upon request by the agency or by a party, the agency and each party must provide:

(a) The names, telephone numbers, and addresses of witnesses expected to testify at the hearing, except rebuttal witnesses;

(b) Documents that the party or agency plans to offer as evidence;

(c) Objects for inspection, if the party or agency plans to offer the objects as evidence;

(d) Responses to no more than 20 requests for admission (each subpart to count as a separate request) unless otherwise authorized, limited, or prohibited by the administrative law judge; and,

(e) Responses to no more than 20 written interrogatories (each subpart to count as a separate interrogatory), unless otherwise authorized, limited, or prohibited by the administrative law judge.

(2) An agency may provide by rule that some or all discovery methods under this section do not apply to a specified program or category of cases if: it finds that the availability of discovery would unduly complicate or interfere with the hearing process in the program or cases, because of the volume of the applicable caseload and the need for speed and informality in that process, and that alternative procedures for the sharing of relevant information are sufficient to ensure the fundamental fairness of the proceedings.

(3) An agency may, by rule, limit a party's ability to obtain discovery from the agency when the agency merely is providing a forum for the parties and is not an active participant in the case.

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(4) This rule is not intended to limit or otherwise conflict with a party's statutory right to obtain public records upon request. If a party knows or expects that a public record request relates to the proceeding, the party shall provide a copy of the public record request to the attorney or representative for the agency at the time the request is made.

(5) This rule is not intended to limit or otherwise conflict with the statutory authority, if any, of the agency to investigate.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

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; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0567

Discovery in Contested Case Hearing — Standard

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.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & 183.630

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; Renumbered from 137-003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0568

Discovery in Contested Case Hearing — Procedure

(1) Before filing a motion for an order requiring discovery, a party or the agency must make a good faith effort to obtain the information from the party, agency or person who has the information, unless the effort would pose a risk to any person or would be futile.

(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) and 137-003-0630.

(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, or an explanation why no such attempt was made, and an explanation of how the discovery is likely to produce information that is generally relevant and necessary to the case.

(4) 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.

(5) 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. 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.

(6) 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.)

(7) 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 in OAR 137-003-0567. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

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(8) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(9) 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 & 183.630
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; Renumbered from 137-
003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0569

Discovery in Contested Case Hearing — Enforcement

(1) 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 183.417(8). If the administrative law judge admits evidence that was not disclosed as ordered or requested, the administrative law judge must, upon request, grant a continuance to allow an opportunity for the agency or other party to respond to the undisclosed evidence. The requirement to grant continuances shall not apply in implied consent proceedings conducted pursuant to ORS chapter 813.

(2) 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 183.417(8). 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.

(3) Nothing in OAR chapter 137, division 3, 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.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
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; Renumbered from 137-
003-0570 by DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0570 [Renumbered to **137-003-0566**, **137-003-0567**, **137-003-0568**, **137-003-0569**]

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

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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 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

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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 and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency or any party may request that additional matters be considered at the conference by providing notice in writing to the administrative law judge, the parties and the agency.

(3) The party 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 exchange of exhibits and witness lists; 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.

(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

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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 for cases where there are no prehearing conferences.

Stat. Auth.: ORS 183.341 & 183.502
Stats. Implemented: ORS 183.341, 183.502 &
183.630

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 1-2012, f.
1-11-12, cert. ef. 1-31-12

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, including a record limited to documents, upon which

a 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 notice or answer, if any. 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 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

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Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
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; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

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 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

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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 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

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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 45.275, 45.285, 45.288,
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

137-003-0595

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 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 (12), that administrative law judge shall comply with the requirements of ORS Chapter 244 (e.g., 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

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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, 183.417(9) and
(10), 183.450(3), 183.630 & 183.695
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 1-2012, f. 1-11-12,
cert. ef. 1-31-12

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 must 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 & 183.630
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 1-2012, f. 1-11-12,
cert. ef. 1-31-12

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

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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.

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(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; or
- (b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.630, 183.685 & Or Laws 2009, ch 866 | 9
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 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0630

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) Before filing any motion, the moving party or agency should make a good faith effort to confer with any non-moving party or agency regarding the order or relief sought to seek agreement about the subject of the motion. The moving party or agency need not make an effort to confer if efforts to confer would pose a risk to any person or would be futile. Any motion must describe the effort to confer and the result of the effort, or explain why the moving party or agency made no effort to confer with the non-moving party or agency.
- (3) Unless otherwise provided by statute or rule, all motions shall be filed in writing at least 14 calendar days before the date set for the hearing and a copy

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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.
- (4) The agency or a party may file a response to a motion.
- (a) Responses to motions filed 14 or more 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 and served within seven calendar days after receipt of the motion.
 - (b) Responses to motions filed fewer than 14 calendar days before the date of the hearing may be in writing or presented orally at the hearing. If the response is in writing, the response must be filed and served on the parties or the agency in the manner required by OAR 137-003-0520 before the start of the hearing.
- (5) Responses to late-filed motions may be presented orally or in writing at the contested case hearing.
- (6) 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.
- (7) 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.
- (8) 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; DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08

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. The agency's response must be signed by a person with authority to speak on the question transmitted.
- (7) The agency's 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

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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 & 183.630
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; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

137-003-0640

Immediate Review by Chief Administrative Law Judge

(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 Chief Administrative Law Judge 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 Chief Administrative Law Judge.

(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 Chief Administrative Law Judge 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 the Chief Administrative Law Judge's immediate review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(5) The Chief Administrative Law Judge shall rule on all requests for immediate review in writing.

(6) The request and ruling shall be made part of the record of the proceeding.

(7) The Chief Administrative Law Judge may designate in writing a person to exercise his or her responsibilities under this rule.

(8) Beginning February 1, 2016, agencies, rather than the Chief Administrative Law Judge, will be responsible for providing the immediate review set out in this rule.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
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 1-2012, f. 1-11-12, cert. ef. 1-31-12; DOJ
4-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14; DOJ 6-2014, f. & cert. ef. 4-1-14

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;

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(h) Intermediate orders or rulings by the administrative law judge or Chief Administrative Law Judge; 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 there from; and

(j) The name of the administrative law judge who prepared the proposed order and the 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 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,
183.630 & 183.685

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
1-2012, f. 1-11-12, cert. ef. 1-31-12

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

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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) An agency should issue an amended proposed order or a final order within 90 days of the date of the proposed order. When an agency will not issue an amended proposed order or final order within 90 days of the proposed order, the agency shall give written notice to the administrative law judge and all parties of the date by which the agency expects to issue the amended proposed order or the final order. This rule does not apply to proceedings under ORS chapters 539 and 537.670 through 537.700. An agency may adopt a rule exempting classes of cases from the requirements of this subsection upon the agency's determination that, due to the nature of the cases, 90 days normally is an insufficient time in which to issue an amended proposed or final order. The requirements of this subsection apply to all orders for which the proposed order is issued after January 31, 2012.

(8) 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 244.120 and 244.130.

Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341 & 183.630
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; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

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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

(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 there from; 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 modification and explain to the parties 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 modification 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 there is clear and convincing evidence in the record that the finding made by the administrative law judge was wrong. 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; and

(c) A copy must be delivered or mailed to each party and the attorney of record for each party that is represented.

(6) The final order shall be served on each party and, if the party is represented, on the party's attorney.

(7) The date of service of the final order on the parties or, if a party is represented, on the party's attorney 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, 183.417(3), 183.470, 183.630, 183.650(3) & Or Laws 2009, ch

866, | 7

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; DOJ 1-2012, f.
1-11-12, cert. ef. 1-31-12

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 party had good cause for not appearing, 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. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

(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 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 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, 183.417(4),
183.450, 183.470 & 183.630
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; DOJ 1-2012, f. 1-11-12, cert. ef. 1-31-12

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, has designated the agency file, including all materials submitted by a party, as the record, and the record constitutes a prima facie case.

(2) When the agency gives a party an opportunity

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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.

(4) If the party fails to appear at the hearing and, before dismissing the request for hearing, the administrative law judge finds that the party had good cause for failing to appear, the administrative law judge may not dismiss the request for hearing under section (3)(b) of this rule. In this case, the administrative law judge shall schedule a new hearing. If the reasons for the party's failure to appear are in dispute, the administrative law judge shall schedule a hearing on the reasons for the party's failure to appear.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.417(4)
183.470, & 183.630

Hist.: DOJ 11-2005, f. 10-31-05, cert. ef. 1-1-06;
DOJ 9-2007, f. 10-15-07 cert. ef. 1-1-08; DOJ
1-2012, f. 1-11-12, cert. ef. 1-31-12

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.

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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:

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

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

(g) A statement explaining why granting the stay will not result in substantial public harm;

(h) 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;

(i) 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

(j) 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), (g) and (h) 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) &
183.630
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 1-2012, f. 1-11-12, cert. ef.
1-31-12

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

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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 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

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 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

**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. For this rule:

(a) “Business connections” include, but are not limited to, the following behaviors and relationships:

(A) Knowingly providing anything of value to a manufacturer or a business licensed by the Commission in return for something of value except for the exchange of commodities or services that are routinely provided to the general public under the same terms, and

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

(b) “Business licensed by the Commission” means a business or any part of a business that requires an alcoholic beverage license to operate. A person is “employed by a business licensed by the Commission” if:

(A) The person’s job duties include involvement with any portion of the business that requires an alcoholic beverage license to operate, or

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

(c) “Close association” means a relationship that does or could be reasonably perceived to influence commissioner or employee decisions.

(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.

(e) “Employed by the Commission” means any permanent, temporary or limited duration Commission employee.

(f) “Financial Interest” means knowingly holding an ownership interest as a sole proprietor, partner, limited partner or stockholder, in any business that is licensed by the Commission or manufactures alcoholic beverages sold in Oregon. This definition excludes any investment that the investor does not control in nature, amount or timing.

(g) “Household member” means all persons living as a family unit in the same dwelling as the commissioner or Commission employee.

(h) “Immediate family” means the spouse or Domestic Partner, and juvenile dependent children of the commissioner or Commission employee.

(i) “Knowledge” and “knowingly” mean that the person had actual knowledge of or reasonably should have known of the fact in question.

(j) “Position to take action or make decisions that 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. However, an employee is not in a “position to take action or make decisions that could affect the licensed business” under ORS 471.710(2)(c) or (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 effect the employee’s ability to perform his or her job duties.

(2) Prohibitions.

(a) The prohibitions in this section do not apply to the commissioner appointed as the food and alcoholic beverage retail industry representative under ORS 471.705(1).

(b) Financial Interests. No commissioner, employee, household member or family member may hold a financial interest described in this rule.

(c) Employment. No commissioner, employee, household member or family member 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 that could affect the licensed business.

(d) Business Connections. No commissioner, employee, household member or family member may have a business connection described in this rule unless the commissioner or employee is not in a

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position to take action or make decisions that could affect the licensed business.

(3) Reporting Requirements.

(a) The reporting requirements in this section do not apply to the commissioner appointed as the food and alcoholic beverage retail industry representative under ORS 471.705(1).

(b) Close Association. A commissioner or employee who has a close association with an alcoholic beverage licensee must:

(A) Inform the Commission of the association as soon as the commissioner or employee has knowledge of the association, and

(B) Refrain from participating in any decision that directly affects the licensee.

(c) An applicant for a Commission job must disclose all financial interests, current employment relationships and business connections that the applicant, or any person in the applicant's household or immediate family, has with the alcoholic beverage industry of which the applicant has knowledge. If the Commission determines that a prohibited financial interest, employment relationship or business connection exists, the applicant must divest the financial interest, employment relationship or business connection before he or she may be hired.

(d) A Commission employee must report all financial interests, current employment relationships and business connections that the employee, or any person in the employee's household or immediate family, has with the alcoholic beverage industry to his or her supervisor as soon as the employee has knowledge of it. If the financial interest, employment relationship or business connection is prohibited, the Commission will set a reasonable time period for divestiture. If divestiture does not occur within the given time period, the Commission will terminate the employee's employment.

(4) Disciplinary Action. The Commission will appropriately discipline any employee who:

(a) Fails to report a prohibited financial interest, employment relationship or business connection as required under this rule, or

(b) Knowingly acquires or establishes a financial interest, employment relationship or business connection prohibited under this rule.

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

Stats. Implemented: ORS 471.710

Hist.: OLCC 4-1988, f. & cert. ef. 7-1-88; OLCC 15-1989, f. 10-31-89, cert. ef. 11-1-89; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 12-2013, f. 11-26-13, cert. ef. 1-1-14

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

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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

Public Records and Miscellaneous Fees

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

(2) Reimbursement of Commission staff time. An hourly rate of \$25.00 will be assessed for any Commission staff time greater than 15 minutes spent locating records, reviewing records to delete exempt

material, supervising the inspection of records, copying records, reproducing records onto a disk or other electronic format, certifying records, and mailing records. This charge is in addition to the charges for the copies of the documents. The Commission may charge for the cost of searching for records regardless of whether the Commission was able to locate the requested record.

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

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

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

(c) Archive Retrieval: actual cost.

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

(4) Electronic Records.

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

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

(5) Certification of Copies of Records. Certification of both hard and electronic copies of records may be provided upon request. The Commission will only

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certify that on the date copied the copy was a true and correct copy of the original record. The Commission cannot certify as to any subsequent changes or manipulation of the record.

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

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

(8) Collection of Fees.

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

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

(c) Prepayment and Notification of Copy Costs.

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

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

(d) Waiver of Fees.

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

(B) The Commission will not charge a fee if a record can be provided at nominal expense. Nominal expense

means costing less than \$5.00, including the labor required to fulfill the request.

(C) The Commission may furnish copies without charge or at a substantially reduced fee if the Commission determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public. Examples include when the material requested is currently being distributed as part of the public participation process such as a news release or public notice, or the material requested has been distributed through mass mailing and is readily available to the Commission at the time of the request.

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

(i) Any financial hardship on the Commission;

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

(iii) The volume of the records requested; or

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

(9) Miscellaneous Distilled Spirits Fees:

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

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

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

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

Stats. Implemented: ORS 192.440

Hist.: LCC 11-1980, f. 3-3-80, ef. 4-1-80;
Renumbered from 845-0010-355; LCC 30-1980, f. 12-22-80, ef. 1-1-81; LCC 30-1986, f. 11-20-86, ef.

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1-1-87; OLCC 3-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 16-1991, f. 10-31-91, cert. ef. 1-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 10-2005, f. 12-19-05, cert. ef. 1-1-06; OLCC 12-2010, f. 10-18-10, cert. ef. 11-1-10

845-004-0022

Annual License Fee Definition and Refund

- (1) Annual license fee is the amount ORS 471.311(5) requires for the use of an annual license.
- (2) The Commission considers an annual license used when a licensee allows any sale, service, or consumption of alcoholic beverages on the premises after the effective date of the license.
- (3) The Commission refunds the annual license fee, when the licensee verifies that he/she has not used the license as described in section (2) of this rule.

Stat. Auth.: ORS 471, including 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 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

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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

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service contracts that exceed \$1,000 but are less than \$5,000 that staff has entered into during the previous month;

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 291.021
Hist.: LCC 15-1983, f. 12-27-83, ef. 1-1-84; LCC 6-1985, f. 5-3-85, ef. 7-1-85; OLCC 3-1989, f. 3-31-89, cert. ef. 4-1-89; OLCC 11-1990, f. 6-4-90, cert. ef. 7-1-90; OLCC 1-1991, f. 3-1-91, cert. ef. 4-1-91

845-004-0075

Public Contracting

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

Stat. Auth.: ORS 471 & ORS 472, including ORS 471.030, ORS 471.730(1), ORS 471.730(5), ORS 472.030, ORS 472.060(1) & ORS 472.060(2)(d)
Stats. Implemented: ORS 279.049
Hist.: LCC 3-1986, f. 2-6-86, ef. 4-1-86

845-004-0100

Production of Alcohol for Fuel

ORS 471.403 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

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845-004-0101

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

(1) ORS 471.730(8) and 471.404 allow the Commission to license, regulate and control the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical and industrial purposes.

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

(3) Importation Permit:

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

(A) Is at least 21 years old;

(B) Completes the Importation Permit application; and

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

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

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

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

(4) The Commission retains the right to audit the

records of alcohol vendors and Importation Permit holders at any time to determine compliance with this rule and other regulations of the Oregon Liquor Control Commission.

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

Stats. Implemented: ORS 471.404 & 471.730(8)

Hist.: OLCC 25-1990, f. 12-19-90, cert. ef. 2-1-91; OLCC 16-1999, f. 11-2-99, cert. ef. 12-31-99; OLCC 13-2004, f. 11-18-04, cert. ef. 1-1-05

845-004-0105

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

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

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

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

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

(A) Is at least 21 years old;

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

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

(b) If the person is eligible for an Open Purchase

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

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

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

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

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

Stat. Auth.: ORS 471, including 471.030, 471.730(1)
& (5)
Stats. Implemented: ORS 471.730(8)
Hist.: OLCC 4-2006, f. 2-22-06, cert. ef. 3-1-06

845-004-0120 Investigative Subpoenas and Oaths

(1) Purpose. ORS 471.760 allows the Commissioners and any of their authorized agents to issue subpoenas and administer oaths. The Commissioners delegate authority to the Administrator and Deputy Administrator to issue investigative subpoenas, and authorize the Administrator to delegate that authority to selected staff. This rule defines the circumstances under which the Commission issues investigative subpoenas and administers oaths. This rule does not

concern subpoenas issued and oaths administered by Administrative Law Judges in the contested case process. For purposes of this rule, the term “records” includes videotapes, DVDs, audiotapes, CDs, and other media used to capture or record information and activities.

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

(a) An investigative subpoena for books, payrolls, accounts, papers, documents or records under the following circumstances:

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

(B) The applicant, licensee or Service Permittee cannot or will not provide the book, payroll, account, paper, document or record; the investigation might be compromised by asking the licensee or applicant for the book, payroll, account, paper, document or record; or the person in possession of the book, payroll, account, paper, document or record requires a subpoena for its release.

(b) An investigative subpoena to any person requiring the person to give a sworn statement. The Administrator or Deputy Administrator may issue a subpoena whenever compelling a sworn statement may be helpful in making a decision about a liquor license application, 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**

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, 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

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

Stats. Implemented: ORS 471.292 & 471.730(5)

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

845-005-0303

Alcohol Impact Areas

(1) Purpose. In some of Oregon's larger cities, there are areas with very serious alcohol-related problems where it would take extraordinary resources to identify the particular licensed businesses whose customers contribute to the problems. In these circumstances, the Commission may designate an alcohol impact area and set uniform limitations and requirements that specify how alcohol may be sold in the area. The purpose of this rule is to describe how the Commission, through the rulemaking process, designates an alcohol impact area and sets uniform limitations and requirements within it.

(2) Requesting an Alcohol Impact Area. In order for the Commission to consider designating an alcohol impact area, it must receive a petition for rulemaking. The Commission initiates rulemaking only on petitions from an authorized representative of an incorporated city with a population over 300,000. The petition must propose rule language to reduce street drinking and public intoxication associated with off-premises sales, or noisy conduct and late night disturbances associated with on-premises consumption.

(3) Prerequisites for Petitioning. The Commission requires voluntary efforts to address problems of street drinking and public intoxication, or noisy conduct and late night disturbances, and requires the city to seek public input before petitioning the Commission. A city that plans to petition for an alcohol impact area must:

(a) Require affected businesses, citizens and city staff to make a serious and good faith effort to work cooperatively to develop a voluntary program to address the problems;

(b) Make reasonable efforts to identify and notify those likely to be affected, offering them an opportunity to participate in the city's process;

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(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

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area, the Commission identifies the boundaries by designating thoroughfares, waterways, or other similar boundaries. The Commission may extend the boundaries beyond the actual area where problems are concentrated;

(b) In setting limitations and requirements, the Commission may:

(A) Limit off-premises alcohol sales;

(B) Limit hours of alcohol sales; or

(C) Set any other limitations or requirements for the alcohol impact area that may reduce the documented problems, such as limiting the number of new outlets in the area.

(c) The Commission does not take into consideration the age, race, sex, disability, marital status, national origin, sexual orientation, color or religion of the licensees or the patrons of the licensed businesses within the alcohol impact area.

(9) Exemptions. After the Commission has established an alcohol impact area and the limitations and requirements are in effect, licensed businesses may apply for an exemption for their business operation:

(a) The request must be in writing and include:

(A) A list of the limitations and requirements from which the licensee wants to be exempted; and

(B) An explanation of how the licensee's business operation did not and will not contribute to the problem, and why their business operation should be exempted from each of the limitations and requirements from which they are requesting exemption.

(b) The burden is on the licensee to convince the Commission that their business operation did not and will not contribute to the problems in the area and should be exempted from each of the limitations and requirements from which they are requesting exemption;

(c) If the Commission denies a request for an exemption, the licensee has the right to a hearing to contest the decision. However, the licensee must comply with all the limitations and requirements unless the Commission issues a final order which reverses the administrator's decision;

(d) The Commission notifies the originally petitioning city of requests for exemption;

(e) For this rule, "business operation" refers to basic business concepts, such as a "gift shop" or a "hotel." It does not refer to retailing practices, such as "selling alcohol only to people with rent receipts";

(f) Licensees must reapply for an exemption with each license renewal. The burden is on the licensee to convince the Commission that their business operation did not and will not contribute to the problems in the area and should be exempted from each of the limitations and requirements from which they are requesting exemption.

(10) Petitioning the Commission to Change an Alcohol Impact Area Rule. Any interested person may petition the Commission to amend or repeal an Alcohol Impact Area rule. The petitioner must follow the steps listed in OAR 137-001-0070. In a petition to amend an Alcohol Impact Area rule, a person may ask for changes to the boundaries, limitations or requirements for the Alcohol Impact Area.

(11) Automatic Review of an Alcohol Impact Area. Twelve months after an alcohol impact area goes into effect, the Commissioners offer a public forum for comment. After considering the comments, the Commissioners may decide to initiate the rulemaking process to consider whether to continue, change or repeal the rule establishing that alcohol impact area:

(a) Before holding the public forum, the Commission makes a reasonable effort to notify:

(A) Licensees and registered neighborhood and business associations located in the alcohol impact area;

(B) Anyone who commented or testified during the original rulemaking process which established the alcohol impact area; and

(C) The city which originally petitioned the Commission.

(b) If the Commissioners initiate rulemaking after the public forum, the Commission follows the notice procedures described in section (6) of this rule.

(12) Sanction. A violation of a limitation or requirement in an alcohol impact area rule is a Category III violation.

(13) Other Commission Action. Nothing in this rule prevents the Commission from imposing additional restrictions on any license in the alcohol impact area or refusing licenses within a designated alcohol impact area if warranted by any other law or rule of

the Commission.

Stat. Auth: ORS 471, 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, 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

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the premises that are related to the sale or service of alcoholic beverages;

(e) Any change for which OAR 845-006-0480 requires Commission approval where the Commission determines that the potential exists for problems with unlawful activities, noise or disturbances in or around the premises that are related to the sale or service of alcoholic beverages.

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

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

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

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

(3) The written notice will include:

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

(b) Address of premises proposed to be licensed;

(c) Type of license;

(d) Legal hours of operation; and

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

(A) The application;

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

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

Stat. Auth.: ORS 471, 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), 471.313(5), OAR 845-005-0320, 845-005-0325 or 845-005-0326, or the license restriction bases of OAR 845-005-0355, and must be supported by reliable factual information.

(4) Organizations, facilities, government agencies, or individuals may give the Commission reliable factual information concerning whether there is a basis to grant or deny a license or to impose license restrictions under the laws specified in section (3) of this rule. Reliable factual information includes personal observations of activities in or around the proposed licensed location, as opposed to opinion, hearsay, feelings, beliefs or speculation.

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

Stats. Implemented: ORS 471.166 & 471.313

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

845-005-0311

True Name on Application; Interest in Business

(1) True name on application. An application for a license must specify the real and true names of all persons and legal entities that have an ownership

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interest in the business proposed to be licensed.

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

(3) Ownership Interest. Under ORS 471.313(4)(h), the Commission may refuse to issue a license if the applicant is not the owner of the business proposed to be licensed or an undisclosed ownership interest exists. For purposes of this rule, an “ownership interest” is indicated by the following behaviors, benefits or obligations:

(a) Any person or legal entity, other than an employee acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;

(b) Any person or legal entity, other than an employee acting under the direction of the owner, that incurs, or is entitled to incur, debt or similar obligations on behalf of the business;

(c) Any person or legal entity, other than an employee acting under the direction of the owner, that enters into, or is entitled to enter into, a contract or similar obligations on behalf of the business; or

(d) Any person or legal entity identified as the lessee of the premises proposed to be licensed.

(4) Financial Interest. Under ORS 471.757, the Commission may require the licensee or applicant to identify the persons and legal entities with a financial interest in the business. The Commission may evaluate any such person as if he or she were the actual licensee or license applicant. If that evaluation reveals any circumstances that would support grounds for the denial, cancellation or suspension of such a license or license application, the Commission may deny, cancel or suspend the license of the actual licensee or issue the license with restrictions. For purposes of this rule, a “financial interest” exists if the performance of the business causes, or is capable of causing, a person or legal entity to benefit or suffer financially. Examples of a financial interest include, but are not limited to:

(a) A licensee;

(b) An employee or agent who receives out-of-the-ordinary compensation. “Out-of-the-ordinary compensation” includes both over- and under-compensation;

(c) Any person who rents or leases real property to a

licensee or applicant for use by the business;

(d) Any person who rents or leases personal property to a licensee or applicant for use in the business for a commercially unreasonable rate;

(e) Any person who lends money, real property or personal property to a licensee or applicant for use in the business;

(f) Any person who gives money, real property or personal property to a licensee or applicant for use in the business.

(g) A spouse or domestic partner of the licensee or license applicant. For purposes of this subsection, “domestic partners” includes adults who share the same regular and permanent address and would be financially effected by the success or failure of the business as well as adults who qualify for a “domestic partnership” as defined under ORS 106.310.

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

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.757
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 9-2002, f. 6-12-02 cert. ef. 7-1-02; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 1-2011, f. 2-23-11, cert. ef. 3-1-11; OLCC 15-2013, f. 12-12-13, cert. ef. 1-1-14

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

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

Stats. Implemented: ORS 471.757

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 16-2004, f. 12-22-04, cert. ef. 1-1-05

845-005-0314

Refusal to Accept an Application

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

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

(a) In the English language;

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(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, 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

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

Stat. Implemented: ORS 471.311(1), 471.155;
471.313 & 471.168.

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

845-005-0320

License Refusal Reasons that Can Not Be Overcome

The following criteria will preclude issuing a license:

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

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

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

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

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

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

(7) The applicant has not paid an outstanding fine to the Commission. ORS 471.313(4)(g) allows the Commission to deny a license if the applicant had a poor compliance record when previously licensed. Nonpayment of a fine is one indicator of a poor compliance record.

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

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

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

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

Stats. Implemented: ORS 471.168 & 471.313

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

OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08; OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09

845-005-0321

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

ORS 471.175 allows the Commission to issue a full on-premises sales license to a nonprofit private club as described in 471.175(8). This rule sets criteria to refuse to issue or renew a Full On-Premises Sales

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License for a Nonprofit Private Club. These criteria are in addition to other refusal criteria set out in ORS Chapter 471 and OAR chapter 845 division 5.

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.175

Hist.: OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09;

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

845-005-0322

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.001 & 471.175

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

845-005-0325

License Refusal Reasons: Applicant Qualifications

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

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

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

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(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 violating any of the laws, general or local, of this state or another state if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license. The Commission considers any intervening circumstances since the commission of the law violation 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, 471.030, 471.040, 471.730(1)
& (5)

Stats. Implemented: ORS 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 8-2012, f. 10-30-12, cert. ef. 11-1-12

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;

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(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, 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

845-005-0329

Licensing Outdoor Areas Not Abutting a Licensed Building

(1) This rule applies to an outdoor area that does not abut applicant's or licensee's licensed building. This rule establishes the licensing qualifications for such an outdoor area. This rule does not apply to Temporary Sales Licenses issued under ORS 471.190; Special Events Brewery-Public House licenses issued under 471.200; Special Event Winery licenses issued under

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471.223; Special Events Grower licenses issued under 471.227; Special Events Distillery licenses issued under 471.230; Small-Scale Private Catering licenses issued under OAR 845-005-0405; and Temporary Use of An Annual License licenses issued under 845-005-0410.

(2) The Commission shall refuse to license an outdoor area, and may cancel the license for an outdoor area, for any of the following reasons:

(a) The outdoor area is controlled by a public entity and the public entity provides the Commission with written proof that the sale, service or consumption of alcohol in the outdoor area is not an authorized use under the applicable rules and regulations governing the public entity;

(b) The outdoor area is privately owned and the applicant or licensee fails to provide the Commission with written proof of legal access to the outdoor area;

(c) The outdoor area is privately owned and the applicant or licensee fails to provide the Commission with written proof that the property owner expressly allows the sale, service and consumption of alcohol in the outdoor area;

(d) The outdoor area fails to qualify for a Number III or Number V minor posting;

(e) The applicant or licensee fails to define the boundaries of the outdoor area;

(f) The applicant or licensee fails to identify and obtain Commission approval of a designated area for alcohol consumption within the outdoor area; or

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

Stat. Auth.: ORS 471, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.030(1), 471.313(1), &
471.315(1)(d)

Hist.: OLCC 4-2014, f. 5-2-14, cert. ef. 6-2-14

845-005-0331

Licensing Outdoor Areas Abutting a Licensed Building

(1) This rule applies to an outdoor area that does abut applicant's or licensee's licensed building. This rule establishes the licensing qualifications for such an

outdoor area. This rule does not apply to Temporary Sales Licenses issued under ORS 471.190; Special Events Brewery-Public House licenses issued under 471.200; Special Event Winery licenses issued under 471.223; Special Events Grower licenses issued under 471.227; Special Events Distillery licenses issued under 471.230; Small-Scale Private Catering licenses issued under OAR 845-005-0405; and Temporary Use of An Annual License licenses issued under 845-005-0410.

(2) The Commission shall refuse to license an outdoor area, and may cancel the license for an outdoor area, for any of the following reasons unless the applicant or licensee shows good cause that outweighs the refusal or cancellation basis:

(a) The outdoor area is controlled by a public entity and the public entity provides the Commission with written proof that the sale, service or consumption of alcohol in the outdoor area is not an authorized use under the applicable rules and regulations governing the public entity;

(b) The outdoor area is privately owned and the applicant or licensee fails to provide the Commission with written proof of legal access to the outdoor area;

(c) The outdoor area is privately owned and the applicant or licensee fails to provide the Commission with written proof that the property owner expressly allows the sale, service and consumption of alcohol in the outdoor area;

(d) The outdoor area does not abut the applicant's proposed licensed building or the licensee's existing licensed building;

(e) The applicant or licensee fails to define the boundaries of the outdoor area;

(f) The applicant or licensee fails to demonstrate there is or will be adequate supervision of the outdoor area so as to prevent violations of the liquor laws; or

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

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

Stats. Implemented: ORS 471.001, 471.030(1),
471.159, 471.313(1) & 471.315(1)(d)

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

OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11; OLCC
4-2014, f. 5-2-14, cert. ef. 6-2-14

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

Stats. Implemented: ORS 471.182

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

OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-005-0336

Certificate of Authority Holder's Sales Employees

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

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

Stats. Implemented: ORS 471.162(3)

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

845-005-0355

Restricting License Privileges and Conduct of Operations

(1) The Commission may restrict a license or service permit when:

(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the license or service permit;

(b) In addition to all or part of a suspension or

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fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s);

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

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

(2) In determining public interest or convenience reasons to restrict a license or permit, the Commission considers factors that include but are not limited to:

(a) The character or environment of the neighborhood in which the licensed premises operate;

(b) The need to eliminate or prevent conditions that have contributed to or that the Commission reasonably believes will contribute to liquor or criminal law violations by the licensee, patrons of the licensed premises or the public, including conditions that have or are likely to contribute to noise, music or sound vibrations from inside or outside the premises that a reasonable person would consider excessive or obtrusive; or

(c) The need to limit the availability of alcohol to minors, visibly intoxicated persons or street drinkers.

(3) The Commission has determined that it is not in the public interest or convenience to issue or renew:

(a) A license that allows off-premises sales in an area frequented by street drinkers, unless the Commission restricts the sales of the alcoholic beverages associated with street drinkers;

(b) A license to a relative or associate of a person whose license was cancelled, surrendered or not renewed because of problems at the premises that involved the person, unless the Commission restricts the relative or associate from permitting the person from being on the premises;

(c) A license or permit to a person who has a recent history or record of alcohol or drug problems, unless the Commission requires the person to complete an alcohol/drug treatment program and follow the program's recommendations regarding alcohol/drug use or to abstain from alcohol/drug use.

(4) When the Commission restricts a license or service permit, it notifies the licensee or permittee. If the licensee or permittee disagrees with the restriction, the licensee or permittee has the right to a hearing under the procedures in ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(5) A licensee or permittee who has a restricted license or permit must exercise license or permit privileges only in compliance with the restriction(s). Failure to comply with the restriction(s) is a Category I violation.

(6) A restriction remains in effect until the Commission removes it. The licensee or permittee may ask the Commission to remove or modify a restriction. The written request must explain why the licensee or permittee believes the Commission should remove or modify the restriction. The Commission will notify the licensee or permittee, in writing, of its decision to approve or deny the request and the basis for its decision. If the Commission denies the request, the licensee or permittee has the right to a hearing under the procedures in ORS Chapter 183; OAR chapter 137, division 003; and chapter 845, division 003.

(7) As used in subsections (2)(c) and (3)(a) of this rule, "street drinkers" means people who drink unlawfully in streets, alleys, parks and other similar public places.

(8) As used in subsection (2)(b) of this rule, "conditions" means conditions in the immediate vicinity of the premises that are related to the exercise of the license privileges and conditions in the premises or in the areas around the premises that the applicant/licensee controls.

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

Stats. Implemented: ORS 471.313, 471.405(1)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC
7-2006(Temp), f. & cert. ef. 6-15-06 thru 12-11-
06; OLCC 13-2006, f. 10-19-06, cert. ef. 12-12-06;
OLCC 2-2011, f. 2-23-11, cert. ef. 3-1-11

845-005-0360

License Renewal: Requirements for Applicants

(1) Filing a Renewal Application:

(a) Any licensee who files a completed renewal application with the Commission at least 20 days before the date the license expires may continue to operate as if the license were renewed, pending a

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decision by the Commission;

(b) Any licensee who does not file a completed renewal application at least 20 days before the existing license expires must stop selling or serving alcoholic beverages when the license expires. However:

(A) If the Commission receives a completed license renewal application less than 20 days before the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee that ORS 471.311(3) requires, issue a letter of authority to operate beyond the expiration of the license, pending a decision by the Commission;

(B) A licensee must not sell or serve alcoholic beverages after the license expires; a violation of this subsection is a Category III violation. If the Commission receives a completed license renewal application within 30 days after the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee that ORS 471.311(3) requires, issue a letter of authority to resume operation, pending a decision by the Commission.

(c) The Commission will not renew a license if the Commission receives the renewal application more than 30 days after the license expires. A person who wants to resume selling or serving alcoholic beverages in this circumstance:

(A) Must submit a completed new application, including the documents and information required by the Commission.

(B) Must not sell or serve alcoholic beverages unless and until they receive authority to operate from the Commission after submitting the completed new application.

(d) A person relicensed under section (1)(c) of this rule who sold or served alcoholic beverages in violation of section (1)(b)(B) of this rule is subject to administrative sanctions.

(e) A person who sells or serves alcoholic beverages without a liquor license is in violation of ORS 471.475, a misdemeanor, and is subject to criminal prosecution.

(f) For purposes of this rule, a completed application is considered filed or received according to its postmark date, if legible, or according to the date the Commission actually receives the completed application, whichever is earlier.

(2) Completed Application: As used in this rule,

a completed application is one that is completely filled out, is signed by the applicant and includes the appropriate fee(s), the bond or equivalent that ORS 471.155 requires and the liquor liability insurance or bond that 471.168 and OAR 845-005-0400 require.

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

(4) Late Renewal Fee:

(a) ORS 471.311(3) requires the Commission to charge a late fee for renewal applications received less than 20 days before the license expires or not more than 30 days after the license expires. In computing this 20 or 30 day period, the Commission does not count the day the license expires. For example, a license expires on the 31st. The 20 day period ends on the 11th unless the 11th is a Saturday, Sunday or legal holiday. If the 20th or 30th day is a Saturday, Sunday or legal holiday, the period ends at 5 p.m. on the first working day after the Saturday, Sunday or legal holiday;

(b) The Commission may waive the late renewal fee if the licensee fails to file a timely application due to unforeseen circumstances, such as a death or illness of the licensee or to a delay in Commission processing of the application through no fault of the licensee.

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

Stats. Implemented: ORS 471.155, 471.311(3),
471.311(4), 471.311(5), 471.313, & 471.168

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 1-2001, f. 2-14-01, cert. ef. 2-19-01 thru 8-17-
01; OLCC 7-2001, f. 8-15-01, cert. ef. 8-18-01

845-005-0365

Change of Licensee; Change of Location

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

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

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

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Stats. Implemented: ORS 471.313, 471.292(1)(e)&
471.292(2)(d)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0366 **License Surrender**

A licensee may ask the Commission to accept the surrender of a license. The license remains in effect until the Commission accepts the surrender. If the Commission accepts it, the Commission will notify the licensee of the date the Commission accepts the surrender. The licensee must stop selling or serving alcoholic beverages from this date through the remainder of the licensing period. If the licensee wants to sell or serve alcoholic beverages after this date, the licensee must apply for and receive a new license.

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

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

845-005-0400 **Liquor Liability Insurance or Bond Requirement**

(1) ORS 471.313(4)(i) requires applicants for a liquor license to demonstrate financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed. ORS 471.313(2) requires applicants listed in 471.168 to maintain liquor liability insurance or bond. In addition to other requirements, the Commission has determined that licensees listed in 471.168 must demonstrate financial responsibility for licensees' liability for damages to third parties caused by patrons off the licensed premises by meeting the requirements in section (1) (a) or (b) of this rule. ORS 471.168 requires certain licensees to provide coverage for injuries suffered because of the conduct of visibly intoxicated persons who were served in licensed premises by:

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

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

(2) The requirement applies to the covered licenses

issued or renewed on or after March 15, 1998.

(3) ORS 471.168 also requires licensees subject to the requirement to supply proof of compliance at the time the license is issued or renewed. For insurance, licensees must provide proof by naming the Commission as Certificate Holder on the policy and giving the Commission a copy of the certificate. For a bond, proof may be satisfied by identifying the name of the surety and providing the bond identification number.

(4) Failure to maintain insurance or a bond as required is a Category I violation and the Commission may cancel the license.

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

Stats. Implemented: ORS 471.313(4)(i) & 471.168
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-005-0405 **Full or Limited On-Premises Licensee Small-Scale Private Catering**

(1) ORS 471.184(1) allows the holder of a Full On-Premises Sales or Limited On-Premises Sales license to serve the alcoholic beverages permitted by the license for on-premises consumption at locations other than the licensee's annually licensed premises when catering small-scale temporary events where the licensee will furnish food and beverage services for 100 or fewer guests of the catering client. This rule refers to this type of catering as small-scale private catering.

(2) Definitions. For this rule:

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

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

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

(d) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations

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involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

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

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

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

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

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

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

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

(c) The licensee is not the client;

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

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

(4) ORS 471.184(1) authorizes the Commission to grant pre-approval to provide the service of small-scale private catering. Applicants must apply in writing using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to beginning the service of small-scale private catering. The Commission may give applicants the opportunity

to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

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

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

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

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

(A) All events to prevent problems and violations;

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

(C) Alcohol consumption by adults.

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

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

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

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

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

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

(a) If the catered event will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced

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that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.184

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

845-005-0410

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

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

(2) Definitions. For this rule:

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

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

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

(d) "Serious violation history" means:

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

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

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

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

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

(3) ORS 471.184(2) allows the holder of a Full On-Premises Sales or Limited On-Premises Sales license to serve the alcoholic beverages permitted by the license for on-premises consumption at locations other than the licensee’s annually licensed premises at large-scale catered events or temporary use of an annual license events after having obtained prior written Commission approval. This rule refers to these types of events as either large-scale private catered events or temporary use of an annual license events.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) All events to prevent problems and violations;

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

(C) Alcohol consumption by adults.

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

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

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

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

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

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

(A) All events to prevent problems and violations;

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

(C) Alcohol consumption by adults.

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

(b) Identification of all individuals to be employed by the licensee to manage the premises proposed for license authority;

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

(d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;

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

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

(g) Processing fee established by Commission rule.

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

(a) If the large-scale catered event premises or

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

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

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

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

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

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

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

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

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

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

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follow that written plan is a Category III violation.

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

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

Stats. Implemented: ORS 471.184(2)

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

845-005-0413

Special Events Distillery License

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

(1) Definitions. For this rule:

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

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

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

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

(e) “Serious violation history” means:

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

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

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

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

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

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

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

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

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

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

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

(4) Applicants must apply in writing for a Special Events Distillery license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that

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does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

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

(a) A written, dated, and signed plan. An application is not complete if this plan is not approved by the Commission. To approve a plan, the Commission must determine that the plan adequately manages:

(A) The event to prevent problems and violations;

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

(C) Alcohol consumption by adults.

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

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

(d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;

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

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

(g) License fees as established by ORS 471.311.

(h) If the licensee will provide distilled liquor by the drink, a written proposal showing compliance with the food service standards of OAR 845-006-0465.

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

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

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

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

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

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

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

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

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

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

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

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must

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follow that written plan. Failure to follow that written plan is a Category III violation.

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

(14) A distillery licensee with a SED may:

(a) Permit tastings of distilled liquor manufactured by the licensee. The distillery licensee must purchase the distilled liquor that the licensee uses for conducting tastings at the event from the Commission at the price set by the Commission for distilled liquor removed from bond for tastings.

(b) Permit sales by the drink of distilled liquor manufactured by the licensee. The distillery licensee must purchase the distilled liquor that the licensee uses for sales by the drink at the event at the retail price set by the Commission for the month in which the distilled liquor is sold by the drink.

(c) If the distillery licensee has been appointed as a distillery retail outlet agent, sell factory-sealed containers of distilled liquor manufactured by the licensee for consumption off the licensed premises of the event. The distillery licensee must purchase and sell the factory-sealed containers in accordance with the terms of the Distillery Retail Outlet Agent Agreement and the Commission's Distillery Retail Outlet Manual.

(15) Tastings provided to the general public.

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

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

(16) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three

ounces. A licensee may not charge a trade visitor a fee for tastings.

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

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

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

Stats. Implemented: ORS 471.230
Hist.: OLCC 1-2010, f. 2-22-10, cert. ef. 3-1-10;
OLCC 2-2012(Temp), f. & cert. ef. 4-5-12 thru 10-1-12;
OLCC 7-2012, f. 9-14-12, cert. ef. 10-1-12

845-005-0414

Special Events Brewery-Public House License

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

(1) Definitions. For this rule:

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

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

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

(d) "Serious violation history" means:

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

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

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

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

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

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

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

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

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

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

(A) The event to prevent problems and violations;

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

(C) Alcohol consumption by adults.

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

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

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

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

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

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

(g) License fees as established by ORS 471.311.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.200

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

845-005-0415

Special Event Winery and Special Event Grower Sales Licenses

(1) ORS 471.223 authorizes the Commission to issue a Special Events Winery license to a Winery licensee. The special license may allow the licensee to sell wine, malt beverages and cider allowed to be sold under the annual Winery license at retail for consumption on or off the licensed premises at a location other than that designated as the winery's annually licensed premises.

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

(3) Definitions. For this rule:

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

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

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

(d) "Serious violation history" means:

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

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

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

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

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

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

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

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

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

(A) The event to prevent problems and violations;

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

(C) Alcohol consumption by adults.

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

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

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

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

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

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

(g) License fees as established by ORS 471.311.

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

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

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

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

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

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

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

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

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

within the past 36 months.

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

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

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

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

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

Stats. Implemented: ORS 471.223 & 471.227
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 6-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; OLCC 19-2007, f. 9-27-07, cert. ef. 11-11-07; OLCC 1-2009, f. 3-17-09, cert. ef. 4-1-09; OLCC 9-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 1-10-10; OLCC 12-2009, f. 10-19-09, cert. ef. 1-11-10

Delivery of Malt Beverage, Wine or Cider to Individuals

845-005-0416 Definitions

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

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

interchangeably.

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

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

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

(5) "Month" means a calendar month.

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

Stats. Implemented: ORS 471.282
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-005-0417

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

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

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

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

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

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(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, 471.030, 471.040, 471.186 & 471.730(1) & (5)

Stats. Implemented: ORS 471.155, 471.186 & 471.282

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

845-005-0420

Qualifications for Same-Day and Next-Day Retail Delivery of Malt Beverages to a Resident of Oregon

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

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

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

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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, 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.

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(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, 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) Any information required by the Commission to establish that the applicant holds a valid license authorizing 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, 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; OLCC 11-2011, f. 12-6-11, cert. ef. 1-1-12

845-005-0426

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

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

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

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

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

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

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

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

(2) 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, 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, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.402
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03

845-005-0428

Retail On-Premises Distilled Spirits Sampling Involving Distillery Representative

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

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

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

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

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

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

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

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

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

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

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

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

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

customer per day. For purposes of this rule, a day is from 7:00 a.m. until 2:30 a.m. on the succeeding calendar day.

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

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

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

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

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

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

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

Stats. Implemented: ORS 471.398

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

OLCC 3-2001(Temp), f. & cert. ef. 8-10-01 thru 2-6-02; OLCC 3-2002, f. & cert. ef. 2-15-02; OLCC 7-2005, f. 10-19-05, cert. ef. 11-1-05; OLCC 5-2011, f. 8-15-11, cert. ef. 9-1-11

845-005-0431

Qualifications for Distilled Liquor Tastings Provided by Oregon Distillery Licensee

ORS 471.230 allows an Oregon distillery licensee to provide tastings of distilled liquor manufactured by the distillery licensee for consumption on the distillery

licensee's premises and on no more than five other premises owned or leased by the distillery licensee. This rule sets the qualifications to obtain approval to provide these tastings.

(1) Definitions.

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

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

(c) "Other premises owned or leased by the distillery licensee" means any other licensed location that is owned or leased by the distillery licensee and separate from its annually licensed location. To qualify under this definition, the distillery licensee must provide proof of ownership or a written contract entitling it to exclusive use and possession of the other location.

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

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

(2) A distillery licensee providing tastings of distilled liquor on its annually licensed premises and on no more than five other premises owned or leased by the distillery licensee must follow this rule and may only offer tastings of distilled liquor in accordance with the requirements of OAR 845-006-0452.

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

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

(5) A distillery licensee providing tastings of distilled liquor on a full on-premises licensed premises that

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is other than the distillery licensee's full on-premises licensed premises is subject to OAR 845-005-0428 and is not subject to this rule.

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

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

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

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

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

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

(9) Application for tastings on no more than five other premises owned or leased by the distillery licensee. A distillery licensee who intends to provide the service of distilled liquor tastings on no more than five other premises owned or leased by the distillery licensee must make application to the Commission upon forms to be furnished by the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. After the

Commission has given its approval for the tastings, the distillery licensee must re-apply if it changes its identified tasting area. The application shall include:

(a) All of the items required in subsections (8)(a)–(c) of this rule; and

(b) Proof of ownership or a written contract that entitles the distillery licensee to exclusive use and possession of the other premises

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

(11) The Commission may refuse to process any application required under this rule if the application is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

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

Stats. Implemented: ORS 471.230

Hist.: OLCC 11-2009, f. 8-26-09 cert. ef. 11-1-09;
OLCC 2-2014, f. 2-11-14, cert. ef. 3-1-14

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

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

(c) "License day" means from 7:00 am until 2:30 am

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on the succeeding calendar day. The license fee is \$50 per license day or for any part of a license day.

(d) “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.

(e) “Serious violation history” means:

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

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

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

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

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

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

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

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

or

(c) An agency of the State; or

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

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

(4) A Temporary Sales License may authorize the licensee to sell wine, malt beverages and cider at retail for consumption on the licensed premises and for consumption off the licensed premises. All wine, malt beverages and cider sold for consumption off the licensed premises must be in either:

(a) Manufacturer-sealed containers that do not hold more than two and one-quarter gallons each; or

(b) Securely covered containers provided by the consumer that do not hold more than two gallons each.

(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) 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.

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

(a) A written, dated, and signed plan. An application is not complete if this plan is not approved by the Commission. To approve a plan, the Commission must determine that the plan adequately manages:

(A) The event to prevent problems and violations;

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

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- (C) Alcohol consumption by adults.
 - (b) Identification of the individuals to be employed by the licensee to manage events on the licensed premises;
 - (c) Identification of the premises proposed to be licensed;
 - (d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;
 - (e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;
 - (f) The recommendation in writing of the local governing body where the licensed premises will be located;
 - (g) License fees as established by ORS 471.311.
- (8) A plan for managing patronage by minors under subsection (7)(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.
- (9) 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.
- (10) Minimum Age of Servers. Alcohol servers at temporary sales licensed locations must be at least 21 years of age to sell or serve alcoholic beverages, with the following exceptions:
- (a) In areas of the licensed premises not prohibited to minors, persons who are 18, 19, and 20 years of age may:
 - (A) Take orders for, serve and sell alcoholic beverages for on-premises consumption if the activity is incidental to the selling or serving of food in that area of the licensed premises, and may sell alcoholic beverages in manufacturer-sealed containers for off-premises consumption; or
 - (B) Sell tokens/script, including verifying age, to be redeemed for alcoholic beverages or food at the event.
 - (b) In areas of the licensed premises prohibited to minors, persons who are 18, 19, and 20 years of age may deliver food, restock non-alcohol supplies and perform other non-alcohol related duties, however the person shall not remain in the prohibited area longer than is necessary to perform these duties.
- (11) Alcohol servers at locations licensed under subsections (3)(b)–(c) 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)–(c) 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

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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 (7)(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, ORS 471.030, 471.040,
471.190 & 471.730(1) & (5)

Stats. Implemented: ORS 471.190, 471.360 &
471.482

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 4-2001(Temp), f. & cert. ef. 8-15-01 thru
2-11-02; OLCC 13-2001, f. 12-18-01, cert. ef. 2-12-
02; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02;
OLCC 24-2007, f. 12-17-07, cert. ef. 1-1-08; OLCC
17-2010, f. 12-22-10, cert. ef. 1-1-11; OLCC 9-2012,
f. 10-30-12, cert. ef. 11-1-12; OLCC 8-2013(Temp),
f. 9-17-13, cert. ef. 10-1-13 thru 3-30-14; OLCC
1-2014, f. 2-11-14, cert. ef. 3-1-14

845-005-0445

Temporary Authority

(1) ORS 471.302 and 471.297 allow the Commission to give certain applicants the authority to sell and serve alcoholic beverages while the Commission determines the applicant's eligibility. Temporary authorities to operate are not to exceed 90 days, unless an extension of up to an additional 30 days is granted under section (2) of this rule. The Commission may refuse to grant this temporary authority to operate when the Commission has reasonable basis to believe that the applicant may not be eligible for a license under ORS Chapter 471 and the Commission's Administrative Rules, OAR chapter 845.

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

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

(b) An extension of time is necessary for the agency to complete its investigation or processing of the application. An extension of the temporary authority will not be granted if the sole basis is the applicant's

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failure to provide timely documentation which was requested pursuant to OAR 845-005-0315.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1)
& (5)
Stats. Implemented: ORS 471.302 & 471.297
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 23-2003(Temp), f. 12-16-03, cert. ef. 1-1-04
thru 6-28-04; OLCC 6-2004, f. 5-19-04, cert. ef.
6-29-04

845-005-0450

Standards for Authority to Operate a Licensed Business as a Trustee, a Receiver, a Personal Representative or a Secured Party

(1) ORS 471.292(2)(b) and (c) allow the Commission to issue a temporary authority to operate a licensed business to a trustee, the receiver of an insolvent or bankrupt licensed business, the personal representative of a deceased licensee, or a person holding a security interest in the business. The purpose of this authority is to provide for the operation of the licensed business for a reasonable period of time to allow orderly disposition of the business.

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

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

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

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

(A) Proof of a security interest in the licensed business;

(B) Proof of the licensee's default on the secured debt;

(C) Proof of legal access to the real property; and

(D) A written request for authority to operate as a secured party listing the secured party's address and telephone number.

(2) The Commission may revoke or refuse to issue or extend authority for the trustee, receiver, personal

representative, or secured party to operate:

(a) If the trustee, receiver, personal representative or secured party does not propose to operate the business immediately or does not begin to operate the business immediately upon receiving the temporary authority;

(b) For any of the reasons that the Commission may revoke or refuse to issue or renew a license;

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

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

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

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

Stat. Auth.: ORS 471, 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 7
ADVERTISING**

845-007-0005

Purpose and Application of Rules

(1) The Commission serves the interests of the citizens of Oregon by regulating alcoholic beverage advertising for these purposes:

(a) To minimize health or safety problems caused by the misuse of alcoholic beverages;

(b) To encourage moderation in the use of alcoholic beverages;

(c) To discourage the appeal of alcoholic beverages to minors;

(d) To ensure accurate presentation of the product;

(e) To ensure compliance with all laws relating to alcoholic beverages.

(2) The Commission also serves the interests of Oregonians by allowing competitive advertising for the purpose of informing the public of the availability and characteristics of alcoholic beverages.

(3) All alcoholic beverage advertising any licensee uses must conform to these rules. Prior approval of advertising material is not normally required. The Commission may, however, require a licensee who fails to comply with these rules to submit all advertising material for prior approval for a reasonable period specified by the Commission.

Stat. Auth.: ORS 471 & 472, 471.030, 471.730(1), 471.730(5), 472.030, 472.060(1) & 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) "Coupon" or "rebate coupon" means any coupon, ticket, certificate token or any other material that a person may use to obtain a price reduction or rebate in connection with alcoholic beverages. This definition applies whether the coupon requires a purchase or not.

(4) "Handbill" is a flyer, leaflet, or sheet that advertises alcoholic beverages.

(5) "Point of sale" item is a display, sign, or other material that advertises alcoholic beverages at a licensed premises.

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

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0086; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90; OLCC 9-2010, f. 8-23-10, cert. ef. 9-1-10

845-007-0015

Advertising Media, Coupons

(1) The Commission prohibits advertising through:

(a) Handbills that are posted or passed out in public areas such as parking lots and publicly owned property; and

(b) Point of sale items on premises where the advertised product is not sold.

(2) The Commission may prohibit advertising through additional media consistent with the objectives in OAR 845-007-0005.

(3) The Commission allows manufacturers to give consumer rebates coupons on malt beverages, wine and cider. Progressive-type coupons which provide a larger rebate when progressively more alcohol is purchased are permitted. An example of this would be a rebate that offers \$5 for the purchase of one six-pack/bottle but \$12 for two. All advertising associated with rebate coupons must comply with applicable state and federal law and regulations. The manufacturer

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must furnish rebate coupons to all licensees carrying the product for off-premises consumption. The manufacturer is responsible for the redemption of rebate coupons. No retail licensee may receive any money or similar benefit from a manufacturer for the redemption of any coupons. All rebate coupons offered by manufacturers in the State of Oregon must meet the following requirements:

- (a) Coupons must be redeemable only by mail, except that a manufacturer may offer instantly redeemable coupons for products sold to consumers under the manufacturer's retail privileges at the manufacturer's licensed premises;
- (b) Coupons must bear an expiration date;
- (c) Manufacturers must require proof of purchase;
- (d) Coupons must be valid only for adults of legal drinking age.
- (4) The Commission may require withdrawal of the rebate coupon if the manufacturer does not comply with the conditions of the rebate coupon or Commission rules.
- (5) The Commission allows manufacturers to offer cross promotional rebate coupons that provide a discount or rebate on food, non-alcoholic beverages or non-food items with or without the purchase of an alcoholic beverage product (for example, \$1.00 off tortilla chips with the purchase of a six-pack of Corona beer). Such coupons may be offered for generic or branded products (for example, hot dogs or Armour hot dogs) but may not be limited to exclusive store brands or products. All manufacturer issued cross promotional coupons must comply with the requirements in section (3) of this rule.
- (6) The Commission allows retailers to issue coupons on alcoholic beverages provided that the retailer bears all costs associated with the redemption of the coupon and receives no payment from any manufacturer. Examples of retailer issued coupons could include rain checks issued by a retailer that allow a customer to get the advertised price of an alcoholic beverage product when a product is temporarily out of stock, coupons or certificates that provide a discount on meals including alcohol to be consumed at a licensed premises, coupons that provide a discount on any products the retailer sells such as 10% off of a bill of \$50 or more, and customer loyalty programs such as club cards or frequent customer discount cards. Retailer issued coupons may be instantly redeemable or mail-in. The retail licensee must pay for all discounts on alcoholic beverages provided under retailer issued

coupons.

(7) Use of coupons must conform with the principles of OAR 845-013-0001. A licensee who violates any section of this rule commits a Category IV violation under the Commission's sanction schedule (OAR 845-006-0500).

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

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; LCC 7-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0091; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 6-1998, f. 5-21-98, cert. ef. 6-1-98; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 2-2004, f. 2-17-04, cert. ef. 6-1-04; OLCC 15-2006, f. 10-19-06, cert. ef. 11-1-06; OLCC 26-2007, f. 12-17-07, cert. ef. 1-1-08; OLCC 9-2010, f. 8-23-10, cert. ef. 9-1-10

845-007-0020 Restrictions

- (1) The Commission prohibits advertising if it contains:
 - (a) False or misleading information;
 - (b) Claims that the alcoholic beverage has curative or therapeutic effects;
 - (c) Claims that any government agency endorses or supports the alcoholic beverage;
 - (d) The requirement of purchasing an alcoholic beverage in order to receive a prize or merchandise unless the manufacturer or wholesaler donates the prize or merchandise to a charitable cause or community non-profit entity;
 - (e) Material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages;
 - (f) A person displayed drinking an alcoholic beverage;
 - (g) Material that encourages the use of an alcoholic beverage because of its intoxicating effect;
 - (h) Statements or illustrations that an alcoholic beverage causes athletic or artistic success;
 - (i) Material that encourages excessive or rapid consumption.

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(2) The Commission prohibits any advertising of the promotional practices that are prohibited under OAR 845-006-0345(10).

(3) Outside the licensed premises, the Commission prohibits advertising of an alcoholic beverage for on-premises consumption if that advertising contains both a specified limited time period when a price or discount is available and either the price of the alcoholic beverage, or a specified dollar amount or percentage discount on the alcoholic beverage. Examples of specified limited time periods could include terms that reference a time of day such as “night” or “hour”, a day of the week such as “Thursdays”, a specific date such as “St. Patrick’s Day”, or similar terms.

(a) Examples of advertising that is prohibited under this section include: \$2.00 draft beer on Fridays, \$4.50 well drinks 4:00–6:00 p.m., \$1.00 off draft beer on Thursdays, half price gin and tonics 6:00–9:00 p.m., or ladies night margaritas \$4.00.

(b) Advertising the regular price of an alcoholic beverage outside the licensed premises, such as on a menu in the window or on a website, is allowed as long as there is no mention of a specified limited time period for those prices. Advertising that uses terms such as “happy hour” is also allowed as long as there is no mention of an alcoholic beverage’s price or discount.

(4) Outside the licensed premises, the Commission prohibits advertising of an alcoholic beverage for on-premises consumption where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as “two for the price of one”, “buy one — get one free”, or “two for \$_____”.

(5) Advertising is considered “outside the licensed premises” if the advertising is visible or audible from the outside, including advertising on a website or on a telephone answering machine recording. Responding via email or telephone to a question from a member of the public is not considered advertising and thus is allowed.

(6) The Commission prohibits advertising that violates OAR 845-015-0130 (Advertising a retail liquor store).

(7) The Commission prohibits manufacturers and wholesalers from giving retailers point-of-sale items and advertising that the financial assistance laws prohibit (ORS 471.398 and 471.400 and OAR 845-013-0050).

Stat. Auth.: ORS 471, 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0096; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 16-1989, f. 12-14-89, cert. ef. 1-1-90; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 4-2010, f. 4-19-10, cert. ef. 5-1-10

845-007-0035

Removal of Objectionable and Non-Conforming Advertising

(1) Licensees and retail sales agents must remove any sign, display, or advertisement if the Commission finds it violates these rules.

(2) The Commission will specify a reasonable time period in which to remove the objectionable advertisements.

Stat. Auth.: ORS 471 & 472, including 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 7
PRIVILEGE TAX**

845-008-0050

Tax Reporting and Tax Liability

All wineries must file tax statements with the Commission which include the quantity of wine produced, purchased or received during the calendar year. This rule explains the criteria to qualify as an annual reporter as well as the reporting requirements for both annual and monthly reporters.

(1) Annual Reporting Eligibility and Requirements.

(a) A winery is eligible to file a single annual tax statement for any particular calendar year if the winery either:

(A) Was not liable for any privilege tax in the prior calendar year and does not expect to be liable for any privilege tax in the current calendar year; or

(B) The winery is in its first calendar year of operation and does not expect to be liable for any privilege tax in the current calendar year.

(b) A winery that files annual tax statements must:

(A) Submit the statement and all required tax schedules for a given calendar year by January 20 of the following year;

(B) Submit a tax statement that shows the total amount of wine removed from federal bond during the calendar year preceding the reporting date as well as any exemptions being claimed for wine that was removed from bond;

(C) Submit by the January 20 reporting date any tax owed on wine removed from bond during a calendar year and not subject to exemption; and

(D) Submit an annual tax statement and supporting schedules by the due date even if the winery did not remove any wine from federal bond or the winery is claiming exemptions for all of the wine it removed from bond.

(c) If a winery discovers during the calendar year that it will owe tax, it no longer qualifies for annual

filing and must begin monthly filing on the 20th of the following month. The month when monthly filing begins is also the catch-up month when any tax owed year-to-date must be submitted to the Commission.

(d) Failure to file a tax statement and supporting schedules or to pay tax owed by the January 20 due date may result in the assessment of penalties and interest as set forth in OAR 845-008-0080.

(2) Monthly Reporting Requirements.

(a) A winery that does not qualify for annual reporting must file a monthly tax statement. If a winery knows or reasonably should know that it will have a tax liability in the current calendar year, it must report monthly.

(b) A winery that files monthly tax statements must:

(A) Submit the statement and all required tax schedules by the 20th of each month for the preceding calendar month;

(B) Submit a tax statement that shows the total amount of wine removed from federal bond during the calendar month preceding the reporting date as well as any exemptions being claimed for wine that was removed from bond;

(C) Submit any tax owed on wine removed from bond during a calendar month and not subject to exemption by the monthly reporting date; and

(D) Submit a monthly tax statement and supporting schedules by the due date even if the winery did not remove any wine from federal bond or the winery is claiming exemptions for all of the wine it removed from bond.

(c) Failure to file a tax statement and supporting schedules or to pay tax owed by the monthly due date may result in the assessment of penalties and interest as set forth in OAR 845-008-0080.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3) & (5), & 473.020

Stats. Implemented: ORS 473.060 & 473.070

Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

845-008-0060

Small Winery Exemption

ORS 473.050(5) provides that no tax shall be levied, collected or imposed upon the first 40,000 gallons of

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wine sold annually in Oregon from a United States manufacturer of wine producing less than 100,000 gallons annually. This rule explains the criteria to qualify for this small winery exemption.

(1) A winery qualifies to take the small winery exemption if the winery produces less than 100,000 gallons of wine during the calendar year in which the exemption is claimed. A winery's total production for the year is measured by the volume of wine produced by fermentation as reported to the Alcohol and Tobacco Tax and Trade Bureau (TTB) for the calendar year. Wine is considered produced for Oregon tax purposes when fermentation is completed or the wine is removed from the fermentor.

(2) The winery claiming the small winery exemption must hold a federal basic permit to produce wine and must have produced a minimum of 1 gallon of wine in the calendar year that the exemption is taken. A winery that holds a federal basic permit to produce wine but does not produce any wine during a calendar year may not take the small winery exemption on any wine it removed from federal bond during that calendar year.

(3) A winery may exempt no more than 40,000 gallons of wine under this exemption during a calendar year. While eligibility for the small winery exemption is based on the current year's wine production (less than 100,000 gallons), the exemption itself (no more than 40,000 gallons combined total) can be taken on any wine removed from bond during the year regardless of the year it was produced.

(4) A winery may claim the small winery exemption for wine that it removes from federal bond and intends, at the time of removal, to sell in Oregon. The exemption may be taken at the time of removal if the winery intends in good faith to sell the wine in Oregon. Wine qualifies as being sold in Oregon if ownership of the wine is, or is expected to be, transferred to a person or entity located within this state.

(5) The winery claiming the small winery exemption must have removed the exempt wine from federal bond. No exemption is available for wine that was not removed from bond by the winery claiming the exemption, such as wine that the winery received or imported federally tax-paid, or wine that the winery has transferred to another entity in bond.

(6) The Commission will deny the small winery exemption if it determines that allowance of the exemption would benefit a winery who would otherwise fail to qualify for use of the exemption.

(7) Wine that is claimed as exempt under the small winery exemption may not be claimed as exempt from tax under any other provisions of ORS 473.

(8) A bonded winery or warehouse may claim the small winery exemption on behalf of an eligible small winery for wine that the winery or warehouse receives from the transferring small winery and removes from bond, provided that all of the following requirements are met:

(a) The wine on which the exemption is claimed must have been produced by the small winery that transfers the exemption and must be eligible for exemption if it were to have been removed from bond by the transferring winery. The exemption may not be transferred on wine that the transferring winery received from another producer.

(b) The winery or warehouse taking the exemption on behalf of the transferring winery must remove the wine from bond.

(c) The transferring winery must hold title to the wine for which the exemption is transferred at the time the wine is removed from bond.

(d) The total amount of the exemption that may be claimed by a winery or warehouse on behalf of a small winery in any calendar year may not exceed 40,000 gallons minus all amounts claimed under the small winery exemption by the transferring small winery or by others on its behalf for that year. The transferring winery must provide to the transferee all information necessary for the transferee to determine the amount of exemption it may claim.

Stats Auth: ORS 471 & 473, 471.030, 471.730(1), (3)
& (5), & 473.020

Stats implemented: ORS 473.050
Hist.: OLCC 13-2008, f. 12-17-08, cert. ef. 12-20-08;
Renumbered from 845-010-0154 by OLCC 19-2010,
f. 12-22-10, cert. ef. 1-1-11

845-008-0070 Export Exemption

ORS 473.050(2) provides that no tax shall be levied, collected or imposed upon any wine exported from the state. This rule explains the criteria to qualify for this export exemption.

(1) The export exemption can be used to recover taxes already paid to the Commission or to offset a current tax liability.

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(2) A winery may claim the export exemption for wine that it removes from federal bond and exports from the state. The exemption may be taken at the time of removal if the winery intends in good faith to export the wine. Wine qualifies as being exported if the wine is, or is expected to be, transported to a location outside of Oregon. All export exemptions must be supported by proof of export such as a bill of lading or other shipping documentation.

(3) Wine that is claimed as exempt under the small winery exemption may not be claimed as exempt from tax under the export exemption.

(4) A winery may claim a refund for wine on which tax was paid to the Commission in a prior period if the wine is subsequently exported from the state. No refund will be issued if no tax was paid by the winery to the Commission on the wine being exported. No refund may be claimed on wine that was previously exempted from tax.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3)
& (5), & 473.020

Stats. Implemented: ORS 473.050 & 473.060
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

845-008-0080

Penalties and Interest

This rule describes the penalties and interest that may be assessed on a winery's outstanding tax liability.

(1) Unless waived, the Commission will assess a penalty of 10% and interest at the rate of 1% per month on any tax that is not paid on the due date as specified in OAR 845-008-0050(1)(d) or (2)(c).

(2) ORS 473.060(2) provides that the Commission may waive any interest or penalty assessed on unpaid taxes if the Commission determines that the winery has made a good faith effort to comply with the privilege tax requirements set forth in ORS Chapter 473, OAR chapter 845 division 8, 845-010-0151, and 845-010-0170.

(3) Failure to file any tax statement and supporting schedules by the due date is a Category IV violation. Failure to file an accurate and complete tax statement and supporting schedules by the due date may result in the assessment of penalties and interest on any outstanding tax liability.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3)
& (5), & 473.020

Stats. Implemented: ORS 473.060 & 473.140
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

845-008-0090

Refunds

ORS 473.060(1) provides that the Commission may refund any tax payment imposed upon or paid in error by a winery. This rule explains the criteria for the refund process.

(1) A refund is the Commission returning money to the winery for over-paid taxes. It is distinguished from a credit, which is also for over-paid taxes but is used to offset a new tax liability.

(2) Refunds of privilege tax paid in a prior reporting period will be issued upon a written request with proper documentation showing that the tax was paid in error or that an exemption applies to wine on which tax was previously paid to the Commission. A refund will be issued only to the entity that previously paid the tax for which the refund is being claimed.

(3) If the refund request is for an amount over \$1,000 an audit may be required before a refund will be issued.

(4) If at audit it is determined that a refund was issued in error and there is in fact an outstanding tax liability, then penalties and interest may be assessed.

Stat. Auth.: ORS 471 & 473, 471.030, 471.730(1), (3)
& (5), & 473.020

Stats. Implemented: ORS 473.060
Hist.: OLCC 19-2010, f. 12-22-10, cert. ef. 1-1-11

**DIVISION 9
SERVICE PERMITS**

845-009-0005

Return of Applications

All wineries must file tax statements with the 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 a valid service permit for any person employed by a licensee who performs the following duties:

(a) Mixes, sells or serves alcoholic beverages for consumption on licensed premises;

(b) Dispenses malt beverages, wines or cider into securely covered containers provided by the consumer;

(c) Directly supervises persons described in subsection (a) of this rule; or

(d) The individual principals of a licensed legal entity who perform the duties described in subsections (a), (b) or (c) of this rule.

(2) Exceptions. The following persons are not required to have a valid service permit:

(a) An individual named on the license as a licensee;

(b) ORS 471.360(2) 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), but it 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 the holder of some temporary licenses (see OAR 845-005-0440(12) & (13) Temporary Sales Licenses).

(c) Under ORS 471.190, employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization with a temporary sales license are not required to have service permits (see OAR 845-005-0440(13) Temporary Sales Licenses).

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(3) Authority to Mix, Sell or Serve Based on an Application. ORS 471.375 allows some service permit applicants to begin mixing, selling or serving alcoholic beverages after the applicant completes an official service permit application and an authorized person as defined under ORS 471.375 indorses and sends the application to the Commission. This authority does not apply to the following applicants:

(a) Any applicant whose service permit application was refused or whose service permit was revoked within three years of the date the Commission received the current application;

(b) Any applicant whose service permit application was refused because he or she failed to complete the required alcohol server education course and/or pass the required exam. To mix, serve or sell alcoholic beverages, the applicant must first complete all server education requirements;

(c) Any applicant whose service permit application was returned under OAR 845-009-0005 Return of Applications; or

(d) Any applicant whose service permit is currently suspended.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.190 & 471.730(1) & (5)

Stats. Implemented: ORS 471.190, 471.360, 471.365(2) & 471.375

Hist.: OLCC 2-1989, f. 3-1-89, cert. ef. 4-1-89; OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 4-2005, f. 6-7-05, cert. ef. 7-1-05; OLCC 17-2010, f. 12-22-10, cert. ef. 1-1-11; OLCC 3-2013(Temp), f. & cert. ef. 5-10-13 thru 11-6-13; OLCC 9-2013, f. 10-30-13, cert. ef. 11-1-13

845-009-0015

Licensee and Authorized Person's Responsibility for Verifying Identification

(1) Before allowing anyone who is required to have a service permit under ORS 471.360 to perform the duties described in OAR 845-009-0010(1), 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 valid service permit, but he or she is eligible to mix, sell or serve alcoholic beverages based on an application under OAR 845-009-0010(3), the following rules apply:

(a) If the person has submitted an application with the Commission, the licensee must, before allowing the person to mix, sell or serve alcoholic beverages:

(A) Verify that the person has a pending application (for example, see a copy of the submitted service permit application);

(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.

(b) If the person has not submitted an application with the Commission, the licensee must, before allowing the person to mix, sell or serve alcoholic beverages:

(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.

(c) After the application is submitted, the licensee has a continuing duty to verify that the person has taken and passed an alcohol server education course and that the person's service permit has been issued.

(3) All other persons authorized to indorse applications under ORS 471.375 must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission within 36 hours of indorsement. Holidays and weekends are not included in counting the 36 hours.

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(4) If a company authorized to indorse applications under ORS 471.375(2)(b) fails to comply with subsection (3) of this rule, the Commission will rescind its 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; OLCC 3-2013(Temp), f. & cert. ef. 5-10-13 thru 11-6-13; OLCC 9-2013, f. 10-30-13, cert. ef. 11-1-13

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 (DUI) convictions or diversions (OAR 845-009-0020(6)); or

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

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

(4) Felony Drug Conviction:

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

(A) A felony conviction within 12 months for possession of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions;

(B) A felony conviction within two years for manufacture, delivery or distribution of a controlled substance or any other drug related felony as described in ORS Chapter 475 or similar laws in other jurisdictions (except possession of a controlled substance).

(C) Two controlled substance felony convictions, one of which was within three years;

(D) Three or more controlled substance felony convictions, any one of which was within six years.

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

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

(B) He/she has successfully completed a state certified drug treatment program or is actively involved in a state certified drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(C) He/she has completed all parole or probation requirements.

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

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

(A) A felony conviction within two years for the commission of a violent crime where alcohol or controlled substances were involved;

(B) Two felony convictions for the commission of

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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

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(C) He/she has completed all parole or probation requirements.

(8) Habit of Using to Excess. The Commission will deny a service permit if within ten years the applicant has had a combination of four or more diversions or convictions for DUII or felony drug related convictions or diversions, if the most recent conviction/ diversion was within two years. The only good cause to overcome the criterion in this section is the applicant's sworn statement on a Commission-supplied form that:

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

(b) He/she has successfully completed a state certified alcohol or drug treatment program or is actively involved in a state certified alcohol or drug treatment or recovery program, and is following treatment recommendations. If a completion certificate or other proof that the applicant successfully completed a treatment program is available, the applicant will provide a copy to the Commission; and

(c) He/she has completed all parole or probation requirements.

(9) Pending Charges. If otherwise eligible, the Commission may grant a service permit to an applicant who has any drug/alcohol related charges pending on the date the Commission receives the application. The Commission will issue the permit with a restriction that the permittee must notify the Commission, in writing, of the disposition of the charge(s).

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

Stats. Implemented: ORS 471.380

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

845-009-0075 Licensee Requirements

(1) ORS 471.542 requires applicants to complete an approved alcohol server education course to qualify or requalify for certain licenses. After an applicant completes an approved alcohol server education course and passes the exam, the applicant has met the alcohol server education requirement for any license issued within five years from the completion date.

The licensee must again complete an approved course and pass the exam before the Commission will issue any license for a licensing period that begins after the date this five year period expires.

(2) When the Commission issues a license in the name of a corporation, limited partnership or business entity other than individual persons, the licensee must designate a person or persons (depending on business structure) to take the course and pass the exam on the licensee's behalf. The designee must have the authority to set, implement or change the licensee's practices for selling and serving alcoholic beverages. The licensee may change its designee. If the designee no longer qualifies to act on the licensee's behalf, the licensee must appoint a new designee within 20 days. The licensee must give the Commission written notification within ten days of the appointment. The new designee must take the course and pass the exam within 45 days of appointment.

(3) A license applicant must include the alcohol server education administrative fee with each initial application and with each renewal application. The alcohol server education administrative fee for annual licenses is \$2.60.

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

Stats. Implemented: ORS 471.542

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

845-009-0080 Extensions and Exemptions

(1) ORS 471.542 allows the Commission:

(a) To extend the time limit for completing the course and passing the exam for hardship reasons; and

(b) To exempt licensees who do not participate in the management of the business.

(2) The Commission may grant an extension to an applicant or licensee for a length of time less than the licensing period but no more than 360 days if:

(a) An applicant or licensee is seriously ill or injured;

(b) A member of an applicant or licensee's family is seriously ill, injured or has died;

(c) There is no course available within 100 miles of an applicant or licensee residence;

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(d) The Commission approved the applicant as a security interest holder within 30 days before the license expiration; or

(e) An applicant or licensee shows other good cause to grant a hardship extension.

(3) The Commission may exempt an applicant or licensee who:

(a) Does not participate in the sale or service of alcoholic beverages;

(b) Does not participate in setting, implementing or changing the business alcoholic beverage sales or service practices; and

(c) Has a co-licensee or manager who meets the alcohol server education requirement.

(4) An applicant or licensee must send the Commission a written request for an extension or exemption that explains the reason for the request. Requests for extensions should include the amount of time needed. The Commission will notify the applicant or licensee in writing of its approval or denial. Extension approval notices will include the length of the extension.

(5) The Commission may deny, cancel or suspend the license:

(a) If the applicant or licensee fails to complete an approved alcohol server education course and pass the exam by the date the extension expires; or

(b) If the licensee fails to complete an approved alcohol server education course and pass the exam within 45 days of the date the exemption no longer applies.

(6) If the applicant or licensee requests a contested case hearing:

(a) The Commission will not deny, cancel or suspend the license if the applicant or licensee completes an approved alcohol server education course before the hearing;

(b) The Hearing Referee will consider whether the length of the extension the Commission granted was appropriate if the extension granted was less than the applicant or licensee requested.

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

Stats. Implemented: ORS 471.542

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

845-009-0085

The Examination (Licensees and License Applicants)

(1) A passing grade on the exam is 70 percent.

(2) After the license applicant or licensee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A license applicant or licensee who does not pass this exam may retake the exam at a Commission field office up to two times within 90 days of the date the license applicant or licensee took the course. If he/she does not take and pass the exam as this section requires, he/she must complete a course again and pass the exam before the Commission will issue or renew his/her license.

(4) The license applicant or licensee must pay a \$5 fee to retake the exam. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

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

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86;
OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991,
f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-

016-0125; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01,
Renumbered from 845-005-0215

**Alcohol Server Education Program Service
Permittee Requirements**

845-009-0100

Service Permittee Requirements

(1) The Commission may not issue or renew a service permit unless the applicant or permittee has complied with the requirements of ORS 471.542 and Commission rules related to the completion of an approved alcohol server education course.

(2) An applicant:

(a) May take the course and pass the exam anytime within two years before the date the Commission receives the person's completed service permit application; or

(b) Must take the course and pass the exam no later than 45 days after the Commission receives the person's completed service permit application. The Commission will deny the application if the applicant has not completed the course and passed the exam within the 45 day limit unless the Commission has approved a hardship extension as described in Sections (3) and (4) of this rule.

(3) ORS 471.542(3) allows the Commission to extend the time limit for completing the course and passing the exam for hardship reasons. The only hardship extensions the Commission will approve are ones for applicants:

(a) Living in counties with a population under 100,000; and

(b) Who demonstrate in writing unusual circumstances beyond the applicant's ability to control or prevent that keep the applicant from completing the course and exam within 45 days.

(4) A hardship extension may not exceed 75 days from the date the Commission received the applicant's completed service permit application. An applicant must submit an extension request within 45 days from the date the Commission received the application. The request must include:

(a) The name of the county that the applicant lives in, and a statement that the population of the county is under 100,000; and

(b) A detailed description of the unusual circumstances that keep the applicant from completing the course and exam within 45 days; the description must demonstrate that the circumstances are beyond the

applicant's ability to control or prevent. The applicant must also include the amount of time needed, and the time requested may not exceed 75 days from the date the Commission received the person's completed service permit application. The Commission will notify the applicant in writing of its approval or denial; an approval will include the length of the hardship extension.

(5) A service permittee:

(a) May complete the course and exam anytime within two years before his/her service permit expires to qualify for renewal; or

(b) May complete the course and exam at anytime and apply for a new service permit.

(6) A service permit applicant must include \$13 alcohol server education administrative fee with the service permit application. An application that does not include this administrative fee is incomplete. The Commission may return the application. The applicant must also include the \$10 service permit application fee.

(7) Sections (3) and (4) apply to all completed service permit applications received by the Commission on or after March 1, 1999. The rest of the rule applies to all completed service permit applications received by the Commission.

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

Stats. Implemented: ORS 471.542 & 471.547
Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 7-1988, f. 9-13-88, cert. ef. 10-1-88; OLCC 8-1988(Temp), f. 11-8-88, cert. ef. 12-1-88; OLCC 5-1989, f. 5-24-89, cert. ef. 5-29-89; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0110; OLCC 1-1999, f. 1-25-99, cert. ef. 3-1-99; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-009-0105

The Examination (Service Permittees and Service Permit Applicants)

(1) A passing grade on the exam is 70 percent.

(2) After the service permit applicant or permittee takes the course and exam, the Commission will give him/her the examination results in writing.

(3) A service permit applicant, who does not pass

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

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86; OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0120; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-009-0110 Oral Option

An applicant or permittee may take the exam either in writing or orally at the completion of the course. He/she may also take the retake exams either in writing or orally. The applicant or permittee must make arrangements with the provider or field office for an oral exam.

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

Stats. Implemented: ORS 471.542

Hist.: LCC 31-1986(Temp), f. 12-1-86, ef. 12-8-86;

OLCC 17-1987, f. 4-30-87, ef. 5-1-87; OLCC 5-1991, f. 3-1-91, cert. ef. 4-1-91; Renumbered from 845-016-0125

845-009-0115

Server Education Hearings: Licensees, Service Permittees, and Applicants

(1) If the Commission denies a license or service permit because the applicant, licensee, or permittee fails to meet the alcohol server education requirement, the applicant, licensee, or permittee is entitled to a hearing under the procedures in OAR 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 Requirements for Employees of Off-Premises Sales Licensees

(1) Purpose. The Commission is charged with regulating the sale of alcoholic beverages in a manner that protects the safety and welfare of citizens and ensures that alcoholic beverages are used legally. One way the Commission accomplishes this goal is to require that each employee of an Off-Premises Sales licensee receive training about liquor laws and the consequences of violating those laws. This training requirement is described below.

(2) Training Requirement. Before allowing an employee to sell alcoholic beverages for off-premises consumption, the Off-Premises Sales licensee must do one of the following:

(a) If the employee will sell alcohol in factory-sealed containers for off-premises consumption, but will not dispense alcohol into securely covered containers provided by the consumer for off-premises consumption, the licensee must:

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(A) Provide the employee with training that satisfies the requirements of the Commission-approved training option described in subsection (3)(a) of this rule;

(B) Provide the employee with training that satisfies the requirements of the licensee-provided training option described in subsection (3)(b) of this rule; or

(C) Verify that the employee has satisfied the requirements of the service permit training option described in subsection (3)(c) of this rule.

(b) If the employee will sell alcohol in factory-sealed containers for off-premises consumption and may also dispense alcohol into securely covered containers provided by the consumer for off-premises consumption, the licensee must:

(A) Verify that the employee has a valid service permit; or

(B) Verify that the employee has submitted a valid indorsed service permit application. (See OAR 845-009-0010 and 845-009-0015 to determine indorsed application eligibility and requirements.)

(c) If the employee will only dispense alcohol into securely covered containers provided by the consumer for off-premises consumption, the licensee must:

(A) Verify that the employee has a valid service permit; or

(B) Verify that the employee has submitted a valid indorsed service permit application. (See OAR 845-009-0010 and 845-009-0015 to determine indorsed application eligibility and requirements.)

(3) Training Options. The selected training option must meet the following requirements:

(a) Commission-Approved Training Option. The licensee must verify that the employee has satisfactorily completed a Commission-approved alcohol server education course at the licensee's or employee's expense, or, upon request, the Commission will provide the licensee with complementary training materials that satisfy the training requirement (e.g., a printed training brochure or a training video) and the licensee must ensure that the employee reads or views these materials.

(b) Licensee-Provided Training Option. In lieu of the Commission-approved training option, the licensee may develop and present its own training program. At minimum, the program must clearly communicate

the information contained in the Commission-approved training option materials, which include: Why it is important to avoid selling alcohol to minors and visibly intoxicated persons; How to recognize minors and visibly intoxicated persons; How to check identification; and How to refuse to sell alcohol to minors or visibly intoxicated persons.

(c) Service Permit Training Option. In lieu of the Commission-approved training option and the licensee-provided training option, the licensee may verify that the employee has a valid service permit. (An indorsed application does not satisfy the requirements of this training option.)

(4) Training Records. For each training option, the licensee must retain the following training records and make these records immediately available for inspection upon request by a Commission employee:

(a) Commission-Approved Training Option. If the licensee selected the Commission-approved training option, the licensee must retain a written record of the date and type of training that the employee completed for the duration of his or her employment.

(b) Licensee-Provided Training Option. If the licensee selected the licensee-provided training option, the licensee must retain a written record of the date and type of training that the employee completed for the duration of his or her employment.

(c) Service Permit Training Option. If the licensee selected the service permit training option, the licensee must retain a copy of the employee's valid service permit or a written record of the information printed on that card for the duration of his or her employment.

(d) Employee List. If the original records described in subsections (4)(a), (4)(b) or (4)(c) of this rule are not maintained on the licensed premises, the licensee must maintain a current list of employees on the licensed premises and this list must include the following information: The name of each employee who sells alcoholic beverages for off-premises consumption; The training option selected for each employee; The date the training option was completed; and the date the employee began selling alcoholic beverages.

(5) Violation of this rule is a Category IV violation.

Statutory Authority: ORS 471, 471.030, 471.040,
471.730(1) & (5)
Stats. Implemented: ORS 471.730(1) & (5)
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01;
OLCC 5-2014, f. 5-2-14, cert. ef. 6-1-14

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845-009-0135

Responsible Vendor Program

(1) Purpose. ORS 471.344 requires the Commission to establish a Responsible Vendor Program (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) Application Process. To be eligible for the program, a licensee must hold a liquor license that authorizes the sale of alcoholic beverages at retail. Any eligible 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.

(3) Program Standards. To qualify as a Responsible Vendor, a licensee must:

(a) Train each employee in alcohol sales. For training purposes, an employee is any person whose responsibilities include the sale or service of alcohol. Except for an on-premises employee who has a valid service permit, each employee must:

(A) Before selling alcohol, read and sign the Commission-provided off-premises brochure or, at the licensee's discretion, meet the alternative requirements of OAR 845-009-0130, Training Brochure Requirement for Off-Premises Sales Employees. Licensees must comply with the record keeping requirements of 845-009-0130; and

(B) Within three days of beginning to sell alcohol, receive training that covers at a minimum the topics

listed in Section (4) of this rule. Licensees may train their employees themselves; licensee's trainings do not require Commission approval. Licensees may also choose to use any clerk training course approved by the Commission under OAR 845-009-0145, Clerk Training Courses. Additionally, servers who have not completed a Server Education course must do so within the time required in 845-009-0100, Service Permittee Requirements.

(b) Accept only identification allowed in ORS 471.130.

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(A) A list of valid types of identification which are accepted at the premises;

(B) Directions for properly checking identification, including the requirement to check anyone who appears to be under the age of 26 years. A licensee may have a house policy to check customers who appear to be older than 26 years; and

(C) Consequences for selling alcohol to a minor.

(d) Permanently post signs reminding patrons and employees of the legal requirements for selling alcohol. The signs must include:

(A) A list of valid types of identification which are accepted at the premises;

(B) A notice that anyone who appears to be under the age of 26 years must show valid identification. A licensee may post that their house policy is to check customers who appear to be older than 26 years.

(e) At a minimum, provide four employee trainings spaced at regular intervals within each 12-month period. The licensee must ensure that employees attend the trainings. The licensee must keep a record of each training which includes the date of the training, names of the employees who participated, and a summary of the training. The licensee must produce these training records for inspection by any Commission employee within five business days, excluding weekends and holidays. 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 (4) of this rule.

(f) Have no prior Category I or II violation within the

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last five years for the licensee personally.

(g) Have no aggravating circumstances surrounding a violation for failing to verify the age of a minor or selling alcohol to a minor. For purposes of this rule, aggravating circumstances do not include licensee's personal involvement in the violation. Aggravating circumstances include, but are not limited to, 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.

(4) 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.

(5) 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 (3) of this rule; and
- (b) 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 (4) of this rule or a Commission-approved Alcohol Server Education course within 45 days of official Commission notification of the violation.

(6) 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.

(7) Licensee Removal from Program and Reinstatement. The licensee is removed from the program in the following circumstances:

- (a) For a sale to a minor or failure to properly verify identification by a licensee or employee, if the licensee did not have all of the Responsible Vendor standards, except for the posting requirements in subsection (3) (c) and (3)(d), in place at the time of the violation. The licensee may reapply for the program one year after the violation is ratified.
- (b) For a sale to a minor or failure to properly verify identification by a licensee or employee, if aggravating circumstances (as referenced in subsection (3)(g)) are present. The licensee may reapply for the program in one year.
- (c) For a second sale to a minor or failure to properly verify identification by a licensee personally within a two year period. The licensee may reapply for the program in one year.
- (d) For a Category I or II violation by the licensee personally. 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.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.344 & 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; OLCC 12-2011, f. 12-6-11, cert. ef. 1-1-12

845-009-0140

Age Verification Equipment

(1) As used in this rule: “Retail licensee” and “licensee” mean a retail licensee as defined in ORS 471.392;

(2) In order to qualify for the credit provided under section (3) or (4) of this rule, age verification equipment must meet all of the following standards:

(a) The equipment must trigger an age verification process or the equipment itself must verify the age. In either case, the equipment must indicate to the licensee or employee if the customer is of legal age to purchase alcoholic beverages;

(b) The equipment must have a memory function and must be capable of producing a hard copy printout of the results of any verification transaction within the last seven days, either directly from the equipment or through a computer;

(c) The equipment must be able to perform the age verification function for identification from all states in the United States, via either the equipment reading the identification automatically or manual entry of the information; and

(d) The equipment must have the capacity to be updated or upgraded.

(3) For the first or second violation of ORS 471.410(2) or 845-006-0335(1) in a two-year period, the licensee may choose to purchase age verification equipment in lieu of the standard first level Category III sanction, not to exceed 10 days of the suspension or \$1650 of the civil penalty. The licensee is responsible for paying or serving any portion of the sanction charged in excess of the standard sanction.

(4) For the first or second violation of ORS 471.410(2) or 845-006-0335(1) in a two-year period by a member of the Responsible Vendor Program, the licensee may choose to purchase age verification equipment in lieu of the standard Category III(a) sanction. The licensee is responsible for paying or serving any portion of the sanction charged in excess of the standard sanction.

(5) A licensee may choose this option only one time per license. If the licensee previously purchased equipment, the Commission may allow the licensee to use the purchase of the equipment in lieu of paying up to \$1650 of the civil penalty or serving up to 10 days of the suspension, if the licensee has not previously received this option.

(6) In order to receive the credit under this rule, the

licensee must be using the age verification equipment within the timeframe specified in either the Request to Exercise Age Verification Equipment Option form or a settlement agreement; otherwise the licensee is responsible for the full sanction.

(7) A licensee who has received a credit under this rule for age verification equipment is expected to maintain the equipment in working order and to use the equipment to verify age as OAR 845-006-0335 requires.

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

Stats. Implemented: ORS 471.342

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

OLCC 5-2003, f. 3-31-03 cert. ef. 4-1-03; OLCC

9-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 9-2011, f.

& cert. ef. 11-1-11; OLCC 7-2013, f. 8-28-13, cert. ef.
10-1-13

845-009-0145

Clerk Training Courses

(1) ORS 471.341 requires an Off-Premises Sales clerk to complete a Commission-approved training course if the clerk sold alcohol to a minor or if the clerk failed to properly verify identification of a person who purchased alcohol. The clerk must complete the training within the time specified in this rule as a condition of continuing to make alcohol sales. Based on 471.030, 471.040, and 471.750, the Commission requires a liquor store clerk to complete a Commission-approved training course within the time frames specified in this rule if the clerk sold alcohol to a minor or failed to properly verify identification, and requires a liquor agent to comply with the requirements of this rule if a clerk sold alcohol to a minor or failed to properly verify identification. ORS 471.341 requires the Commission to establish timelines for completing the training and to approve all training courses offered for purposes of this rule. This rule establishes notice requirements and times for completing the training, sets standards and approval procedures for training courses, and sets an administrative fee for the expenses incurred by the Commission.

(2) As used in this rule,

(a) “Clerk,” “Off-Premises Sales clerk,” “liquor store clerk,” or “employee” means an Off-Premises Sales or liquor store employee, corporate officer, manager, or any other person whose job includes selling packaged alcohol, but does not include an individual named on the license or on the liquor agent contract;

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- (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

845-009-0150

Approved Seller Training Programs

(1) ORS 471.410 provides that an employee of a liquor licensee or retail sales agent who has sold, given or otherwise made available alcohol to a minor may receive a reduced criminal penalty if the employee either holds a valid Oregon service permit or has completed a Commission-approved training program. This rule sets the standards and procedures the Commission uses when approving seller training programs and clarifies recordkeeping responsibilities.

(2) As used in this rule,

(a) "Approved seller training program" means a program approved by the Commission for the purposes of ORS 471.410.

(b) "Seller" means an employee of a liquor licensee or retail sales agent who sells or serves alcohol for on or off-premises consumption.

(3) Program Approval Standards and Process. A licensee or liquor agent may offer a Commission-approved seller training program to its employees. The licensee or agent may apply for Commission approval of their own program or use a Commission-approved seller training program from another source.

(a) To obtain Commission approval of a seller training program an applicant must:

(A) Submit a completed application packet provided by the Commission;

(B) Have a program that meets the Commission's Clerk Training Course Minimum Standards (published December 21, 1999, and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR);

(C) Explain in writing how the program will provide written certification of program completion to each seller who completes the training program.

(b) Commission staff will review the application, and will:

(A) Approve a seller training program that meets the requirements in Section (3)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course; or

(B) Return an incomplete application or one that does not meet the requirements of Section (3)(a).

(c) At its discretion, the Commission may periodically

conduct a review of a Commission-approved training program to ensure it still meets the Commission's Clerk Training Course Minimum Standards. To conduct the review, the Commission may ask an approved program to submit copies of all current materials used in the program. If a training program is found to fall below minimum standards then program approval may be withdrawn.

(4) Record Keeping.

(a) The liquor licensee or retail sales agent should provide written certification of program completion to each seller who completes their Commission-approved seller training program.

(b) It is the seller's responsibility to verify that a training program, whether offered by their employer or from another source, has been Commission-approved, and they may do so by contacting the Commission.

(c) It is the seller (employee of the liquor licensee or retail sales agent) who is responsible for keeping their own records regarding completion of an approved training program. The seller should take these records with them from one employer to the next. It will be up to the seller to provide such records in order to receive the reduced criminal penalty available under ORS 471.410.

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

Stats. Implemented: ORS 471.410

Hist.: OLCC 7-2010, f. 6-22-10, cert. ef. 7-1-10

845-009-0200

Uniform Standards for Minor Decoy Operations

(1) Purpose. ORS 471.346 directs the Oregon Liquor Control Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the Commission under 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages. It is the Oregon Liquor Control Commission's intention that decoy operations are to be an impartial test of a licensee or agent's ability and willingness to obey laws on preventing sale or service of alcoholic beverages to minors.

(2) Uniform standards for minors used in minor decoy operations:

(a) The minor must be under 21 years of age; and

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- (b) The minor may not use false identification; and
- (c) The minor must look under the age of 26 years; and

(d) The minor may not lie about their age.

(3) Uniform standards for operations. In cities with populations of 20,000 or more, minor decoy operations must be conducted on either a random or targeted basis.

(a) "Random" decoy operations. Selection of the agent(s) or licensee(s) to be visited will be done using simple random sampling which ensures to the greatest extent possible that each licensee or agent has an equal chance of being selected. The simple random sampling may be performed using a variety of generally accepted simple random sampling tools, such as a random number table, a random number generator, or other method.

(b) "Targeted" minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance problem with the specific licensee or agent that is the target of the operation.

(4) Uniform standards for coordination with law enforcement agencies. The Oregon Liquor Control Commission will coordinate with law enforcement agencies to ensure, to the greatest extent possible, that:

(a) Law enforcement agencies are informed of the Commission's uniform standards for minor decoy operations; and

(b) Law enforcement agencies provide the Commission with copies of their minor decoy policies;

(c) In order for the Commission to process violation cases in a timely manner, law enforcement agencies will be encouraged to provide the Commission with the results of their minor decoy operation(s).

(5) DEFINITIONS: Documented compliance problem. For purposes of this rule, "documented compliance problem" means:

(a) OLCC or Law Enforcement has received one or more documented complaints about an agent, licensee or license applicant alleging one or more of the following occurred at the retail sales agency or on the licensed premises:

(A) Failed to check, or failed to properly check

identification;

(B) Allowed minors in prohibited areas;

(C) Allowed minors to consume alcohol;

(D) Sold alcohol to minors; or

(b) The agent, licensee or license applicant has received one or more citations, or administrative Notice of Warning or Notice of Violation tickets for one or more of the following:

(A) Failed to check, or failed to properly check identification;

(B) Allowed minors in prohibited areas;

(C) Allowed minors to consume alcohol;

(D) Sold alcohol to minors.

(6) Uniform standards for licensees. A licensee using a person under the age of 21 years for the purpose of investigating possible violations by employees of the licensee for sale of alcoholic beverages to a person or persons who are under the age of 21 years must:

(a) Comply with the uniform standards for minors used in minor decoy operations; and

(b) Notify the Director of OLCC's Regulatory Program and the Chief or Sheriff of their local law enforcement agency of the minor decoy's name, date of birth, provide a current photograph of the minor decoy, and the date(s) and location(s) of the minor decoy operation(s) at least 24 hours prior to the use of the minor decoy.

(7) Licensees, service permittees, licensee's employee(s), agents, and agent's employee(s) must immediately return identification presented by the minor decoy upon request of law enforcement or an OLCC representative.

Stat. Auth: ORS 471, 471.030, 471.040, 471.346 & 471.730(1) & (5)

Stats. Implemented: ORS 165.805, 471.346, 471.430 & 471.567

Hist.: OLCC 11-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; OLCC 8-2002, f. 6-12-02 cert. ef. 6-30-02; OLCC 15-2004, f. 12-22-04, cert. ef. 1-1-05

**DIVISION 10
MANUFACTURERS;
WHOLESALEERS; IMPORTERS**

845-010-0151

Deduction of Privilege Tax After Destruction of Defective Product

(1) A wholesaler may claim a deduction for the privilege tax paid on defective malt beverage or wine after the wholesaler has destroyed the defective product. To claim the deduction, the wholesaler:

- (a) Destroys the defective product as indicated;
- (b) Sends a Bad Order Claim (Form 434) and an Affidavit of Destruction to the Commission;
- (c) Receives the Commission's written approval of the claim;
- (d) Completes Schedule V -- Authorized Deductions; and
- (e) Sends the completed form and the Bad Order Claim approval letter to the Commission with the monthly privilege tax report.

(2) The Commission may require at least 24 hours notification before the wholesaler destroys the product of the date, time and place of the planned destruction.

(3) When the wholesaler has given the retailer a credit for more than one case of product, as OAR 845-013-0020(1) allows, the wholesaler, in addition to the procedure in section (1) of this rule:

(a) Gets the retailer's signature on the Bad Order Claim before sending it to the Commission for approval; and

(b) Includes a copy of the Commission's approval of the credit with Schedule V.

(4) When the wholesaler has given the retailer a credit for one case of product or less, as OAR 845-013-0020(1) allows, in addition to the procedure in section (1) of this rule, the wholesaler includes a copy of the wholesaler's credit memorandum with Schedule V.

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

Stats. Implemented: ORS 473.050(4) & 473.060

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 21-1980, f. 6-20-80, ef. 7-1-80; Renumbered from 845-010-0150; OLCC 3-1987, f. 2-9-87, ef. 4-1-87; Renumbered from 845-006-0075; OLCC 13-1991, f. 9-9-91, cert. ef. 10-1-91; OLCC 11-2005, f. 12-19-05, cert. ef. 1-1-06

845-010-0154 [Renumbered to 845-008-0060]

845-010-0166

Territorial Agreements for the Wholesale Sale of Malt Beverages

The Commission interprets ORS 474.115 as follows:

(1) Only one wholesaler may distribute a brand of malt beverage in a designated territory.

(2) When an importer contracts with a wholesaler for exclusive distribution, the importer must give the Commission copies of both its agreement with the wholesaler and its agreement with the manufacturer that documents its authority to designate a wholesaler. The Commission will not allow the wholesaler to post prices without both agreements.

(3) The Commission will accept a filing for a change in an exclusive territorial designation whenever the manufacturer executes and files a notice of change and an affidavit that the level of service will not be affected. This applies even when the existing agreement is between an importer and a wholesaler. When the Commission receives the notice, manufacturer's affidavit, and territorial agreement, the new agreement automatically supercedes any previous agreements.

(4) The manufacturer may base the affidavit on information received from the wholesaler.

(5) "Level of service will not be affected" means that the new wholesaler will comply with all quality control standards and services as required in ORS 474.115, and will service all retail licensees within the designated territory who want to sell the product.

(6) The Commission's only responsibilities under ORS 474.115 are to accept and file notices, affidavits, and territorial agreements a manufacturer submits.

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

Stats. Implemented: ORS 474.115

Hist.: LCC 5-1986(Temp), f. & ef. 3-26-86; LCC 24-1986, f. 10-30-86, ef. 11-1-86; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

845-010-0170

Maintaining Records: Manufacturers, Wholesalers, Importers

(1) The Commission requires every manufacturer, wholesaler, or importer of wine or malt beverages, including wineries and brewery public houses, to keep certain records so the Commission can assure appropriate privilege tax payment and compliance with financial assistance laws.

(2) A manufacturer, wholesaler or importer must keep a record of:

(a) Wine and malt beverage purchases, including:

(A) Sources of purchases and dates received in units by brand and container size;

(B) A classification of dollar amounts as cash or credit;

(C) A record of subsequent account payments; and

(D) An indication of whether the percent of alcohol by volume is under or over 14 percent on wine.

(b) Sales and deliveries to any licensee within Oregon, including:

(A) Daily sales and deliveries in units by brand and container size;

(B) Classification of dollar amounts as cash or credit;

(C) A record of subsequent account collections;

(D) Supporting sales invoices filed by days and bearing the purchaser's true name;

(E) An indication of whether the percent of alcohol by volume is under or over 14 percent on wine; and

(F) Any rebate, discount or allowance for empty container returns.

(3) In addition to the requirements in section (1) of this rule:

(a) A manufacturer, winery or brewery public house must keep a record of the amount of wine or malt beverages produced;

(b) A winery must keep a daily record of retail sales including the total dollar amount of each day's sales and the quantity of each sale by variety; and

(c) A wholesaler must record the purchaser's name, address and telephone number on the invoice of any dock sale that ORS 471.235 allows.

(4) A manufacturer, wholesaler or importer must:

(a) Complete a physical inventory by brand and size of container following the close of business on the last day of February, June and October; and

(b) Adjust the book inventories to agree with the physical inventory for each of these months with satisfactory explanations of differences.

(5) The manufacturer, wholesaler or importer must send the Commission reports that summarize the information in sections (2), (3) and (4) of this rule in a form and within a timeframe prescribed by the Commission.

(6) Every wholesaler, manufacturer or importer of wine or malt beverages must maintain records of all salaries, wages, expenses, allowances, bonuses, cash disbursements, gratuities and gifts, in any form, paid to any non-licensee customer, employee or agent. In addition, a wholesaler, manufacturer or importer must keep an itemization of all advertising items charged to advertising within Oregon. Receipts, vouchers or other evidence of obligation must support all these disbursements.

(7) Every wholesaler, manufacturer or importer within Oregon and every out-of-state manufacturer must keep the records that sections (2), (3), (4) and (6) of this rule require for two years and have them available for inspection by authorized representatives of the Commission after 72 hours notice to the licensee or the licensee's agent.

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

Stats. Implemented: ORS 471 & 473, including 471.030, 471.392 - 471.402 & 473.140 - 473.160

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 65, f. 9-22-77, ef. 10-4-77; OLCC 11-1989, f. 10-31-89, cert. ef. 1-1-90; OLCC 9-1991, f. 5-24-91, cert. ef. 7-1-91; OLCC 12-2005, f. 12-19-05, cert. ef. 1-1-06

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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 Alcohol and Tobacco Tax and Trade Bureau (TTB). If a manufacturer or wholesaler sells a malt beverage in Oregon that does not comply with the labeling requirements, the Commission may, in addition to any other sanction, require the licensee to stop selling and recall the malt beverage.

(3) Any licensee dealing in malt beverages will give the Commission an analysis of the licensee's malt beverage product upon request. The Commission may prohibit

the sale of any malt beverage if, in its discretion, it finds that the malt beverage is not of good quality or that the alcohol content does not conform to the law or to the label of the container.

(4) ORS 471.448 prohibits calling a malt beverage beer if it contains more than six percent alcohol by volume. All malt beverages exceeding six percent alcohol by volume must show in conspicuous type on the label or container the alcoholic content by volume within a tolerance not to exceed five-tenths of one percent.

(5) No person may alter or remove a label on malt beverages produced, bottled or for sale in Oregon, except to add labeling to comply with federal or state laws.

(6) Violation of this rule is a Category IV violation.

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

Stats. Implemented: ORS 471.445, 471.446(2) & 471.448

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 31, f. 12-4-67, ef. 12-26-67; LCC 49, f. 7-26-74, ef. 9-1-74; LCC 4-1979(Temp), f. & ef. 4-2-79; LCC 9-1979, f. 5-24-79, ef. 5-25-79; OLCC 20-1991, f. 12-4-91, cert. ef. 1-1-92; OLCC 10-1995, f. 12-4-95, cert. ef. 1-1-96; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-010-0206

Private Labels

(1) A manufacturer or wholesaler may produce or sell wine or malt beverages under a private label under the following conditions:

(a) The retailer pays all costs associated with the development, production and application of the private label;

(b) Although both an Oregon and an out-of-state manufacturer may produce a private label product, the out-of-state manufacturer must sell the private label product to a retailer only through an independently owned and controlled wholesaler. ORS 471.220 and 471.223 allow Oregon manufacturers (breweries and wineries) to sell products directly to retailers;

(c) The manufacturer or wholesaler does not develop a new malt beverage or wine product for the private label. The private label product must be the identical malt beverage or wine product the manufacturer or wholesaler sells under another label. The manufacturer

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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

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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, 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.

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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

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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.

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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.

(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

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

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

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

Stats. Implemented: ORS 471.398

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0121; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 11-2013, f. 11-26-13, cert. ef. 1-1-14

845-013-0010 Substantial Gratuities

(1) ORS 471.398(1) prohibits a manufacturer or wholesaler from providing a substantial gratuity to a retailer. This rule lists the only gratuities a manufacturer or wholesaler may give to a retailer and not violate ORS 471.398(1).

(2) Food and Beverages. A manufacturer or wholesaler may give a retailer food and beverages for immediate consumption:

(a) At a meeting at which the primary purpose is the discussion of business;

(b) At a convention when the food and beverages are offered to all participants;

(c) At a sports or entertainment event that the manufacturer or wholesaler attends with the retailer. See section (4) of this rule.

(3) Items at a Convention. A manufacturer or wholesaler may give item(s) to retailers who are participants at a convention as long as the manufacturer or wholesaler

offers the item(s) to all the convention participants.

(4) Tickets/Admission Fees:

(a) A manufacturer or wholesaler may pay for a retailers ticket or admission fee including green, court and lane fees for a sports or entertainment event;

(b) Payment is allowed as long as the manufacturer or wholesaler accompanies the retailer to the event and does not pay associated costs like the retailers airfare and costs of a similar type.

(5) Campaigns for Responsible Use. A manufacturer or wholesaler may:

(a) Give a retailer inexpensive items that function only to promote responsible use of alcoholic beverages. These items may be for retailer use on the premises or for customer use. They may include an inconspicuous reference to a manufacturer or wholesaler but no reference to the retailer. Examples of allowable items: buttons, posters and static-cling stickers. Examples of non-allowable items: glasses, T-shirts and coasters;

(b) Provide a person as a part of a campaign to promote responsible use of alcoholic beverages on a retailers premises as long as:

(A) Neither the manufacturer/wholesaler or retailer advertise or promote the persons presence at the premises;

(B) If a celebrity or performer is involved, the celebrity or performer does only a brief performance, if any;

(C) The manufacturer or wholesaler provides no alcoholic beverages to the retailers customers;

(D) The manufacturer or wholesaler does a promotion no more than once per year per retail premises.

(6) Gifts. A manufacturer or wholesaler may give a retailer a gift to acknowledge a grand opening, personal or business anniversary, death in the family, birthday, holiday or similar special occasion. The value of all gifts given to a retailer during any calendar year must not exceed \$30 fair market value. Gifts may not include cash or anything else that ORS 471.398 and OAR chapter 845, division 013 regulate. For example, 845-013-0050 limits exterior point of sale material to a 630 square inch maximum. A manufacturer or wholesaler may not use this gift section to expand allowable point of sale material in order to give a retailer a larger exterior sign.

(7) Winery or Brew-Pub Festivals for the Public Held

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

Stats. Implemented: ORS 471.398(1)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC
7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-
10-122, 10-124 & 10-126; OLCC 7-1996, f. 5-6-96,
cert. ef. 7-1-96; OLCC 19-2000, f. 12-6-00, cert. ef.
1-1-01

845-013-0020

Money, Credit, Discounts; ORS 471.398(2) and 471.400(3)(a)

(1) "Money, Credit": ORS 471.398(2) prohibits a manufacturer or wholesaler from providing money or credit to a retailer. A manufacturer or wholesaler may, however:

(a) Give credit or cash, with the Commission's prior written approval, for malt beverage or wine that a retailer returns:

(A) When the retailer terminates the business or seasonal license;

(B) When the retailer temporarily stops operating due to unforeseen circumstances like fire, flood or other natural disasters;

(C) When the retailer temporarily stops operating for more than 29 days; or

(D) After holding a Temporary Sales license event

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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 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.398(2) & 471.400(3)(a)
Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 20-1990, f. 9-28-90, cert. ef. 10-1-90; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0123; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0030 Fixtures, Furniture, Furnishings, ORS 471.398(3)

ORS 471.398(3) prohibits a supplier (manufacturer, wholesaler, or its agents) from providing any fixtures, furniture or furnishings to a retailer. A supplier does not violate this prohibition if he/she provides a display bin or rack for manufacturer-sealed containers of alcoholic beverages for consumption off the licensed premises, if the following conditions are met:

- (1) The supplier provides no more than one bin or rack per brand name family per retailer at any given time;
- (2) The cost of the display bin or rack may not exceed \$100 (cost is the cost to the supplier who initially purchased or produced the bin or rack);
- (3) The supplier has permanently marked the bin or rack with a brand name or trade name of the supplier’s alcoholic beverage product; and
- (4) The retailer uses the bin or rack to display only products from the brand name family or trade name permanently marked on the bin or rack;
- (5) For purposes of this rule, “trade name” means the operating trade name and associated business names filed by a manufacturer or wholesaler as part of the Alcohol and Tobacco Tax and Trade Bureau (TTB) basic permit, i.e. Anheuser-Busch InBev; “brand name family” means all of the alcoholic beverage products included in a particular product line which are marketed and labeled with a particular brand name, i.e. Budweiser.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.398(3)
Hist.: OLCC 8-1992, f. 8-25-92, cert. ef. 10-1-92; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03; OLCC 4-2011, f. 4-25-11, cert. ef. 5-1-11

845-013-0040

Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer.

(1) Except as authorized under section (2) of this rule, the only advertising a supplier (manufacturer or wholesaler), or its agents, may provide under this statute is generic, off-premises references to the manufacturer or wholesaler's alcoholic beverage products that mention no specific retailer. Some examples include radio and television commercials and billboards.

(2) A supplier, or its agents, may make available to its customers, either on the supplier's website or on lists available at the supplier's premises, the names and addresses of the retail licensees that sell products made or distributed by the supplier. Any such list must include all retailers who carry the products without discrimination, for example, an alphabetical or geographical list. The lists may not include prices or any other information that would appear to promote any particular retailer over other retailers.

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

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

Stats. Implemented: ORS 471.398(4) & 471.730(7)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124; OLCC 8-2010, f. 6-22-10, cert. ef. 7-1-10

845-013-0050

Point of Sale Advertising Materials and Consumer Take-Aways, ORS 471.398(4)

(1) A supplier (manufacturer, wholesaler, or its agents), may provide point of sale materials and consumer take-aways to a retailer provided that the conditions prescribed in section (3) of this rule are met. Suppliers may provide point of sale material only for display at the retailer's premises. No minimum purchase may be required of a retailer in order to have an item at their premises.

(2) Definitions. For this rule:

(a) Point of sale advertising materials are items designed to be used at a retail establishment to attract consumer attention to a supplier's products. Such materials include window decorations, posters,

placards, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, calendars, alcohol beverage lists or menus, display mirrors, table tents, chalk boards, thermometers, and similar items of like value. Also allowed are signs (neon, electrical, mechanical, inflatable or otherwise). Point of sale items do not include fixtures, furniture or furnishings as prohibited by ORS 471.398(3) and OAR 845-013-0030.

(b) Consumer take-aways are items intended for use by the retailer's customers off the premises that provide information to the retailer's customers but do not promote the retailer's business. Only items made of paper or other similar inexpensive material are allowed to be given to the retailer and such informational items include recipes, sports and entertainment event schedules, and informational pamphlets.

(3) Conditions and limitations.

(a) All point of sale advertising materials and consumer take-aways must bear conspicuous and substantial advertising matter about the product or the supplier that is permanently inscribed or securely affixed. The name and address of the retailer may appear on the point of sale advertising materials only.

(b) The supplier may not directly or indirectly pay or credit the retailer for using or distributing these items or for any expense incidental to their use.

(c) The Commission prohibits any advertising that contains material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages (OAR 845-007-0020(1)(e)).

(d) Items that predominantly advertise the supplier's alcoholic beverage products but also advertise a generic food product are allowed. This subsection does not prohibit cross-promotions of the supplier's alcoholic beverage product with a specific food product or brand when the food product producer is not a retail licensee; the food product producer pays at least half the cost of the cross-promotion; and any retailer who receives the item pays none of the costs. For example, a cheese manufacturer and a wine manufacturer jointly produce a poster to promote their products. As long as the cheese manufacturer is not a retail licensee, the cheese manufacturer pays at least half the costs and the retail licensee pays none of the costs, the Commission treats the poster as an alcoholic beverage/generic food product item;

(e) Items that predominantly advertise the supplier's alcoholic beverage products but also have generic words or symbols for activities the supplier wants to

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associate with his/her alcoholic beverage products are allowed. Exterior material may, however, have only generic symbols relating to activities, not words.

(f) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limits items of nominal value to the supplier's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite 845-013-0001(3)(d) that prohibits customization, the supplier may add generic food references to the list. For example, the list may indicate that a particular alcoholic beverage goes well with chicken but may not refer to a chicken dish on the retailer's menu.

(g) Exterior point of sale material given or loaned under this rule must not exceed 2160 square inches. This means that inflatables or any point of sale material cannot be displayed in a retailer's parking lots or other outside areas if the material exceeds 2160 square inches.

(4) A violation of any section of this rule is a Category III violation.

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124; OLCC 5-2009, f. 4-21-09, cert. ef. 5-1-09; OLCC 4-2011, f. 4-25-11, cert. ef. 5-1-11

845-013-0060

Items of Nominal Value, ORS 471.398(4)

(1) In addition to advertising and point of sale material, ORS 471.398(4) allows a supplier (manufacturer or wholesaler), or its agents, to provide items of nominal value to a retailer. This rule describes the items of nominal value a supplier, or its agents, may give to a retailer.

(2) A supplier, or its agents, may give basic items that support the supplier's products at the retailer's premises such as:

(a) Tavern Heads:

(A) One tavern head per calendar year per retail licensee;

(B) A trade-in of a tavern head at the fair market value as partial payment for a new one when the retailer replaces an existing draft system.

(b) Washers or Thomas valves necessary for proper operation of draft equipment;

(c) New and used empty shells or bags in sufficient quantity for returning the supplier's empty containers;

(d) Samples and Tastings:

(A) Tastings or samples of distilled spirits that the retailer does not carry but only in an amount not to exceed 50 ml.;

(B) Tastings or samples of wine and malt beverages that the retailer does not carry. The sample must not exceed a one gallon container of malt beverage or a five liter container of wine. It must be clearly and permanently marked "sample -- not for resale";

(C) Distilled spirits, wine and malt beverage tastings for retailer educational seminars that are not open to the public.

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

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 5-2009, f. 4-21-09, cert. ef. 5-1-09

845-013-0070

Services of Nominal Value; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except those described in 471.398(5) and the two categories of services of nominal value described in this rule.

(2) A manufacturer or wholesaler may give basic services that support products on draft such as:

(a) Inspecting draft equipment, coolers and cooling equipment for sanitation and quality control;

(b) Performing emergency repairs on draft equipment;

(c) Instructing retail licensees in the proper use, maintenance and care of draft and cooling equipment;

(d) Tapping kegs during regular delivery calls.

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(3) A manufacturer or wholesaler may give basic marketing support services for the manufacturer's or wholesaler's alcoholic beverage products such as:

(a) Delivering to the designated place on the retailer's premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;

(b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;

(c) Pricing packages and containers of the manufacturer's or wholesaler's brands but not repricing packages and containers. Repricing includes entering the Uniform Price Code (UPC) or pricing information in the retailer's system but does not include changing shelf tags;

(d) Promptly exchanging alcoholic beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;

(e) Exchanging products that are leaking, deteriorating, near or past their shelf date, have damaged or missing labels, or have damaged containers for an equal quantity of identical product, or exchanging products that have been found to contain adulterated ingredients (See also OAR 845-013-0020(1)(b)). If the amount exchanged is one case or less of malt beverages or if the product contains adulterated ingredients, the manufacturer or wholesaler may substitute another malt beverage product of similar value. A manufacturer or wholesaler may not exchange product that the retailer or retailer's customer damaged;

(f) Installing, cleaning and repairing point of sale materials allowed in OAR 845-013-0050;

(g) Providing an employee to assist in educational seminars and wine or malt beverage tastings that a retailer conducts for the public as long as each licensee complies with OAR 845-006-0353 and 845-006-0450.

NOTE: ORS 471.186(4) prohibits a manufacturer or wholesaler from 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, 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.398(5) & 471.446(2)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 8-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 8-1997, f. 2-28-97, cert. ef. 3-15-97; OLCC 17-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 15-2010(Temp), f. & cert. ef. 12-3-10 thru 5-31-11; Administrative correction, 6-28-11; OLCC 10-2011, f. & cert. ef. 11-1-11

845-013-0075

Schematics; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except services of nominal value.

(2) OAR 845-013-0070 limits services of nominal value to those which fall into one of two categories.

(3) The category described in OAR 845-013-0070(3) allows a manufacturer or wholesaler to give basic marketing support services for the manufacturer or wholesaler's alcoholic beverage products. When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the Commission considers that to be a basic marketing support service.

(4) When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the retailer remains responsible for deciding what products are actually sold.

(5) The Commission holds licensees accountable for the acts of their agents and employees. (See OAR 845-006-0362). Accordingly, any licensee who provides schematics through another person or business is responsible for the actions of the party. If a person or business that provides schematics on

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behalf of a licensee violates any liquor law or rule, the Commission takes the appropriate compliance action against the licensee.

Stat. Auth.: ORS 471 & 472, including 471.030,
471.730(1) & (5)
Stats. Implemented: ORS 471.398(5)
Hist.: OLCC 3-1994, f. 8-3-94, cert. ef. 10-1-94;
OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845 013-0080

Manufacturer or Wholesaler Sponsorship of a Temporary Special Event

ORS 471.398 and 471.400 allow manufacturers and wholesalers to provide certain items and services to retail licensees. This rule describes the terms and conditions under which a manufacturer or wholesaler may provide items or services to a retail licensee in connection with the sponsorship of a temporary special event.

(1) For this rule: “temporary special event” means an event licensed with a temporary sales license under ORS 471.190, a temporary use of an annual license under ORS 471.184(2), or a special event brewery public house license under ORS 471.200 where the event does not exceed five license days (which need not be consecutive), and the event is not on a licensee’s annually licensed premises. It does not mean an event licensed with a special event winery license or a special event grower license issued under OAR 845-005-0415 or licensed with a special event distillery license under OAR 845-005-0413.

(2) This rule does not apply to the purchase of advertising from a licensee as authorized under ORS 471.401.

(3) This rule does not apply to items or services a manufacturer or wholesaler provides under OAR 845-013-0090 to a nonprofit or governmental temporary sales licensee as described in OAR 845-013-0090(4)(a).

(4) This rule does not apply to a manufacturer or wholesaler providing items and services to a retail licensee (Full On-Premises Sales licensee, Limited On-Premises Sales licensee, Off-Premises Sales licensee, and Brewery-Public House Sales licensee) at the retail licensee’s annually licensed premises or at an event where the retail licensee has pre-approval for small-scale private catering under OAR 845-005-0405 or large-scale private catering under OAR 845-005-0410. Instead, the manufacturer or wholesaler must comply

with ORS 471.398, 471.400, 471.401, and division 13 of chapter 845 of the Commission’s administrative rules.

(5) A manufacturer or wholesaler sponsoring a temporary special event may provide to the temporary special event licensee only the items or services allowed under division 13 of chapter 845 of the Commission’s administrative rules. However, notwithstanding OAR 845-013-0040, a manufacturer or wholesaler may also provide advertising of a temporary special event that lists the name and location of the temporary special event along with the name of the manufacturer’s or wholesaler’s product.

(6) No monetary payments of any kind may be made by a manufacturer or wholesaler or its agent to a retail licensee in connection with a temporary special event, except for payments to purchase advertising allowed under ORS 471.401(1)(d). Any payments for advertising provided under this rule must be made by the manufacturer or wholesaler or its agent directly to the third party provider of the advertising (for example, payments for advertising furnished by the manufacturer or wholesaler must be made to the media outlet that provides the advertising and not to the retail licensee). Advertising does not include fixtures, furniture or furnishings as prohibited by ORS 471.398(3) and OAR 845-013-0030.

(7) All alcoholic beverages sold or served at a temporary special event must be purchased by the temporary special event licensee from a licensed manufacturer or wholesaler at the established wholesale price or from the Commission. The manufacturer or wholesaler may not require the temporary special event licensee to exclude any competitor’s products.

(8) Each manufacturer or wholesaler and each retail licensee providing or accepting sponsorship for a temporary special event shall maintain an accurate and complete record of the sponsorship. These records must include the items or services provided in connection with the sponsorship, the name and duration of the event, and the names of the licensee and sponsoring manufacturers or wholesalers. These records must be retained for a period of two years from the date of the event, and this information shall be provided to the OLCC upon request.

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

Stat. Auth.: ORS 471, including 471.030, 471.040 &
471.730(1) & (5)
Stats implemented: ORS 471.398 & 471.400
Hist.: OLCC 7-2011, f. 8-15-11, cert. ef. 9-1-11

845-013-0090

Wholesale-Retail Relations: Non-Profit Temporary Sales Licenses

(1) ORS 471.400(1) permits the Commission to allow manufacturers and wholesalers to provide products and services to non-profit Temporary Sales licensees without violating financial assistance laws. These products and services are allowed in addition to the gratuities, point of sale material, items of nominal value and services of nominal value that OAR 845-013-0001 through 845-013-0070 allow.

(2) Federal Law May Differ. Although Oregon law allows manufacturers and wholesalers to provide the products and services described in this rule, federal laws regarding wine may not. When dealing with wine, a federal law that is more strict than an Oregon law takes precedence over the Oregon law. Therefore, manufacturers and wholesalers should check with the Bureau of Alcohol, Tobacco, and Firearms before applying this rule to their wine business.

(3) Products and Services. A manufacturer or wholesaler may provide the following to a non-profit Temporary Sales licensee:

(a) Any product the manufacturer or wholesaler normally sells. The manufacturer or wholesaler may give the product free, sell the product at a discount or sell the product at the regular price. The manufacturer or wholesaler may pick up excess malt beverage product at the end of a special event held by a non-profit Temporary Sales licensee, and if the product was sold to the Temporary Sales licensee, may give a credit or cash refund for the returned product;

(b) Any services to support the alcoholic beverage product. This includes providing employees to sell or serve alcoholic beverages at the Temporary Sales license event as long as the employee has successfully completed an approved alcohol server education course within the last five years or has a valid service permit; and

(c) Banners for interior or exterior display at the licensed premises that advertise a special event and prominently display the manufacturer's or wholesaler's alcoholic beverage brand name. These banners may be displayed before and during the Temporary Sales license event and may exceed 630 square inches.

(4) Limitations. A manufacturer or wholesaler may provide the products and services that this rule allows only if:

(a) The Temporary Sales licensee is a non-profit or

charitable organization that is registered with the state, a political committee that has a current statement of organization filed under ORS 260.039 or 260.042, an agency of the State, or a local government or an agency or department of a local government; and

(b) The Temporary Sales license is not for more than 72 hours.

(5) Equipment. ORS 471.400(1) also allows a manufacturer or wholesaler to provide the following equipment to any retail licensee: picnic pumps, cold plates, tubs, refrigerated trailers, refrigerated vans and refrigerated draft systems. The manufacturer or wholesaler may provide this equipment only for a period not to exceed ten days and for a reasonable rental or service fee. The statute allows a manufacturer or wholesaler to provide this equipment to any retail licensee for a reasonable fee. A manufacturer or wholesaler does not have to require a reasonable fee when providing this equipment to a non-profit temporary sales licensee.

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

Stats. Implemented: ORS 471.400(2)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0129; OLCC 11-1997, f. 5-12-97, cert. ef. 6-1-97; Administrative correction 5-23-97; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02
cert. ef. 11-1-02

845-013-0100

Wholesale-Retail Relations; Sale at Both Wholesale and Retail

(1) Except as provided in ORS 471.396, 471.394(1) prohibits licensees from selling or engaging in the business of selling alcoholic beverages both at wholesale and retail. For purposes of this statute, the direct consumer sales that 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 471.030,
471.040, 471.730(1) & 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 471.030,
471.730(1), 471.730(5), 472.030, 472.060(1) & ORS
472.060(2)(d)

Stats. Implemented: ORS 471, including 471.398

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC
7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-
010-0131

**DIVISION 15
RETAIL SALES AGENTS**

845-015-0101

Definitions

As used in OAR chapter 845, division 015:

(1) “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).

(2) “Disabled Retail Sales Agent” is one who has a physical or mental impairment that has continued more than one year or is permanent that prevents a retail sales agent from properly performing contractual duties. The Commission determines retail sales agent disability after reviewing medical reports from the retail sales agent’s physician. The Commission may require additional medical information from a Commission-selected physician.

(3) “Full On-Premises Sales Licensee” means any person or entity holding a Full On-Premises Sales license.

(4) “Retail Liquor Store” is a premises or a specific area in a premises the Commission approves for the sale of packaged distilled spirits for off-premises consumption, other than an Oregon licensed distillery or portion of such a distillery which has been approved for the sale of packaged distilled spirits manufactured by the distillery.

(5) “Retail Sales Agent” or “Agent” is an individual person or legal entity appointed by the Commission who enters into a retail sales agent agreement to sell packaged distilled spirits on behalf of the Commission in a retail liquor store.

(6) “Retail Sales Agent Agreement” is a written contract between the Commission and a retail sales agent that specifies the terms, conditions, and obligations between both parties.

(7) “Temporary Retail Sales Agent” or “Temporary Agent” is an individual person or legal entity selected by the Commission to temporarily operate a retail

liquor store.

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

Stats. Implemented: ORS 471.750 & 471.752

Hist.: LCC 25-1980, f. 9-30-85, ef. 1-1-81; LCC

9-1985, f. 11-6-85, ef. 1-1-86; Renumbered from

845-015-0040; LCC 23-1986, f. 10-16-86, ef. 1-1-

87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03,

Renumbered from 845-015-0007; OLCC 10-2006, f.

7-19-06, cert. ef. 8-1-06; OLCC 15-2011, f. 12-6-11,

cert. ef. 1-1-12; OLCC 1-2012, f. 3-20-12, cert. ef.

4-1-12

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, business plan 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; OLCC 1-2012, f. 3-20-12, cert. ef. 4-1-12

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

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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 who is an individual person 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.

(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, substantial stockholder or member of a licensee, except that:

(a) A non-exclusive retail sales agent may be an Off-Premises Sales licensee. An exclusive retail sales agent may be an Off-Premises Sales licensee provided that

the licensed business is separate from the retail liquor store; or

(b) The Commission may appoint a licensee if the licensee is the only suitable applicant for appointment as retail sales agent in a very small town in a remote area. This retail liquor store must be non-exclusive and must be located in a part of the premises completely separated from the service or consumption of alcoholic beverages.

Stat. Auth.: ORS 471 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; OLCC 1-2012, f. 3-20-12, cert. ef. 4-1-12

845-015-0118

Retail Sales Agent Prohibited Interests, ORS 471.710(3)

(1) Definitions: As used in ORS 471.710(3) and this rule:

(a) "Liquor Store Agent" has the same meaning as a retail sales agent, as defined in OAR 845-015-0101(5);

(b) "Financial Interest" means knowingly having an ownership interest, as a sole proprietor, partner, limited partner or stockholder or any direct or indirect ownership interest through a device such as a holding company, in a business licensed with a Distillery or Full On-Premises Sales license or any distillery whose products are sold in Oregon;

(c) "Business Connections" include, but are not limited to:

(A) Knowingly providing anything of value to a person or business licensed 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

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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,

(d) “Knowingly” means a person actually knew or reasonably should have known;

(e) “Household” means all persons living as a family unit in the same dwelling;

(f) “Immediate Family” means spouse or Domestic Partner, and minor dependent children.

(g) “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.

(h) “Company Principal” means a person who holds any of the following interests in a legal entity that is a retail sales agent or an applicant for appointment as a retail sales agent:

(A) An officer;

(B) A director;

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

(D) A manager of a limited liability corporation or limited liability partnership or the general partner of a limited partnership.

(2) Prohibited Interests. No retail sales agent, company principal, or member of the agent’s household or immediate family may hold a Financial Interest or Business Connection as those terms are defined in section (1) of this rule.

(3) Additional Prohibitions:

(a) No retail sales agent, company principal 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, company principal or member of the agent’s household or immediate family may be employed by any distillery whose products are sold in Oregon.

(4) Reporting Requirements:

(a) All retail sales agent applicants must complete and sign a form describing any financial interest or business connection the applicant, company principal or any person in the applicant’s household or immediate family has, that the applicant would reasonably know of, with a Distillery or Full On-Premises Sales licensee, or with a distillery whose products are sold in Oregon. The Commission will determine whether any prohibited interest or connection exists. An applicant, company principal 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, company principal, household member or immediate family member fails to divest, the Commission will terminate the agent’s contract.

(5) Gifts and Gratuities: No retail sales agent will accept any gift, gratuity or thing of value from any Distillery or Full On-Premises Sales licensee or any distillery or any person representing a distillery, except that a retail sales agent may accept:

(a) Items totaling \$25 or less per year per licensee or distillery offered to retail sales agents as customers of the licensee or distillery 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

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irrespective of any connection to the Commission.

(6) Disciplinary Actions: The Commission will appropriately discipline a retail sales agent who:

(a) Fails to report a prohibited interest or connection as section (4) 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 (5) of this rule prohibits.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.710 & 471.730(1) & (5)

Stats. Implemented: ORS 471.710

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; OLCC 1-2012, f. 3-20-12, cert. ef. 4-1-12

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) When seeking applications from the public, the Commission advertises to fill a vacancy. The Commission may publish its intent to fill a vacancy via a variety of methods, i.e. internet postings, other online media, or newspapers.

(3) After an application deadline, all applications will be screened according to selection criteria in OAR 845-015-0125 and qualified applicants will be selected for interview. After reviewing applications and screening results, an interview committee conducts personal interviews. The interview committee scores the applicants and recommends finalists who are most qualified based on the selection criteria in 845-015-0125. From the finalists, the Commission appoints a retail sales agent using the criteria in 845-015-0125. A public presentation at a Commission meeting may be required. Advance notice of the public meeting date will be given to all finalists.

(4) An appointed retail sales agent must submit a retail liquor store improvement plan for approval, enter into a Retail Sales Agent Agreement, purchase fixtures

and equipment at an 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, OLCC 13-2011, f. 12-6-11, cert. ef. 1-1-12

845-015-0125

Retail Sales Agent Selection Criteria

(1) When the Commission selects a retail sales agent using the procedure in OAR 845-015-0120, the Commission evaluates the knowledge, skills and abilities of all applicants in the following areas:

(a) Retail business experience including, but not limited to, responsibility for inventory control, cash accountability, supervision of personnel and customer service;

(b) Knowledge of retail operations or business management, including study or training in those or related fields;

(c) Customer service skills and ability to communicate and work effectively with the public;

(d) Whether the applicant's health permits full-time supervision of a retail liquor store;

(e) The applicant's record of felony conviction, conviction of crime relating to money management fraud, or a history of conviction of crimes relating to the abuse of alcohol or controlled substances;

(f) The applicant's financial ability to purchase or lease and equip the retail liquor store at a Commission approved location. The applicant's ability to provide the necessary funds to meet the operating expenses of the retail liquor store and be bonded under the Commission's blanket position fidelity bond.

(2) In appointing a successor to a deceased or disabled retail sales agent, the Commission gives the preference in ORS 471.752. The Commission evaluates the qualifications of the applicant. After review of the

application documents and personal interviews, the Commissioners decide if the applicant is qualified.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 14-1978, f. & ef. 10-26-78; Renumbered from 845-010-0344; LCC 6-1981, f. 11-2-81, ef. 1-1-82; LCC 16-1983, f. 12-27-83, ef. 1-1-84; OLCC 18-1987, f. 6-10-87, ef. 7-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0025

845-015-0130

Advertising a Retail Liquor Store

(1) A retail sales agent may advertise a retail liquor store with prior Commission approval. This approval shall be based on the standards contained in the Retail Operations Manual.

(2) The Commission prohibits any advertising that contains material so appealing to minors that it encourages them to purchase, possess, or drink alcoholic beverages (OAR 845-007-0020(1)(e)).

(3) A retail sales agent may support a local, non-profit community event and receive recognition for that support if the recognition given is the same as the minimum allowed for other supporters.

(4) Agents may not use or refer to specific brand names of distilled spirits in their advertising other than in a liquor store website that lists all brand names carried in their inventory. Prices may be included within the brand name website advertising.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5) &
471.750

Stats. Implemented: ORS 471.750(1) & (2)

Hist.: LCC 26-1986, f. 11-20-86, ef. 1-1-87; OLCC 16-1990, f. 6-29-90, cert. ef. 7-1-90; OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03; Renumbered from 845-015-0090; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06; OLCC 5-2010, f. 4-19-10, cert. ef. 5-1-10

845-015-0135

Public Opinion on Retail Liquor Store Location

(1) The Commission considers public opinion when it evaluates establishing or relocating a retail liquor store. The Commission seeks public opinion by:

(a) Posting a public notice at the proposed location and at the existing location, if any; and

(b) Providing a written notice to any residence, business, pre-elementary, elementary or secondary school, house of worship or alcoholic treatment facility within a minimum of a 500 foot radius of the proposed location and to the local governing body when the Commission is considering relocating a store to another governing body's jurisdiction, or when it establishes a new retail liquor store in the jurisdiction.

(2) These notices will ask for opinions on the proposed location and identify when, where and how the public can comment.

(3) The Commission will consider liquor-related public opinions. It considers these liquor-related comments together with its criteria for liquor store establishment and relocation. OAR 845-015-0110 sets out these criteria.

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

Stats. Implemented: ORS 471.750(1)

Hist.: OLCC 20-1987, f. 9-2-87, ef. 10-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03; Renumbered from 845-015-0086; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

845-015-0138

Retail Price for Distilled Spirits

Before the Commission implements a surcharge or change in the mark-up formula for distilled spirits that would result in an increase in the retail price of distilled spirits sold to the public, the Commission shall:

(1) Provide at least 45 days public notice before such a price increase takes effect;

(2) Provide the opportunity for submission of written comments regarding the proposed price increase;

(3) Conduct a public meeting for the purpose of receiving verbal comment regarding the proposed price increase; and

(4) Consider any written or verbal comments before implementing such a price increase.

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

Stats. Implemented: ORS 471.745

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Hist.: OLCC 20-2010, f. 12-22-10, cert. ef. 1-1-11

845-015-0140

Hours and Days of Operation

To ensure adequate service to the public, the Commission requires retail liquor stores to maintain convenient hours of operation:

(1) Except for Sundays and holidays, all retail liquor stores must be open between the hours of 12 noon and 6 p.m. Retail liquor stores may not open earlier than 7 a.m. or close later than 10 p.m.

(2) Except for Sundays and holidays, retail liquor stores will be open a minimum of eight hours each day.

(3) On Sundays or holidays, retail liquor stores may be open for any number of hours, but may not be open before 7 a.m. or after 10 p.m. Sunday and holiday openings are optional for Retail Sales Agents.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 1-1978(Temp), f. & ef. 1-25-78; LCC 5-1978, f. 5-24-78, ef. 5-25-78; Renumbered from 845-010-0350; LCC 12-1983, f. 11-14-83, ef. 1-1-84; LCC 3-1985, f. 2-28-85, ef. 4-1-85; OLCC 4-2002(Temp), f. & cert. ef. 4-12-02 thru 10-8-02; OLCC 11-2002, f. 8-29-02, cert. ef. 10-9-02; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-0; 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 requirements and limits described in this rule.

(2) Sample Sizes, Number of Samples per Customer. The size of each distilled spirits tasting shall be no more than one-quarter fluid ounce of distilled spirits in a single container. The container may also contain nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A sponsor may not provide more than one-half ounce total of distilled spirits per customer per day.

(3) The distilled spirits product(s) provided for sample tastings must be available for sale at the retail sales agency where the sample tasting occurs at the time of the sample tasting.

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(4) Identified Tasting Area. Retail sales agents who allow tastings at their retail liquor store must identify a specific tasting area. The area must be of a size and design such that the person(s) conducting the tasting can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol. Customers must remain in the tasting area until they have finished consuming the sample(s). In exclusive retail liquor stores, the tasting area may be the entire retail liquor store. In non-exclusive retail liquor stores, the retail sales agent must identify a tasting area, and keep on file at the retail liquor store a floor plan sketch identifying the tasting area.

(5) Duration of Tastings Allowed. Tastings are limited to a maximum of three consecutive hours per sponsor per retail sales agency per day. Only one sponsor at a time may conduct sample tastings in a retail sales agency.

(6) Server Requirements. Alcohol servers must have valid Oregon service permits.

(7) Record Keeping. The sponsor must keep a record of each tasting they conduct, including the date and location of each event, the products served, and the names of the servers. The sponsor must retain records of tastings for one year.

(8) Sponsor responsibilities. Sponsors must:

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

(b) Provide or pay for a person to serve the distilled spirits being tasted. The server must be a sponsor or an employee or agent of the sponsor;

(c) Not compensate the retail sales agent, or any employee or agent of the retail sales agent to participate in the tasting; and

(d) Not advertise the tasting outside of the retail liquor store.

(9) Retail Sales Agent Responsibilities. Retail sales agents:

(a) Must not advertise the sample tasting outside the retail sales agency; and

(b) Are responsible for liquor law violations occurring in the retail sales agency which are not related to the sample tasting.

(10) Violations Associated with the Sample Tasting.

In the case of a liquor law violation associated with sample tasting (for example, service of a sample to a minor or a visibly intoxicated person), both the server and the sponsor may be held responsible for violations of Oregon liquor laws which occur due to or during the tasting. Violations which occur due to a sponsor or server violating the law will not be charged to the retail sales agent.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.750

Hist.: LCC 27-1986, f. 11-20-86, ef. 1-1-87; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0095; OLCC 9-2004, f. 6-29-04 cert. ef. 7-1-04; OLCC 5-2011, f. 8-15-11, cert. ef. 9-1-11

845-015-0160 Sale of Lottery Tickets

Despite OAR 845-015-0143(1) (sale of related items), retail sales agents may contract with the Oregon State Lottery Commission to sell Oregon State Lottery Tickets in retail liquor stores.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5),
472.030, 472.060(1) & (2)(d)
Stats. Implemented: ORS 471.750(1)

Hist.: LCC 5-1985, f. 3-28-85, ef. 4-1-85; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0065

845-015-0165 Supplier Rebates on Distilled Spirits

(1) The Commission allows suppliers to give consumer rebates on distilled spirits. Progressive-type coupons which provide a larger rebate when progressively more alcohol is purchased are permitted. An example of this would be a rebate that offers \$5 for the purchase of one bottle but \$12 for two.

(2) Suppliers will distribute distilled spirits rebate coupons only through retail liquor stores or by publishing them in newspapers or magazines. Any newspaper or magazine advertising associated with rebate coupons must comply with OAR 845-015-0175, 845-015-0177, and any other applicable state and federal regulations.

(3) All rebate coupons offered in the State of Oregon must meet the following requirements:

(a) Rebate coupons must be redeemable only by mail;

(b) Rebate coupon offers must bear an expiration date;

(c) The supplier must require proof of purchase;

(d) Rebate coupons must be valid only for adults of legal drinking age. The Commission may require withdrawal of the rebate coupon if the supplier does not comply with the conditions of the rebate coupon or Commission rules.

(4) The supplier must furnish rebate coupons to all retail liquor stores carrying the product. Any advertising materials such as posters, signs, banners, or display racks the supplier provides to promote rebate coupons in a retail liquor store must comply with OAR 845-015-0175, 845-015-0177, and any other applicable state and federal regulations.

(5) The supplier is responsible for the redemption of rebate coupons. The supplier and the retail customer are responsible for settling any disagreement about the supplier's coupon.

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

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 2-1983, f. 3-8-83, ef. 7-1-83; LCC 2-1985, f. 2-28-85, ef. 4-1-85; OLCC 19-1991, f. 10-31-91, cert. ef. 11-1-91; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0055; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03; OLCC 3-2006, f. 2-22-06, cert. ef. 3-1-06; OLCC 26-2007, f. 12-17-07, cert. ef. 1-1-08

845-015-0168

Full On-Premises Sales Licensee Refund

A Full On-Premises Sales licensee who is going out of business may make a written request to the Commission to return resalable merchandise for a refund. If the Commission approves the request, the Commission will issue a refund after it determines that the merchandise is resalable.

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

Stats. Implemented: ORS 471.740 & 471.750

Hist.: LCC 8-1985, f. 10-9-85, ef. 3-1-86; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0070; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

845-015-0170

Payment for Distilled Spirits

(1) Timing of Payment for Distilled Spirits Purchases. Payment for distilled spirits must be made at the time of purchase. If the purchaser is a Full On-Premises Sales licensee, and the distilled spirits being purchased are to be delivered, payment must be received at the liquor store not later than the store's close of business on the same day that the product was delivered to the licensee.

(2) A retail sales agent accepts these forms of payment:

(a) United States currency or a United States traveler's check;

(b) A cashier's check or money order;

(c) A licensee's business check for the amount of the purchase only, properly dated, personalized and free of alterations;

(d) A personal check from a non-licensee with 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; and

(e) Exclusive retail sales agents shall accept debit and credit cards from non-licensees using equipment that meets or exceeds Commission approved standards as set forth in the Retail Operations Manual. At a non-exclusive retail sales agent's option, they may also accept these same debit and credit card transactions.

(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 from non-licensees only if the retail sales agent accepts debit and credit cards using equipment that meets or exceeds Commission approved standards as set forth in the Retail Operations Manual. A retail sales agent must pay the Commission for any uncollected check from a non-licensee.

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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; OLCC 10-2012,
f. 12-18-12, cert. ef. 1-1-13

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, including 471.030,
471.730(1)&(5) & 471.750

Stats. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91;
OLCC 13-1996, f. 9-30-96, cert. ef. 10-7-96; OLCC
2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from
845-015-0091; OLCC 10-2003, f. 7-22-03, cert. ef.
9-1-03; OLCC 17-2004, f. 12-22-04, cert. ef. 1-1-05;
OLCC 11-2008, f. 8-18-08, cert. ef. 9-1-08

845-015-0177

Specific Requirements for Signs and Displays in a Retail Liquor Store

If a retail sales agent chooses to allow signs and displays in the retail liquor store, the agent must allow each distillery representative who wants to advertise products in the store a reasonable opportunity to do so. The Commission prohibits advertising liquor in a retail liquor store other than as permitted by this rule and OAR 845-015-0175.

(1) The Commission allows signs and displays that:

(a) Function to advertise or display the distillery's

alcoholic beverage products, or the approved items described in OAR 845-015-0143 that bear a distilled spirits brand name or trademark that are for sale in the retail liquor store;

(b) Are not placed in a window;

(c) Do not obstruct another distillery's products; and

(d) Are used only for advertising or display of the distillery's products and not for the retail sales agent's personal use.

(2) If the total value of the sign or display is \$500 or more, then the item can only be loaned to the retail sales agent, must be clearly marked as the property of the distillery representative, marked with the date the loan begins, and can only be loaned for a maximum of 90 days per calendar year. At no time can a loan period exceed more than 90 consecutive days. The distillery representative can only have one such sign or display at any one time in any one liquor store. The value of a sign or display is the actual cost to the supplier who initially purchased it. Transportation and installation costs are excluded.

(3) Nothing in this rule requires a retail sales agent to order distilled spirits for use in a display. Empty case boxes may be used, if necessary.

(4) The Commission retains the right to remove signs and displays the Commission finds objectionable.

Stat. Auth.: ORS 471, including 471.030,
471.730(1)&(5) & 471.750

Stats. Implemented: ORS 471.750(2)

Hist.: OLCC 15-1991, f. 9-30-91, cert. ef. 10-1-91;
OLCC 5-1994, f. 10-31-94, cert. ef. 11-1-94; OLCC
2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from
845-015-0092; OLCC 10-2003, f. 7-22-03, cert. ef.
9-1-03; OLCC 11-2008, f. 8-18-08, cert. ef. 9-1-08

845-015-0180

Distilled Spirits Samples Offered to Retail Sales Agents

(1) Distillery representatives may not give samples to retail sales agents, their employees or customers in a retail liquor store.

(2) Despite section (1) of this rule, a retail sales agent may accept samples from distillery representatives or OLCC staff of not more than four 50 ml manufacturer-sealed containers of distilled spirits one time per brand. The sample must be a Commission-

approved brand. If a product is not available in a 50 ml container, the retail sales agent may accept a single sample in the next larger available size if the distillery representative has written approval from the Listing Committee of the Commission to offer samples in a larger size. Samples may not be consumed in a retail liquor store or within its immediate vicinity. All samples must be sealed bottles. Samples as described in this rule are not sample tastings as described in OAR 845-015-0155.

(3) Retail sales agents may give samples received according to section (2) of this rule to their employees that are at least 21 years of age.

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

Stat. Implemented: ORS 471.750

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03,

Renumbered from 845-015-0096; OLCC 10-2006, f. 7-19-06, cert. ef. 8-1-06

845-015-0185

Special Orders for Distilled Spirits

Customers may order distilled spirits products or container sizes that the Commission does not carry in the regular product line. Minimum order quantities may apply. 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.

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

Stats. Implemented: ORS 471.175 & 471.750

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; OLCC 14-2011, f. 12-6-11, cert. ef. 1-1-12

845-015-0190

Resignation Buy-Out Program for Retail Sales Agents

(1) Purpose. The purpose of the Resignation Buy-Out Program is to provide a monetary benefit to all retail sales agents when they resign. Retail sales 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 sales agent to pay the outgoing agent, or the agent’s estate, an amount of money (called the buy-out). Except as provided in section (4), the Commission calculates the buy-out by taking three percent of the stores average annual gross distilled spirits sales for the last five years. If a Retail Sales Agent’s most current Annual Evaluation is outstanding, they will be eligible for a four percent buy-out percentage. The Commission includes the buy-out amount as part of the financial requirement in the information sheet that all applicants receive.

(4) Recruiting Qualified Applicants. The outgoing agent may supplement the Commission’s recruiting process to assure finding qualified applicants. If the Commission’s recruiting process does not generate a qualified applicant 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 payment to the outgoing agent once the Commission has estimated

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any debt reimbursements to the Commission or the State of Oregon. 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 at the store working productively together before the store takeover, unless the incoming agent declines the opportunity in writing. 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. The Commission may waive the buy-out requirement at the written request of the outgoing agent.

(6) Family Transfer of Retail Liquor Store When Agent Dies or is Disabled. If an agent dies or becomes unable to operate a retail liquor store due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse, Domestic Partner, or child, or a qualified spouse, Domestic Partner, or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse, Domestic Partner, or child in this situation, the Commission may waive the buy-out requirement at the request of the outgoing agent or the agent's estate after the Commission has estimated any debt reimbursements to the Commission or the State of Oregon.

(7) Probationary Agents. Except as provided in section (9), an agent who resigns during their probationary period is eligible for a buy-out.

(8) Relocating, Adding, or Closing Stores. The Commission reserves the right to relocate any store, and to add or close stores. Neither the State of Oregon nor the Commission is liable for any changes in the volume of distilled spirits 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 sales agent is not eligible for a buy-out if:

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility, a history of high shortages exists, or the final estimated audit shortage exceeds the estimated amount of compensation due that agent. In these situations, the incoming agent will be instructed to hold payment until the Commission calculates any dollars owed the Commission or the State of Oregon. At that time the Commission will instruct the incoming agent as to the disbursement of the buy-out fund to the outgoing agent and the Commission. Any amount sent to the Commission in excess of the amount due to the Commission or

the State of Oregon will be returned to the outgoing agent upon final financial settlement;

(b) The agent is under suspension;

(c) The agent is a temporary retail sales 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 a permanent incoming agent is appointed and takes over the store; or

(e) The store does not turn over during the time the program is in effect; turnover occurs on the date the Commission conducts the final audit of the permanent outgoing agent.

(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 store's customers to assist any agent (other than the incoming agent) in soliciting the store's customers for the purpose of selling distilled spirits. The outgoing agent recognizes that she/he receives consideration for compliance with this section. The prohibitions in this section:

(a) Are limited to a two-year period. The Commission calculates the two-year prohibition beginning on the date the store is turned over to the incoming agent;

(b) Relate only to 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:

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(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent;

(c) The Commission terminates the Resignation Buy-Out Program, the non-compete provisions in section (10) remain in effect.

(12) No Contract Rights in Buy-Out. No agent shall have any entitlement to, or expectation of receiving, any buy-out. The institution and continuation or termination of the buy-out program constitutes unilateral regulatory action by the Commission, and gives no agent any contractual right or expectation in any buy-out payment. The Commission reserves the right to repeal or modify this rule, or otherwise terminate the buy-out program at any time.

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

Stats. Implemented: ORS 471.750 & 471.752(2)

Hist.: OLCC 14-1996, f. 10-1-96, cert. ef. 1-1-97;

OLCC 8-1998(Temp), f. & cert. ef. 9-18-98 thru 3-16-99; OLCC 4-1999, f. 2-16-99, cert. ef. 3-17-99; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0032; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; OLCC 15-2011, f. 12-6-11, cert. ef. 1-1-12

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

845-015-0196

Appointment of a Temporary Retail Sales Agent or Operation by Commission Staff

(1) The Commission may appoint a temporary agent or operate a store temporarily with Commission staff when the Commission determines a retail sales agent is unable to operate a retail liquor store, is suspended, or a retail sales agent agreement is proposed for termination. In these circumstances the Commission considers any candidate for temporary agent nominated by a retail sales agent but may choose someone else. A temporary agent or Commission staff operates a retail liquor store until the Commission determines the current retail sales agent can resume store duties or until a new retail sales agent is appointed and can assume retail liquor store operations.

(2) The Commission may also appoint a temporary agent or may operate a store temporarily with Commission staff when a new store has been established and the retail sales agent has not yet been selected or has been selected but is unable to begin operating the store, or in other similar circumstances where the Commission finds it necessary to do so.

(3) All of the rules that apply to a retail sales agent apply to a temporary agent except OAR 845-015-0110, 845-015-0120 and 845-015-0125.

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

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; OLCC

15-2011, f. 12-6-11, cert. ef. 1-1-12

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845-015-0200

Satellite Liquor Stores Pilot Program

(1) Purpose. The Satellite Liquor Stores Pilot Program is a program wherein the Oregon Liquor Control Commission (Commission) appoints retail sales agents on a temporary basis to operate Pilot Satellite Liquor Stores under the terms set forth in this rule. Pilot Satellite Liquor Stores are non-exclusive retail liquor stores located in smaller communities where there is a fluctuating, seasonal demand for an additional small outlet due to tourism or other similar factors. The purpose of the Pilot Program is to obtain data on the efficacy of operating such satellite stores in these areas. In connection with the Pilot Program, the Commission will collect data on a variety of subjects, including but not limited to: the economic viability (profitability) of the Pilot Program business model for the Pilot Program Agent and the state of Oregon; public safety impacts on the community; and public response to the program including customer satisfaction and convenience.

(2) Definitions. The following definitions apply only to this rule:

(a) The Satellite Liquor Stores Pilot Program is called the Pilot Program.

(b) The agent appointed to the pilot agency is called a Pilot Program Retail Sales Agent, or Pilot Program Agent. Pilot Program Agent is a retail agent who currently operates a Liquor Store (the "Primary Liquor Store") in the community where the Pilot Satellite Liquor Store is located.

(c) Pilot Program Retail Sales Agent Agreement or Pilot Program Agreement is the agreement between the Pilot Program Agent and the Oregon Liquor Control Commission.

(d) The location where the Commission appoints a retail sales agent on a temporary basis to operate a Liquor Store is called a Pilot Satellite Liquor Store.

(e) Liquor Store means a retail sales agency of the Oregon Liquor Control Commission.

(3) Number of Pilot Liquor Stores; Factors Considered when Siting Pilot Liquor Stores. The Pilot Program will consist of up to six new Pilot Satellite Liquor Stores to be selected within 12 months of the start of the Pilot Program. The Commission will consider the following factors in determining the locations of Pilot Satellite Liquor Stores:

(a) Population fluctuations, changes in consumer

traffic patterns, and/or increased demand within a community during seasonal or peak periods due to tourism or other similar factors;

(b) Distance of the proposed Satellite Liquor Store from existing Liquor Store(s);

(c) Community proximity of the proposed Satellite Liquor Store to the Pilot Program Agent's Primary Liquor Store;

(d) Sales volume of the Pilot Program Agent's primary Liquor Store;

(e) Anticipated ability of the Pilot Satellite Liquor Store to accommodate seasonal, fluctuating demand (through operating days/hours, product mix, etc);

(f) Size of Pilot Satellite Liquor Store, including retail floor space and storage space. A Pilot Satellite Liquor Store may carry no more than 50 percent of the products carried in the Primary Liquor Store, as measured by SKUs;

(g) The ability of the Pilot Program Agent to negotiate acceptable terms for the Satellite Liquor Store location.

(4) Length of Pilot Program Retail Sales Agent Agreements. Each Pilot Program Agent and the Commission will execute a Pilot Program Agent Agreement, the duration of which will not exceed three years from the effective date of the Pilot Program Agent's appointment at the Pilot Satellite Liquor Store. Six months before the expiration of each Pilot Program Retail Sales Agent Agreement, the performance of the applicable Pilot Liquor Store will be evaluated. The Commission will evaluate performance consistent with section (9)(a)-(d) of this rule, the terms of the applicable Pilot Program Retail Sales Agent Agreement, and the Retail Operations Manual. A process to create a permanent Satellite Liquor Store at the applicable location will be initiated by the Commission if it determines the applicable Pilot Satellite Liquor Store is a success.

(5) All statutes and administrative rules governing retail liquor agents will apply to this Pilot Program, with the following exceptions:

(a) OAR 845-015-0110 Establishment of a Retail Liquor Store;

(b) OAR 845-015-0120 Retail Sales Agent Selection Procedure;

(c) OAR 845-015-0135 Public Opinion on Retail

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Liquor Store Location;

(d) OAR 845-015-0140 Hours and Days of Operation;

(e) OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents;

(f) OAR 845-015-0193(1) & (2) Terminating an Agency Agreement;

(g) OAR 845-015-0196 Appointment of a Temporary Agent.

(6) The Retail Operations Manual, including any Pilot Program Appendix, and other relevant Commission policies will apply to the Pilot Program, unless otherwise provided in the Pilot Program Agreement.

(7) All personnel working in the Pilot Satellite Liquor Store must meet all the standards and requirements for liquor store clerks which are required by the Pilot Program Agreement and the Retail Operations Manual.

(8) Pilot Program Agents will provide the Commission with any and all data related to the operation of the Pilot Satellite Liquor Store as specified in the Pilot Program Agreement and the Retail Operations Manual.

(9) Measuring Success of the Pilot Program. Factors the Commission will consider in measuring the success of the Pilot Program include but are not limited to:

(a) Economic viability of the Pilot Program business model for Pilot Program Agents and the Commission;

(b) Increase in total seasonal revenue from liquor sales in the community;

(c) Effects on the public safety of the surrounding community;

(d) Public response to the Satellite Liquor Stores, including customer satisfaction and convenience.

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

Stats. Implemented: ORS 471.750

Hist.: OLCC 10-2010, f. 8-23-10, cert. ef. 9-1-10

845-015-0205

Satellite Liquor Stores

(1) Satellite Liquor Stores are non-exclusive retail liquor stores located in smaller communities where there is a fluctuating, seasonal demand for an additional small outlet due to tourism or other similar factors.

(2) A Satellite Retail Sales Agent is an agent who currently operates a retail liquor store (the Primary Liquor Store) in proximity to the community where a Satellite Liquor Store is located and who is appointed to operate the Satellite Liquor Store.

(3) Factors Considered when Siting Satellite Liquor Stores. The Commission will consider the following factors in determining the locations of Satellite Liquor Stores:

(a) Population fluctuations, changes in consumer traffic patterns, and/or increased demand within a community during seasonal or peak periods due to tourism or other similar factors;

(b) Distance of the proposed Satellite Liquor Store from existing liquor store(s);

(c) Community proximity of the proposed Satellite Liquor Store to the Primary Liquor Store;

(d) Sales volume of the Satellite Retail Sales Agent's Primary Liquor Store;

(e) Anticipated ability of the Satellite Liquor Store to accommodate seasonal, fluctuating demand (through operating days/hours, product mix, etc);

(f) Size of Satellite Liquor Store, including retail floor space and storage space. A Satellite Liquor Store may carry no more than 70 percent of the products carried in the Primary Liquor Store, as measured by SKUs;

(g) The ability of the Satellite Retail Sales Agent to negotiate acceptable terms for the Satellite Liquor Store location.

(4) All statutes and administrative rules governing retail sales agents will apply to a Satellite Liquor Store, with the following exceptions:

(a) OAR 845-015-0110 (1)(d) Establishment of a Retail Liquor Store;

(b) OAR 845-015-0120 Retail Sales Agent Selection Procedure;

(c) OAR 845-015-0140 Hours and Days of

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Operation;

(d) OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents does not apply if a Satellite Liquor Store Agent ceases to operate the Satellite Liquor Store but continues to operate the Primary Liquor Store. However, if the agent resigns from both the Primary Liquor Store and the Satellite Liquor Store, the buy-out shall apply to both stores.

(5) The Retail Operations Manual, including any Satellite Liquor Store Appendix, and all other relevant Commission policies will apply to a Satellite Liquor Store unless otherwise provided in the Retail Sales Agent Agreement.

(6) Satellite Retail Sales Agents will promptly provide the Commission with any and all data related to the operation of the Satellite Liquor Store as specified in the Retail Sales Agent Agreement and the Retail Operations Manual.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1)
& (5)
Stats. Implemented: ORS 471.750
Hist.: OLCC 6-2013, f. 8-26-13, cert. ef. 9-1-13

845-015-0210 Pilot Programs

(1) The Commission may establish pilot programs of up to three years duration in order to test new marketing concepts or retail sales models or to respond to fluctuations in customer demand for distilled spirits products. As part of a pilot program the Commission may establish pilot liquor stores and may appoint retail sales agents to operate the pilot liquor stores.

(2) All statutes and administrative rules governing retail liquor agents will apply to such pilot programs, with the following exceptions:

(a) OAR 845-015-0110 Establishment of a Retail Liquor Store;

(b) OAR 845-015-0120 Retail Sales Agent Selection Procedure;

(c) OAR 845-015-0135 Public Opinion on Retail Liquor Store Location;

(d) OAR 845-015-0140 Hours and Days of Operation;

(e) OAR 845-015-0190 Resignation Buy-Out Program

for Retail Liquor Agents;

(f) OAR 845-015-0193(1) & (2) Terminating an Agency Agreement.

(3) The Retail Operations Manual, including any Pilot Program Appendix, and other relevant Commission policies will apply to the pilot program, unless otherwise provided in the Pilot Program Agreement.

(4) Measuring Success of a Pilot Program. Factors the Commission will consider in measuring the success of a pilot program include but are not limited to:

(a) Economic viability of the pilot program's retail sales model, for both retail sales agents and the Commission;

(b) Public safety impacts;

(c) Public response to the pilot program, including customer satisfaction and convenience.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5)
Stats. Implemented: ORS 471.750(1)
Hist.: OLCC 15-2011, f. 12-6-11, cert. ef. 1-1-12

**DIVISION 16
SERVER EDUCATION PROGRAM
PROVIDER CERTIFICATION**

845-016-0001

Purpose

ORS 471.542 and 471.547 require the Commission to establish standards for an alcohol education course, certify providers and instructors, and establish fees to cover the administrative cost of the program. These rules set standards and certification procedures to ensure that the Commission certifies qualified providers and instructors who will provide quality education within acceptable business practice.

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0005

Definitions

As used in OAR chapter 845, division 16:

(1) “Advertising” means any form of notice used in recruiting and promotion, however disseminated, such as publications, signs, mailings, radio, television and audiovisual materials.

(2) “Authorized Representative” means a person who meets the minimum qualifications in OAR 845-016-0020(1) and makes decisions on behalf of the provider that include hiring instructors, evaluating instructor qualifications and supervising instructor performance or managing online operations.

(3) “Case Study” means a teaching method in which the instructor or actor(s) describes, orally or in writing, a situation directly related to the training. The students, instructor or actor(s) demonstrate a possible solution and then the students, instructor or actor(s) describe, demonstrate or discuss the strengths, weaknesses and alternatives to the solution.

(4) “Classroom course” or “classroom setting” means an Alcohol Server Education course (either initial or renewal) taught in a classroom setting with an instructor present.

(5) “Initial Alcohol Server Education course” or “initial course” means the course required by ORS 471.542 and OAR 845-009-0075.

(6) “Online course” means an Alcohol Server Education course (either initial or renewal) accessible via a computer or computer network.

(7) “Provider” means a person certified by the Commission to provide a Commission-approved alcohol server education course and includes: an individual, limited partnership, general partner, limited partner whose investment commitment is ten percent or more of the total investment commitment, corporation, director or principal officer as defined in OAR 845-006-0301, stockholder who owns or controls ten percent or more of any class of stock, limited liability company, limited liability company’s member or manager, or other bonafide legal entity. The legal entity may not be set up to avoid the fee structure for providers that these rules establish.

(8) “Renewal Alcohol Server Education course” or “renewal course” means the course required by ORS 471.542, OAR 845-009-0075, and 845-016-0068.

(9) “Role Play” means a teaching method in which the students or actors assume the roles of characters in a situation directly related to the training and then act out responses to the situation the scene presents. Role plays in online courses must meet the course design and technical standards in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Course Design and Technical Standards for Online Courses (published September 1, 2007 and available at the Commission’s main office at 9079 SE McLoughlin Blvd., Portland, OR).

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

845-016-0010

Provider Certification Process

(1) A person who wants to become a provider of

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Alcohol Server Education Courses must submit:

(a) A completed application package provided by the Commission that shows how the applicant meets the standards in OAR 845-016-0015 or 845-016-0016; and

(b) A \$500 non-refundable application evaluation fee. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

(2) If an application is incomplete, the Commission will tell the applicant what is needed. The applicant will have 90 days from the date the Commission received the application to give the required information. If the applicant does not provide the information within the 90 days, the Commission will refuse to process the application. If the applicant provides the information after the 90 day limit, the Commission will require a new application and fee.

(3) The Commission evaluates the application to determine if the applicant and proposed course(s) meet the standards in OAR 845-016-0015 or 845-016-0016.

(4) The Commission sends the applicant written notification of certification approval or denial. If the Commission approves the application, it will issue a Letter of Certification.

(5) Initial provider certification is for six calendar months from the certification date. The Commission evaluates the provider's performance before the end of the sixth month. If the provider complies with all course procedures, the Commission extends certification for the next six calendar months, with no additional fee. If the provider does not comply, the Commission may suspend or cancel certification. The Commission gives the provider written notification of its determination to extend, suspend or cancel certification at least 15 days before the end of the sixth month.

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86; OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

845-016-0015

Alcohol Server Education Provider Standards -- Classroom Course

To be certified, a provider must:

(1) Have a course that meets the Commission's Alcohol Server Education Minimum Curriculum Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR) and that includes:

(a) Role-playing, case study exercises and other methods that actively involve students in acquiring behavioral skills in identifying minors and stopping service to visibly intoxicated persons.

(b) Regular intervals where students demonstrate comprehension of the material through knowledge or skills before continuing to the next unit.

(c) Teaching techniques and methods the provider proposes and the Commission approves. The Commission will approve teaching techniques and methods based on the guidelines in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Teaching Techniques and Methods Standards, (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR) and

(d) A student workbook that meets the Commission's Minimum Workbook Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR)

(2) Meet the minimum qualifications in OAR 845-016-0020(1) or have an authorized representative who meets these minimum qualifications, if the provider is not responsible for hiring, training or evaluating instructor qualifications or performance. The provider applicant must submit a completed Provider Staff Certification form describing the provider applicant or authorized representative's qualifications, as appropriate.

(3) Identify all course instructors and persons who train instructors and verify that they meet the qualifications in OAR 845-016-0020.

(4) Submit a completed Provider Staff Certification form and instructor fee for all course instructors as OAR 845-016-0020 requires.

(5) Comply with Secretary of State filing requirements for an Oregon business entity, nonprofit corporation, or assumed business name as specified in ORS 60, 62,

63, 65, 67, 70, and 648, if applicable.

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

Stats. Implemented: ORS 471.542 & 471.547
Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;
OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 5-1989, f.
5-24-89, cert. ef. 5-29-89; OLCC 9-1990, f. 3-27-90,
cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef.
7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98;
OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC
3-2007, f. 2-26-07, cert. ef. 9-1-07; OLCC 16-2007, f.
8-20-07, cert. ef. 9-1-07

845-016-0016

Alcohol Server Education Provider Standards for Initial Course When Given Online

To be certified to present the initial Alcohol Server Education course online, a provider must:

(1) Have a course that meets the Commission's Alcohol Server Education Minimum Curriculum Standards (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR). The course approved for the initial online course must include:

(a) Role-playing, case study exercises and other methods that actively involve students in acquiring behavioral skills in identifying minors and stopping service to visibly intoxicated persons.

(b) Course design and technical standards the provider proposes and the Commission approves. The Commission will approve course design and technical standards based on the guidelines in the Alcohol Server Education Provider Quality Assurance Plan, including the Minimum Course Design and Technical Standards for Online Courses, (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR); and

(c) A student workbook that meets the Commission's Minimum Workbook Standards for Online Courses (published September 1, 2007 and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR)

(2) Meet the minimum qualifications in OAR 845-016-0020(1) or have an authorized representative who meets these minimum qualifications if the provider is not responsible for hiring, training or evaluating instructor qualifications or performance or managing online operations. The provider applicant

must submit a completed Provider Staff Certification form describing the provider applicant or authorized representative's qualifications, as appropriate.

(3) Meet all technical and security standards required by the Commission for transmission of electronic data and information to the Commission.

(4) Submit a completed Provider Staff Certification form and appropriate fees as OAR 845-016-0020 requires.

(5) Comply with Secretary of State filing requirements for an Oregon business entity, nonprofit corporation, or assumed business name as specified in ORS 60, 62, 63, 65, 67, 70, and 648, if applicable.

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

Stats. Implemented: ORS 471.542 & 471.547
Hist.: OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

845-016-0020

Instructor and Trainer Qualification and Performance Standards; Provider Responsibility for Fee and Performance

(1) Qualifications: Each instructor and person who trains instructors, and who submits a Provider Certification form after September 1, 2007 must have:

(a) A minimum of four years of verified full-time employment (8,000 hours) in the fields of training, education, law, law enforcement, substance abuse rehabilitation, the hospitality industry or any of the subjects listed in ORS 471.542(5); or

(b) A minimum of two years of post-secondary education in the fields of training, education, law, law enforcement, substance abuse rehabilitation, the hospitality industry or any of the subjects listed in 471.542(5).

(2) Performance Standards: Each instructor and person who trains instructors must:

(a) Teach the Alcohol Server Education Program that the Commission approved;

(b) Understand the objectives of the program and be able to communicate to the students with knowledge, clarity and judgment about the program;

(c) Demonstrate skill in student supervision;

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(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

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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

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845-016-0036

Course Examination in Online Courses

(1) The provider will:

(a) Administer the Commission-provided closed-book exam as a required portion of each course presentation;

(b) Transmit student and examination data in the electronic format specified by the Commission for scoring within 36 hours of the completion of the course presentation. Holidays and weekends are not included in counting the 36 hours; and

(c) Ensure safe electronic storage of student information and testing materials as specified in technical specifications the Commission approves.

(2) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471.030, ORS 471.730(1) & (5)
Stats. Implemented: ORS 471.542 & ORS 471.547
Hist.: OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

845-016-0040

Recertification

(1) A provider who wants to be recertified must submit a completed recertification application provided by the Commission, a non-refundable \$250 recertification evaluation fee and the \$100 fee for each instructor who will be teaching in the provider's program. The instructor fee is refundable only if the Commission denies provider recertification. The Commission accepts a check or money order payable to the Oregon Liquor Control Commission.

(2) Despite section (1) of this rule, the Commission may require only one provider recertification fee to recertify a group of providers if each provides the same program workbook and class curriculum. The Commission will certify each as a provider who will have the same requirements and responsibilities as any other provider.

(3) The Commission must receive the application and fee not more than 90 days or less than 30 days before the date the current certification expires. If the provider submits the application or fee less than 30 days before certification expires, the provider must pay a \$5 per day late fee or submit the application and fee that OAR 845-016-0010(1) requires for initial certification. The Commission may waive the late fee

if the provider does not receive the renewal notice at least 90 days before the current certification expires due to Commission or United States Post Office error.

(4) The Commission gives the provider written notification of its decision to approve or deny recertification:

(a) If the Commission approves recertification, the recertification is valid for one year from the expiration date of the current certification unless the provider requests a later effective date. If the provider requests a later date, the recertification is valid for one year from the date the provider requested. The Commission will approve any requested date that does not exceed 30 days from the current expiration date. The provider may not provide any alcohol server education courses between the time the current certification expires and the recertification date;

(b) If the Commission denies recertification, the Commission will give the reason(s) for the denial, will include information about the applicant's right to a hearing under the procedure in OAR 845, division 3, and will refund any instructor fee(s) the provider included as a part of the recertification application.

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

Stats. Implemented: ORS 471.542 & 471.547
Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;
OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 4-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0045

Certification and Recertification Denial

(1) The Commission may deny certification or recertification to a provider or provider applicant if the applicant, provider, provider's instructor or instructor applicant, or the provider's authorized representative does not comply with section (3)(a) through (f) of this rule.

(2) The Commission may deny certification or recertification to an instructor or instructor applicant who does not comply with section (3)(a) through (f) of this rule.

(3) Applicants, instructors, providers, and authorized representatives must:

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(a) Not make any material false or misleading statement to induce or prevent Commission action;

(b) Meet the requirements in OAR 845-016-0015, 845-016-0016, or 845-016-0020, as appropriate;

(c) Follow the procedures described in these rules;

(d) Not violate any laws or Commission rules related to the Alcohol Server Education course;

(e) Not exploit the professional relationship with a student for personal gain;

(f) Not have a recent history of liquor or controlled substance law violations, a recent history of using a controlled substance or alcoholic beverage to excess or recent disregard for laws related to being a responsible provider or authorized representative.

(4) When the Commission proposes to deny certification or recertification, a provider, instructor, or applicant may make a written request for a hearing under the provisions of OAR 845, division 3 (Contested Case Procedures).

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;

OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef.

12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 3-2007, f. 2-26-07, cert. ef. 9-1-07

845-016-0048 Restrictions

(1) The Commission may restrict a provider's or instructor's certificate when:

(a) In the absence of a restriction, the Commission has a basis to cancel, suspend/fine or deny the certification; or

(b) In addition to all or part of a suspension or fine, a restriction may prevent the recurrence of the problem(s) that caused the violation(s).

(2) Violation of a restriction is a Category I violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98

845-016-0055 Record Keeping

(1) Each provider will keep course presentation information including the location, date and number of students attending each class. The provider will give the Commission this information upon request.

(2) Each provider will keep enrollment records for two years and three months. Enrollment records include the name of each student enrolled in the provider's program and the date and location of the class the student took. The provider will give the Commission copies of these enrollment records if the provider is no longer certified. The Commission may inspect records at any time during normal business hours.

(3) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

Stat. Auth.: ORS 471 & 472, including 471.030,

471.730(1) & (5), 472.030, 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.542 & 471.547

Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;

OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92, cert. ef. 7-1-92

845-016-0060 Changes in Course, Instructor or Provider

(1) A provider or instructor will not change program content or method of presentation without the provider receiving the Commission's prior approval.

(2) Selling the Business: If the provider sells the business, the purchaser must apply for and receive certification before the purchaser gives any course.

(3) Adding an Instructor:

(a) When the provider adds an instructor, the provider must mail or deliver to the Commission, no later than 36 hours after the instructor's first course, a completed Provider Staff Certification form for each instructor and the non-refundable instructor fee. Holidays and weekends are not included in counting the 36 hours. If the provider adds an instructor during the first six months of the certification period, the instructor fee is \$100. If the provider adds an instructor during the

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last six months of the certification period, the fee is \$50;

(b) Despite subsection (3)(a) of this rule, if a provider adds an instructor who teaches another Oregon Alcohol Server Education Course, the Commission will not require another instructor fee if the fee has been paid for the certification period. However, the provider must send the Commission a completed Provider Staff Certification form before the instructor teaches the provider's course.

(4) Changing a Corporate Officer or Authorized Representative.

(a) A provider must notify the Commission within 20 days whenever a corporate officer changes;

(b) Whenever the provider changes the authorized representative or adds a person to train instructors, the provider must mail or deliver to the Commission a Provider Staff Certification form for the new authorized representative or trainer. The provider must do this no later than 36 hours after the provider makes the change or addition. Holidays and weekends are not included in counting the 36 hours.

(5) The Commission will evaluate any requested change and notify the provider in writing of its approval or denial.

(6) Violation of section (1) or (2) of this rule is a Category II violation. Violation of section (3) or (4) of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & 471.547
Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;
OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 9-1990,
f. 3-27-90, cert. ef. 4-1-90; OLCC 6-1992, f. 6-5-92,
cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98, cert. ef.
12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0065

Provider Advertising and Promotion Standards

(1) Provider advertising related to the course must include:

(a) The provider's telephone number and cancellation policy;

(b) The total amount of course time which includes

instruction, exam and break time;

(c) A statement that students must attend the entire course before taking the exam.

(2) Advertising will not suggest that the State of Oregon, the Commission or any state agency endorses or recommends the provider's course.

(3) The provider will give the Commission copies of course publications, brochures, pamphlets, tear sheets, scripts or any other representation of advertising materials related to the course upon use.

(4) A provider must have records available to support any claims or representations the provider makes in advertising.

(5) Violation of this rule is a Category III violation (see OAR 845-016-0080, Sanctions).

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

Stats. Implemented: ORS 471.542 & 471.547
Hist.: LCC 13-1986(Temp), f. 9-2-86, ef. 9-8-86;
OLCC 5-1987, f. 2-9-87, ef. 3-1-87; OLCC 6-1992, f.
6-5-92, cert. ef. 7-1-92; OLCC 10-1998, f. 10-27-98,
cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef.
11-1-02

845-016-0068

Alcohol Server Education Renewal Requirements for Service Permittees and Licensees; Examination; Approval Standards and Process

(1) ORS 471.542(1) requires applicants for any license that authorizes the sale or service of alcoholic beverages for consumption on the premises and service permits to complete an approved alcohol server education course and examination in order to qualify for a license or permit. ORS 471.542(3) requires the Commission to establish by rule the requirements that licensees and permittees must comply with as a condition of requalifying for a license or permit every five years.

(2) Once every five years after completing the initial alcohol server education course and examination required in ORS 471.542(1), licensees and permittees may satisfy the requirement of 471.542(3) by:

(a) Repeating the initial alcohol server education course and examination; or

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(b) Completing a renewal alcohol server education course and examination.

(3) Renewal Course Examination

(a) Despite OAR 845-009-0085(1) and 845-009-0105(1), a passing grade on a renewal course exam is 80 percent.

(b) Despite OAR 845-009-0085(3) and (4) and 845-009-0105(3), a student who does not pass a renewal course exam must repeat the initial alcohol server education course and examination to meet the renewal requirement.

(4) Renewal Course Approval Standards and Process

(a) For a course to be approved, an applicant must:

(A) Submit a completed application packet provided by the Commission; and

(B) Have a course that meets the Commission's Minimum Curriculum and Instruction Standards for an Alcohol Server Education Renewal Course (published June 22, 2000, and available at the Commission's main office at 9079 SE McLoughlin Blvd., Portland, Oregon).

(b) Commission staff will review the application and will:

(A) Approve a completed application that meets the requirements in section (4)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course, or;

(B) Return an incomplete application or one that does not meet the requirements of section (4)(a).

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

Stats. Implemented: ORS 471.542

Hist. OLCC 13-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2001, f. 6-11-01, cert. ef. 7-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0070

Provider Responsibility for Acts of Employees

The Commission may hold a provider responsible for any act or omission of the provider's course instructor, personnel or representative that violates any law or administrative rule affecting provider privileges.

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

Stats. Implemented: ORS 471.542 & 471.547

Hist.: OLCC 9-1990, f. 3-27-90, cert. ef. 4-1-90; OLCC 10-1998, f. 10-27-98, cert. ef. 12-1-98; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-016-0075

Prohibited Conduct

No provider or instructor will:

(1) Administer the exam to a person who has not attended and completed the entire class. Violation of this section is a Category I violation.

(2) Drink alcoholic beverages, be visibly intoxicated, or be under the influence of intoxicants during the course presentation and exam, including breaks and meals. Violation of this section is a Category I violation.

(3) Make any material false or misleading statement to induce or prevent Commission action. Violation of this section is a Category I violation.

(4) Falsify, alter or otherwise tamper with examination materials. Violation of this section is a Category I violation.

(5) Have a recent history of liquor or controlled substance law violations, a recent history of using a controlled substance or alcoholic beverage to excess or recent disregard for laws related to being a responsible provider, instructor or authorized representative. Violation of this section is a Category I violation.

(6) Exploit the professional relationship with a student for personal gain. Violation of this section is a Category II violation.

(7) Permit a student to refer to any written material or have a discussion with another person (except the instructor or instructor's designee) during the exam unless the instructor authorizes the student to use an interpreter. Violation of this section is a Category II violation.

(8) Prohibit or interfere with on-site observations by the Commission or fail to assist the Commission in scheduling these observations. Violation of this section is a Category III violation.

(9) Permit any student to drink alcoholic beverages or to be under the influence of intoxicants during

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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

EXHIBIT 1 (OAR 845-016-0080)
Alcohol Server Education Provider and Instructor Sanction Schedule

Category I	
845-016-0048	Restriction violation
845-016-0075(1)	Administers exam without required class attendance
845-016-0075(2)	Drinks, is under the influence of intoxicants, or is visibly intoxicated in class
845-016-0075(3)	False or misleading statement
845-016-0075(4)	Falsifies, alters, etc. exam
845-016-0075(5)	History of liquor/controlled substance violations/abuse
Category I	1st Cancel

Category II	
845-016-0020(2)	Instructor fails to meet performance standards
845-016-0020(4)	Provider fails to ensure that instructor meets performance standards
845-016-0060(1)&(2)	Changes course without prior approval
845-016-0075(6)	Exploits professional relationship
845-016-0075(7)	Allows cheating on exam
Category II	1st \$250
	2nd \$500
	3rd 30 days or \$1000
	4th Cancel

Category III	
845-016-0020(3)	Fails to pay instructor fee
845-016-0020(5)	Fails to notify Commission of course schedules or changes
845-016-0030	Student enrollment and classroom setting violation
845-016-0035	Course exam administration and handling violation
845-016-0055	Record keeping violation
845-016-0060(3)&(4)	Changes in course personnel violation
845-016-0065	Advertising violation
845-016-0075(8),(9)&(10)	Other prohibited conduct
Category III	1st Letter of Reprimand
	2nd Letter of Reprimand
	3rd \$500
	4th 30 days or \$1000
	5th Cancel

**DIVISION 20
BEVERAGE CONTAINERS AND
REDEMPTION CENTERS**

845-020-0005

Definitions

(1) The terms defined in ORS 459A.700 have the same meaning in OAR 845-020-0005 through 845-020-0030, unless the context requires otherwise.

(2) The definition of beverage in ORS 459A.700(1) includes "similar carbonated soft drinks." "Soft drinks" means any non-alcoholic drink except 100 percent coffee, tea, milk, cocoa and fruit or vegetable juices. "100 percent coffee, tea, milk, cocoa and fruit or vegetable juices" means the natural product with no water added, or concentrate that has been reconstituted to full strength, to which no flavorings have been added.

(3) As used in OAR 845-020-0005 through 845-020-0030, unless the context requires otherwise: "Person" includes individuals, corporations, associations, firms, partnerships, and joint stock companies.

Stat. Auth.: ORS 459A, 459.992(4), 471 & 472,
including 471.030, 471.730(1) & (5), 472.030 &
472.060(1) & (2)(d)

Stats. Implemented: ORS 459A.725

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered
from 845-010-0600; OLCC 8-1989, f. 7-28-89, cert.
ef. 8-1-89

845-020-0010

Certification of Containers

(1) A beverage container may be certified by the Commission if:

(a) It is reusable as a beverage container by more than one manufacturer in the ordinary course of business; and

(b) More than one manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value

of the container.

(2) The Commission shall withdraw certification of a beverage container which it determines is no longer qualified for certification under section (1) of this rule.

(3) The Commission shall refuse to certify or shall withdraw certification of:

(a) A beverage container which by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting, or other permanent method, is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name;

(b) Each beverage container, in excess of one, for beer and other malt beverages, having a liquid capacity of 16 fluid ounces or less;

(c) Each beverage container, in excess of one, for beer and other malt beverages, having a liquid capacity of more than 16 fluid ounces; or

(d) Any beverage container which would tend to disrupt the orderly return and reuse of beverage containers.

Stat. Auth.: ORS 459A.725(1) & (3) & 459A.730(1)
& (2)

Stats. Implemented: ORS 459A.725

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; LCC 44, f. 11-20-73, ef. 12-11-73; Renumbered from 845-010-0605

845-020-0015

Application for Certification of Containers

Any manufacturer desiring certification of a beverage container shall make application to the Commission upon forms to be furnished by the Commission. The application shall state the name and address of the manufacturer requesting the container certification and the name and addresses of each other manufacturer, known to the applicant, who will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container. The application shall include such additional information as the Commission may require. Each application for certification will be accompanied by the following:

(1) Sample of the container to be considered for

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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) & (3) & 459A.730(1)
& (2)
Stats. Implemented: ORS 459A.730
Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered
from 845-010-0610

845-020-0020 Redemption Centers

(1) The Commission shall approve a redemption center if it finds the redemption center will provide a convenient service to consumers for the return of empty beverage containers.

(2) The Commission considers factors such as the following in determining whether or not a redemption center provides a convenient service to consumers for the return of empty beverage containers:

(a) Location of the redemption center;

(b) Kinds of beverage containers accepted at the redemption center;

(c) Dealers to be served by the redemption center and their distance from the redemption center;

(d) Days and hours of operation of the redemption center;

(e) Parking facilities serving the redemption center;

(f) Evidence showing that the redemption center meets all applicable local ordinances and zoning requirements;

(g) The cap, if any, on the number of beverage containers per person per day that the redemption center will accept;

(h) Payment method(s) accepted by the redemption

center for redeemed beverage containers;

(i) The projected volume of beverage container returns at the redemption center as compared to the actual returns at the dealers to be served by the redemption center;

(j) A description of how consumers will be notified of the redemption center's location, services, and service hours.

Stat. Auth.: ORS 459A.735(1), (3) & (4)
Stats. Implemented: ORS 459A.735
Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered
from 845-010-0615; OLCC 2-2010, f. 2-22-10, cert.
ef. 3-1-10

845-020-0025 Application for Approval of Redemption Center

Any person desiring approval of a redemption center shall make application to the Commission upon forms to be furnished by the Commission. The application shall include the following and such additional information as the Commission may require:

(1) Name and address of each person to be responsible for the establishment and operation of the redemption center;

(2) Exact location and mailing address of redemption center;

(3) Kinds of beverage containers that will be accepted at the redemption center;

(4) Names and addresses of the dealers to be served by the redemption center;

(5) Distances from the redemption center to the dealers to be served;

(6) Days and hours of operation of the redemption center;

(7) Description of parking facilities to serve the redemption center;

(8) Evidence showing that a redemption center meets the zoning requirements and other applicable local ordinances of the regulating local jurisdiction;

(9) The cap, if any, on the number of beverage containers per person per day that will be accepted at the redemption center;

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(10) Payment method(s) for redeemed beverage containers;

(11) The projected volume of beverage container returns at the redemption center as compared to the actual returns at the dealers to be served by the redemption center;

(12) A description of how consumers will be notified of the redemption center's location, services, and service hours.

Stat. Auth.: ORS 459A, 459.992 & 471.730

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0620; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

845-020-0030

Standards of Cleanliness for Redemption Centers

All persons responsible for the establishment and operation of the redemption center shall at all times keep the redemption center premises, including the parking facilities serving the redemption center, in full compliance with the law. Such persons shall keep such redemption center premises in good repair, painted, clean, well lighted, free of litter and trash, and free of rodents, vermin, infestations of insects, and their harborages or breeding places.

Stat. Auth.: ORS 459A.735(1), (3) & (4)

Stats. Implemented: ORS 459A.735

Hist.: LCC 39, f. 7-17-72, ef. 7-8-72; Renumbered from 845-010-0625; OLCC 2-2010, f. 2-22-10, cert. ef. 3-1-10

845-020-0035

When Dealer Not Required to Accept Containers

(1) The Commission does not interpret ORS 459A.710 to require a dealer to accept an empty beverage container, if the dealer:

(a) Occupies a total enclosed space of 5,000 or more square feet in a single location and has not offered the kind of beverage for sale within the past six months;

(b) Occupies a total enclosed space of less than 5,000 square feet in a single location and has not offered the kind, size, and brand of beverage for sale within the past six months;

(c) Has reasonable grounds to believe the container was sold at retail outside Oregon;

(d) Has reasonable grounds to believe that container was obtained from or through a distributor without paying the refund value. The primary goal of this subsection is to prevent distributors, recyclers or others from putting containers through the refund/return system more than once without paying the refund value; or

(e) Has reasonable grounds to believe that container has already been redeemed, such as through a reverse vending process.

(2) Dealers must not use this rule to frustrate the requirement of the Beverage Container Act that dealers accept return of:

(a) Up to 144 beverage containers sold in Oregon from any person in any one day, if the dealer occupies a total enclosed space of 5,000 or more square feet in a single location; or

(b) Up to 50 beverage containers sold in Oregon from any person in any one day, if the dealer occupies a total enclosed space of less than 5,000 square feet in a single location.

Stat. Auth.: ORS 459A, 459.992, 471.030 & 471.730

Stats. Implemented: ORS 459A.715

Hist.: LCC 1-1982(Temp), f. & ef. 1-22-82; LCC 5-1982, f. 3-26-82, ef. 4-1-82; OLCC 10-1987, f. 3-13-87, ef. 4-1-87; OLCC 15-1999, f. 6-9-99, cert. ef. 7-1-99; OLCC 17-2007(Temp), f. & cert. ef. 9-17-07 thru 3-15-08; OLCC 2-2008, f. 1-16-08, cert. ef. 3-16-08; OLCC 14-2008, f. 12-17-08, cert. ef. 1-1-09