

DIVISION 13 FINANCIAL ASSISTANCE

845-013-0001

Financial Assistance; Purpose, Limitation, Definitions and Record Keeping

(1) Purpose. ORS 471.398 and 471.400 generally prohibit manufacturers and wholesalers from giving services or things to retailers. The statute makes some exceptions to the general prohibition. OAR 845-013-0001 through 845-013-0090 define and explain the exceptions. The Commission's basis for its interpretations of point of sale material, items of nominal value and services of nominal value is that manufacturers and wholesalers may promote their products but may not promote a retailer's business or underwrite a retailer's business expenses.

(2) Definitions. As used in ORS 471.398, 471.400, and OAR 845-013-0001 through 845-013-0090:

- (a) "Customize" means designing or modifying point of sale material or items of nominal value to promote a specific retail business;
- (b) "Exterior" means on the outside of the business or clearly visible from the outside;
- (c) "Manufacturer" includes brewery, distillery, winery, brew-pub and grower sales privilege licensees;
- (d) "Retailer," "retail license," and "any licensee authorized to sell alcoholic liquor at retail" includes any officer, director, agent, employee or substantial stockholder of the licensed business;
- (e) "Substantial stockholder" as used in subsection (2)(d) of this rule means a person who owns ten percent or more of any class of stock.

(3) General Limitations:

- (a) Although Oregon law allows manufacturers and wholesalers to provide the items and services described in these rules, federal laws regarding wine may not. When the federal law is more strict, wine

manufacturers and wholesalers must follow the federal law rather than Oregon law. Therefore, manufacturers and wholesalers should check with the Alcohol and Tobacco Tax and Trade Bureau (TTB) before applying these rules to their wine business;

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

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

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

moved and the retailer moves or helps move the products of any manufacturers or wholesalers who are not present;

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

- (A) Add the retailer's name or logo;
- (B) Add the retailer's price for the advertised product(s); or
- (C) Leave a blank space for the retailer to add only the retailer's price for the advertised product(s).

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

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

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

Stats. Implemented: ORS 471.398

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0121; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04

845-013-0010

Substantial Gratuities

(1) ORS 471.398(1) prohibits a manufacturer or wholesaler from providing a substantial gratuity to a retailer. This rule lists the only gratuities a manufacturer or wholesaler may give to a retailer and not violate ORS 471.398(1).

(2) Food and Beverages. A manufacturer or wholesaler may give a retailer food and beverages for immediate consumption:

- (a) At a meeting at which the primary purpose is the discussion of business;
- (b) At a convention when the food and beverages are offered to all participants;
- (c) At a sports or entertainment event that the manufacturer or wholesaler attends with the retailer. See section (4) of this rule.

(3) Items at a Convention. A manufacturer or wholesaler may give item(s) to retailers who are participants at a convention as long as the manufacturer or wholesaler offers the item(s) to all the convention participants.

(4) Tickets/Admission Fees:

- (a) A manufacturer or wholesaler may pay for a retailer's ticket or admission fee including green, court and lane fees for a sports or entertainment event;
- (b) Payment is allowed as long as the manufacturer or wholesaler accompanies the retailer to the event and does not pay associated costs like the retailer's airfare and costs of a similar type.

(5) Campaigns for Responsible Use. A manufacturer or wholesaler may:

- (a) Give a retailer inexpensive items that function only to promote responsible use of alcoholic beverages. These items may be for retailer use on the premises or for customer use. They may include an inconspicuous reference to a manufacturer or wholesaler but no reference to the retailer. Examples of allowable items: buttons, posters and static-cling stickers. Examples of non-allowable items: glasses, T-shirts and coasters;
- (b) Provide a person as a part of a campaign to promote responsible use of

alcoholic beverages on a retailers premises as long as:

- (A) Neither the manufacturer/wholesaler or retailer advertise or promote the persons presence at the premises;
- (B) If a celebrity or performer is involved, the celebrity or performer does only a brief performance, if any;
- (C) The manufacturer or wholesaler provides no alcoholic beverages to the retailers customers;
- (D) The manufacturer or wholesaler does a promotion no more than once per year per retail premises.

(6) Gifts. A manufacturer or wholesaler may give a retailer a gift to acknowledge a grand opening, personal or business anniversary, death in the family, birthday, holiday or similar special occasion. The value of all gifts given to a retailer during any calendar year must not exceed \$30 fair market value. Gifts may not include cash or anything else that ORS 471.398 and OAR chapter 845, division 013 regulate. For example, OAR 845-013-0050 limits exterior point of sale material to a 630 square inch maximum. A manufacturer or wholesaler may not use this gift section to expand allowable point of sale material in order to give a retailer a larger exterior sign.

(7) Winery or Brew-Pub Festivals for the Public Held on a Retailers Premises:

- (a) With a Special Events Winery License, one or more wineries may hold and promote a wine-tasting festival (the Timberline Wine Festival, for example) or similar event on a retailers premises. With a Temporary Sales License, one or more brewery-public houses (Brew-Pubs) may hold and promote a malt beverage tasting festival or similar event on a retailers premises;
- (b) The purpose of this section is to allow wineries and brew pubs, not retailers, to make any allowable sales of alcoholic beverages at the festival. To accomplish this, the requirements for these festivals are:

- (A) Space is all the retailer provides;
- (B) At the festival, only the winery(s) or brew-pub(s), not the retailer, makes all the sales, if any, of the products offered for tasting;
- (C) A winery or brew-pub participates in no more than two festivals per calendar year per licensed retail premises;
- (D) Anyone who sells or serves alcoholic beverages at these tastings must have a service permit except the Special Events Winery or Temporary Sales licensee.

(8) Holding Conventions. Like other businesses, a manufacturer or wholesaler may want to hold and promote a convention or similar function. A manufacturer or wholesaler may use a retailers facility for a convention under the following conditions:

- (a) The manufacturer or wholesaler holds no more than one convention per calendar year per retail license premises;
- (b) The manufacturer or wholesaler pays a reasonable fee for rental of the retailers facility and anything else the retailer provides.
- (c) The manufacturer or wholesaler may include the retailers name and location in any advertising only as necessary to give directions to the event. The retailer must not pay or receive payment from the manufacturer or wholesaler for any part of the advertising cost.

(9) Donations of Prizes: A manufacturer or wholesaler may donate prize money or prizes to an organization for a public event, at which a retailer licensee sells or serves alcoholic beverages. He/she may do this only under the following conditions:

- (a) The organization must not exist solely for the benefit of a single retailer;
- (b) The manufacturers or wholesalers donation must go to the participants in the events;
- (c) The retailer must make all alcoholic beverages usually sold on the premises

readily available and at the comparable prices charged on non-event days;

(d) The retailer must not solicit donations; and

(e) An individual manufacturer or wholesaler may donate to only one event per retailers premises each calendar year. The donation does not exceed \$2,000. The event lasts no longer than seven consecutive calendar days. The Commission may extend the limitations in this subsection if the manufacturer or wholesaler shows that the retailer will not receive a direct or indirect substantial benefit as a result of the donation or if the facility is the only one available that can reasonably accommodate the event.

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

Stats. Implemented: ORS 471.398(1)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-10-122, 10-124 & 10-126; OLCC 7-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0020

Money, Credit, Discounts; ORS 471.398(2) and 471.400(3)(a)

(1) "Money, Credit": ORS 471.398(2) prohibits a manufacturer or wholesaler from providing money or credit to a retailer. A manufacturer or wholesaler may, however:

(a) Give credit or cash, with the Commissions prior written approval, for malt beverage or wine that a retailer returns:

(A) When the retailer terminates the business or seasonal license;

(B) When the retailer temporarily stops operating due to unforeseen circumstances like fire, flood or other natural disasters;

(C) When the retailer temporarily stops operating for more than 29 days; or

(D) After holding a Temporary

Sales license event except for Full On-Premises Sales licenses.

(b) Give credit for wine or malt beverages that the retailer cannot exchange as allowed in OAR 845-013-0070(3)(d) and (3)(e) because the manufacturer or wholesaler has no saleable product available. However, the manufacturer or wholesaler must:

(A) Apply the credit to the retailers next purchase;

(B) Get the Commissions prior written approval if the credit is for more than one case; and

(C) Limit the amount of the credit to the retailers original purchase price for the product.

(2) "Non-Alcoholic Product Credit Sales": ORS 471.400 (3)(a) allows a manufacturer or wholesaler licensee to sell non-alcoholic products in the manner in which non-licensee manufacturers and wholesalers sell them. With regard to credit, the Commission has determined that the usual industry practice allows credit sales with full payment within 45 days of delivery. Therefore, a manufacturer or wholesaler may sell non-alcoholic products on credit. The retailer must, however, pay for these credit purchases in full within 45 days of the delivery date. If the retailer does not, both the manufacturer or wholesaler and the retailer have violated ORS 471.400(3)(a). The manufacturer or wholesaler has not given financial assistance under this section if he/she gives the Commission written notification by no later than the 37th day that the retailer has not paid for the product. He/she will also send the retailer a copy of the notice.

(3) "Discounts": ORS 471.398(2) and 474.115(4)(a) prohibit a manufacturer or wholesaler from giving discounts to a retailer. The manufacturer or wholesaler and the retailer have violated these prohibitions if the manufacturer or wholesaler contracts with the retailer for delivery of alcoholic beverages more than ten days in the future.

(4) Despite section (3) of this rule: A manufacturer or wholesaler may sell existing vintage-dated wines for future delivery by written contract prior to winery release if the manufacturer or wholesaler:

- (a) Offers this opportunity to all their retail license customers at the same general time subject to availability;
- (b) Keeps a copy of the contract;
- (c) Keeps a record of the offering that includes the names of the retail licensees who were given the opportunity to participate in the offering and an explanation of the method used to make the offering.

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

Stats. Implemented: ORS 471.398(2) & ORS 471.400(3)(a)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 20-1990, f. 9-28-90, cert. ef. 10-1-90; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0123; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0030

Fixtures, Furniture, Furnishings, ORS 471.465(1)(c)

(1) ORS 471.398(3) prohibits a manufacturer or wholesaler from providing any fixtures, furniture or furnishings to a retailer. A manufacturer or wholesaler does not violate this prohibition if he/she provides a display bin or rack under the following conditions:

- (a) The manufacturer or wholesaler provides no more than one bin or rack per trade name per retailer at any given time;
- (b) The manufacturer or wholesaler has permanently marked the bin or rack with a brand name or trade name of the manufacturer or wholesaler's alcoholic beverage product; and
- (c) The retailer uses the bin or rack to display only products from the brand name or trade name permanently marked on the bin or rack;
- (d) For purposes of this rule, "trade name" means the operating trade name and associated business names filed by a manufacturer or wholesaler as part of the Federal Bureau of Alcohol, Tobacco and Firearms basic permit; "brand names" means the various wines,

distilled spirits and malt beverages sold under a particular trade name.

(2) In addition to the requirements in section (1) of this rule, if the cost of the display bin or rack exceeds \$30 (cost is the cost to the manufacturer or wholesaler who initially purchased or produced the bin or rack), the manufacturer or wholesaler must:

(a) Invoice the retailer for the bin or rack upon delivery and issue a credit upon manufacturer or wholesaler removal;

(b) Loan the bin or rack to the retailer for a period not to exceed 45 days. At least 45 days must elapse before the manufacturer or wholesaler loans the same or another display bin or rack to the retailer for products from the same trade name.

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

Stats. Implemented: ORS 471.398(3)

Hist.: OLCC 8-1992, f. 8-25-92, cert. ef. 10-1-92; OLCC 6-2003, f. 4-25-03, cert. ef. 5-1-03

845-013-0040

Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer. The only advertising a manufacturer or wholesaler may provide under this statute is generic, off-premises references to the manufacturer or wholesaler's alcoholic beverage products that mention no specific retailer. Some examples include radio and television commercials and billboards.

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

Stats. Implemented: ORS 471.398(4) & ORS 471.730(7)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124

845-013-0050

Point of Sale Material, ORS 471.398(4)

(1) Wine Manufacturers and Wholesalers.

NOTE: Bureau of Alcohol, Tobacco and Firearms (BATF) rules differ from Commission rules, particularly with regard to subsection (2)(b) of this rule. Be sure to check with BATF before applying this rule.

(2) ORS 471.398(4) allows a manufacturer or wholesaler to provide point of sale material to a retailer. Manufacturers and wholesalers may provide point of sale material only for display at the retailer's premises. The only point of sale material a manufacturer or wholesaler may provide is:

(a) Material that functions only to advertise the manufacturer or wholesaler's alcoholic beverage products. Some examples of this material include table tents, case cards, danglers, static-cling stickers, display mirrors, inflated plastic beer or wine bottles and neon beer or wine signs;

(b) Material that has another function in addition to advertising the manufacturer or wholesaler's alcoholic beverage products that meets the following conditions:

(A) The cost of the material in any one display does not exceed \$30

(cost is the cost to the manufacturer or wholesaler who initially purchased or produced the item);

(B) The manufacturer or wholesaler loans but does not give the material to the retailer for a period not to exceed 45 days;

(C) The manufacturer loans this type of material for no more than four displays per year per retail premises;

(D) The manufacturer or wholesaler invoices the material upon delivery, describes on the invoice how the retailer will use the material and issues the retailer a credit upon manufacturer or wholesaler removal;

(E) The retailer uses the material only as a part of a promotional display for the manufacturer or wholesaler's products on the

retailer's licensed premises; and

(F) The retailer makes no minimum purchase in order to have the material at his/her premises.

(c) Material that predominantly advertises the manufacturer or wholesaler's alcoholic beverage products but also advertises a generic food product. This section does not prohibit cross-promotions of the manufacturer or wholesaler's alcoholic beverage product with a specific food product or brand when food product producer is not a retail licensee; the food product producer pays at least half the cost of the cross-promotion; and any retailer who receives the material pays none of the costs. For example, a cheese manufacturer and a wine manufacturer jointly produce a poster to promote their products. As long as the cheese manufacturer is not a retail licensee, the cheese manufacturer pays at least half the costs and the retail licensee pays none of the costs, the Commission treats the poster as alcoholic beverage/generic food product material;

(d) Material that predominantly advertises the manufacturer or wholesaler's alcoholic beverage products but also has generic words or symbols for activities the manufacturer or wholesaler wants to associate with his/her alcoholic beverage products. Exterior material may, however, have only generic symbols relating to activities, not words.

(3) Exterior point of sale material given or loaned under this rule must not exceed 630 square inches. This means that inflatables or any point of sale material cannot be displayed in a retailer's parking lots or other outside areas if the material exceeds 630 square inches.

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87;

OLCC 7-1992, f. & cert. ef. 7-1-92;
Renumbered from 845-010-0124

845-013-0060

Items of Nominal Value, ORS 471.398(4)

(1) In addition to advertising and point of sale material, ORS 471.398(4)) allows a manufacturer or wholesaler to provide items of nominal value to a retailer. This rule describes the two categories of items of nominal value a manufacturer or wholesaler may give to a retailer.

(2) A manufacturer or wholesaler may give basic items that support the manufacturer or wholesaler's products at the retailer's premises such as:

- (a) Tavern Heads:
 - (A) One tavern head per calendar year per retail licensee;
 - (B) A trade-in of a tavern head at the fair market value as partial payment for a new one when the retailer replaces an existing draft system.
- (b) Washers or Thomas valves necessary for proper operation of draft equipment;
- (c) New and used empty shells or bags in sufficient quantity for returning the manufacturer or wholesaler's empty containers;
- (d) Samples and Tastings:
 - (A) Tastings or samples of distilled spirits that the retailer does not carry but only in an amount not to exceed 50 ml.;
 - (B) Tastings or samples of wine and malt beverages that the retailer does not carry. the sample must not exceed a one gallon container of malt beverage or a five liter container of wine. It must be clearly and permanently marked "sample - not for resale";
 - (C) Distilled spirits, wine and malt beverage tastings for retailer educational seminars that are not open to the public.

(3) A manufacturer or wholesaler may give items that are made of paper or other similar

inexpensive material that provide information to a retailer's customers but do not promote the retailer's business. The following are some examples of these items:

- (a) Items that have the manufacturer or wholesaler's alcoholic beverage brand name prominently displayed, are intended for use by the retailer's customer off the premises and are made available to the retailer's customers. Some examples include sports schedules, schedules for concerts, theatre, operas and other entertainment series, calendars, recipes and informational pamphlets. Examples do not include napkins, coasters and other paper products a licensee uses in the normal course of business;
- (b) Schedules of entertainment events (sports, music, theatre, etc.) for the retailer to display at the licensed premises;
- (c) Beer, wine and distilled spirits lists. Despite OAR 845-013-0001(3)(b)(A) that limit items of nominal value to the manufacturer or wholesaler's products, the list may include any malt beverage, wine or distilled spirit the retailer sells. Despite OAR 845-013-0001(3)(d) that prohibits customization, the manufacturer or wholesaler may add generic food references to the list. For example, the list may indicate that a particular alcoholic beverage goes well with chicken but may not refer to a chicken dish on the retailer's menu.

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

Stats. Implemented: ORS 471.398(4)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87;
OLCC 7-1992, f. & cert. ef. 7-1-92;
Renumbered from 845-010-0126

845-013-0070

Services of Nominal Value; ORS 471.398(5)

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer

any services except those described in ORS 471.398(5) and the two categories of services of nominal value described in this rule.

(2) A manufacturer or wholesaler may give basic services that support products on draft such as:

- (a) Inspecting draft equipment, coolers and cooling equipment for sanitation and quality control;
- (b) Performing emergency repairs on draft equipment;
- (c) Instructing retail licensees in the proper use, maintenance and care of draft and cooling equipment;
- (d) Tapping kegs during regular delivery calls.

(3) A manufacturer or wholesaler may give basic marketing support services for the manufacturer's or wholesaler's alcoholic beverage products such as:

- (a) Delivering to the designated place on the retailers premises. If a retailer closes a store, the wholesaler or manufacturer may move product to another of the retailer's stores in the wholesaler's territory. The manufacturer or wholesaler may move only his/her brands;
- (b) Rearranging or replenishing bottles or cans of the manufacturer or wholesaler's brands;
- (c) Pricing packages and containers of the manufacturer's or wholesaler's brands but not repricing packages and containers. Repricing includes entering the Uniform Price Code (UPC) or pricing information in the retailer's system but does not include changing shelf tags;
- (d) Promptly exchanging alcoholic beverages delivered in error for the proper product, provided both businesses reflect the exchange in their records;
- (e) Exchanging products that are leaking, deteriorating, near or past their shelf date, have damaged or missing labels, or have damaged containers for an equal quantity of identical product (See also OAR 845-013-0020(1)(b)). If

the amount exchanged is one case or less of malt beverages, the manufacturer or wholesaler may substitute another malt beverage product of similar value. A manufacturer or wholesaler may not exchange product that the retailer or retailer's customer damaged;

(f) Installing, cleaning and repairing point of sale materials allowed in OAR 845-013-0050;

(g) Providing an employee to assist in educational seminars and wine or malt beverage tastings that a retailer conducts for the public as long as each licensee complies with OAR 845-006-0353, 845-006-0427, and 845-006-0450.

NOTE: ORS 471.186(4) prohibits a manufacturer or wholesaler from providing or paying for a person to serve samples at package stores except as provided in ORS 471.402.

(h) Providing celebrities or performers to promote the manufacturer's or wholesaler's product on a retailer's premises as long as:

- (A) Neither the manufacturer/wholesaler nor retailer advertise or promote the celebrity or performer's visit;
- (B) The celebrity or performer does only a brief performance, if any;
- (C) The manufacturer or wholesaler provides no alcoholic beverages to the retailer's customers;
- (D) The manufacturer or wholesaler provides the celebrities no more than once per year per retail premises.

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

Stats. Implemented: ORS 471.398(5)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0126; OLCC 8-1996, f. 5-6-96, cert. ef. 7-1-96; OLCC 8-1997, f. 2-28-97, cert. ef. 3-15-97; OLCC 17-2000, f. 11-9-00, cert. ef. 12-1-00; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-013-0075**Schematics; ORS 471.398(5)**

(1) ORS 471.398(5) prohibits a manufacturer or wholesaler from giving a retailer any services except services of nominal value.

(2) OAR 845-013-0070 limits services of nominal value to those which fall into one of two categories.

(3) The category described in OAR 845-013-0070(3) allows a manufacturer or wholesaler to give basic marketing support services for the manufacturer or wholesaler's alcoholic beverage products. When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the Commission considers that to be a basic marketing support service.

(4) When a manufacturer or wholesaler uses schematics to promote their products to a retailer, the retailer remains responsible for deciding what products are actually sold.

(5) The Commission holds licensees accountable for the acts of their agents and employees. (See OAR 845-006-0362). Accordingly, any licensee who provides schematics through another person or business is responsible for the actions of the party. If a person or business that provides schematics on behalf of a licensee violates any liquor law or rule, the Commission takes the appropriate compliance action against the licensee.

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

Stats. Implemented: ORS 471.398(5)
Hist.: OLCC 3-1994, f. 8-3-94, cert. ef. 10-1-94;
OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03

845-013-0090**Wholesale-Retail Relations: Non-Profit Temporary Sales Licenses**

(1) ORS 471.400(1) permits the Commission to allow manufacturers and wholesalers to provide products and services to non-profit Temporary Sales licensees without violating financial assistance laws. These products and services are allowed in addition to the gratuities, point of sale material, items of nominal value and services of nominal value that OAR 845-013-0001 through 845-013-0070 allow.

(2) Federal Law May Differ. Although

Oregon law allows manufacturers and wholesalers to provide the products and services described in this rule, federal laws regarding wine may not. When dealing with wine, a federal law that is more strict than an Oregon law takes precedence over the Oregon law. Therefore, manufacturers and wholesalers should check with the Bureau of Alcohol, Tobacco, and Firearms before applying this rule to their wine business.

(3) Products and Services. A manufacturer or wholesaler may provide the following to a non-profit Temporary Sales licensee:

(a) Any product the manufacturer or wholesaler normally sells. The manufacturer or wholesaler may give the product free, sell the product at a discount or sell the product at the regular price. The manufacturer or wholesaler may pick up excess malt beverage product at the end of a special event held by a non-profit Temporary Sales licensee, and if the product was sold to the Temporary Sales licensee, may give a credit or cash refund for the returned product;

(b) Any services to support the alcoholic beverage product. This includes providing employees to sell or serve alcoholic beverages at the Temporary Sales license event as long as the employee has successfully completed an approved alcohol server education course within the last five years or has a valid service permit; and

(c) Banners for interior or exterior display at the licensed premises that advertise a special event and prominently display the manufacturer's or wholesaler's alcoholic beverage brand name. These banners may be displayed before and during the Temporary Sales license event and may exceed 630 square inches.

(4) Limitations. A manufacturer or wholesaler may provide the products and services that this rule allows only if:

(a) The Temporary Sales licensee is a non-profit or charitable organization that is registered with the state, a political committee that has a current

statement of organization filed under ORS 260.039 or 260.042, an agency of the State, or a local government or an agency or department of a local government; and

(b) The Temporary Sales license is not for more than 72 hours.

(5) Equipment. ORS 471.400(1) also allows a manufacturer or wholesaler to provide the following equipment to any retail licensee: picnic pumps, cold plates, tubs, refrigerated trailers, refrigerated vans and refrigerated draft systems. The manufacturer or wholesaler may provide this equipment only for a period not to exceed ten days and for a reasonable rental or service fee. The statute allows a manufacturer or wholesaler to provide this equipment to any retail licensee for a reasonable fee. A manufacturer or wholesaler does not have to require a reasonable fee when providing this equipment to a non-profit temporary sales licensee.

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

Stats. Implemented: ORS 471.400(2)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0129; OLCC 11-1997, f. 5-12-97, cert. ef. 6-1-97; Administrative correction 5-23-97; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

845-013-0100

Wholesale-Retail Relations; Sale at Both Wholesale and Retail

(1) Except as provided in ORS 471.396, ORS 471.394(1) prohibits licensees from selling or engaging in the business of selling alcoholic beverages both at wholesale and retail. For purposes of this statute, the direct consumer sales that ORS 471.235 allows a wholesale malt beverage and wine licensee to make are wholesale sales.

(2) As used in ORS 471.394(1):

(a) "Licensee" includes retailers, wholesalers, and manufacturers of any alcoholic beverages and their managers, officers and directors;

(b) "Licensee" also includes retailers', wholesalers', and manufacturers' agents

and employees who sell or engage in the business of selling alcoholic beverages. This means that a retailer and manufacturer or wholesaler may employ the same person to provide janitorial service. A manufacturer or wholesaler may not, however, hire a retailers checker as a trucker since the checker/trucker would be engaged in the business of selling alcoholic beverages at both retail and wholesale.

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

Stats. Implemented: ORS 471.394(1)

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0128; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01

845-013-0110

Wholesale-Retail Relations; Prohibited Conduct

(1) No manufacturer or wholesaler may buy food, beverages or anything of value on a retailer licensee's premises for customers who are not his/her personal acquaintances.

(2) No manufacturer or wholesaler may provide or offer assistance through a group of trade association of breweries, wineries, distilleries or wholesalers to a person to obtain a retail license.

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

Stats. Implemented: ORS 471, including ORS 471.398

Hist.: OLCC 8-1987, f. 3-13-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0131