

OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845, DIVISION 15
RETAIL STORE PACKAGE
PROPOSED AMENDMENTS – JH/DV Draft 1/6/11

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

845-015-0101
Definitions

As used in OAR chapter 845, division 015:

~~(2)~~ **(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).

~~(3)~~ **(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.

~~(4)~~ **(3)** "Full On-Premises Sales Licensee" means any person or entity holding a Full On-Premises Sales license.

~~(5)~~ **(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.**

~~(6)~~ **(5)** "Retail Sales Agent" or "Agent" is an individual person **or legal entity** appointed by the Commission who enters into an agency agreement to sell packaged distilled spirits on behalf of the Commission in a retail liquor store.

~~(1)~~ **(6)** "~~Agency~~ **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 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

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)

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. ~~A corporation or partnership cannot be a retail sales agent.~~

(2) ~~A~~ **Except as authorized in section (3)(b) of this rule, a** retail sales agent may not have a financial interest or business connection that ORS 471.710(3) or OAR 845-015-0118 prohibits.

(3) A retail sales agent cannot be a Commission licensee or an officer, director ~~or~~, substantial stockholder **or member** of a ~~corporate~~ licensee, except that:

(a) A non-exclusive retail sales agent may be an Off Premises Sales licensee, **and an exclusive retail sales agent may be an Off Premises Sales licensee at a location that is separate from the exclusive retail liquor store; or**

~~(b) The Commission may appoint a licensee if the~~ **If a Full On-Premises or Limited On-Premises Sales** licensee is the only suitable applicant for appointment as retail sales agent in a very small town in a remote area, **the Commission may appoint the licensee as a retail sales agent.** This retail liquor store must be non-exclusive and must be located in a part of the premises completely separated from the service or consumption of alcoholic beverages; ~~or.~~

~~(c) The Commission may appoint a retail licensee as a non-exclusive retail sales agent as part of a pilot project that will last no more than two years.~~

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

Stats. Implemented: ORS 471.750(1)

845-015-0118

Retail Sales Agent Prohibited Interests, ORS 471.710(3)

(1) Definitions: As used in ORS 471.710(3) and this rule:

~~(a) "Alcoholic beverage licensee" means the holder of a Distillery license, a Full On-Premises Sales license, or a distillery whose products are sold in Oregon.~~

~~(b)~~ **(a)** "Liquor Store Agent" has the same meaning as a retail sales agent, as defined in OAR 845-015-0101(6);

~~(c)~~ **(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;

~~(d)~~ **(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 with a Distillery or Full On-Premises Sales license, or to any distillery whose products are sold in Oregon, and similar ventures formed for the purpose of making profit,

~~(e)~~ **(d)** "Knowingly" means a person actually knew or reasonably should have known;

~~(f)~~ **(e)** "Household" means all persons living as a family unit in the same dwelling;

~~(g)~~ **(f)** "Immediate Family" means spouse or Domestic Partner, and juvenile dependent children.

~~(h)~~ **(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) "Corporate 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. Except as authorized in OAR 845-015-0115(3)(b), no retail sales agent, corporate 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.

~~(2)~~ **(3)** Additional Prohibitions:

(a) No retail sales agent, **corporate 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, **corporate principal** or member of the agent's household or immediate family may be employed by any distillery whose products are sold in Oregon.

~~(3)~~ **(4)** Reporting Requirements:

(a) All retail sales agent applicants must complete and sign a form describing any financial interest or business connection the applicant, **corporate 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, **corporate 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, **corporate principal**, household member or immediate family member fails to divest, the Commission will terminate the agent's contract.

~~(4)~~ **(5)** Gifts and Gratuities: No retail sales agent will accept any gift, gratuity or thing of value from any ~~alcoholic beverage~~ **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 ~~alcoholic beverage~~ 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 irrespective of any connection to the Commission.

~~(5)~~ **(6)** Disciplinary Actions: The Commission will appropriately discipline a retail sales agent who:

(a) Fails to report a prohibited interest or connection as section ~~(2)~~ **(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 ~~(4)~~ **(5)** of this rule prohibits.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.710(3)

845-015-0190

Resignation Buy-Out Program for Retail Liquor Agents

(1) Purpose. The purpose of the Resignation Buy-Out Program is to provide a monetary benefit to all retail liquor agents when they resign as a contracted liquor store agent. Retail liquor agents receive the buy-out, in part, to recognize their contribution in building a successful business.

(2) Definitions.

(a) "Solicit," "solicitation" and "soliciting" have the meaning given them under OAR 845-015-0145. These terms also include any act or contact directed at a specific business, Full On-Premises Sales licensee or other like entity for the purpose of asking, encouraging, suggesting, urging or persuading a specific business, Full On-Premises Sales licensee or other entity to purchase distilled spirits from a particular retail liquor store.

(b) "Full On-Premises Sales licensee" means any person or entity holding a Full On-Premises Sales license.

(c) "Commercial Accounts" means any business or association that purchases more than fifty 750 ml bottles of distilled spirits from the store in the twelve months immediately preceding turnover of the store to the incoming agent.

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

(3) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail liquor agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out) at the time of store takeover. The Commission calculates the buy-out by taking ~~two percent~~ **a percentage** of the stores average annual gross alcohol sales for the last five years. **The buy-out percentage shall be four percent as of [the effective date of these rule amendments] and for the following two years. Effective [xx/xx/xx] the buy-out percentage shall be two and one-half percent.** The Commission manages this transaction by including the buy-out amount in the information sheet that all applicants receive.

(4) Recruiting Qualified Applicants. The outgoing liquor agent may supplement the Commission's recruiting process to assure finding qualified applicants. If the Commission's recruiting process does not generate a qualified applicant, or the Commissioners do not appoint a new agent, the outgoing agent may continue to seek qualified applicants. If these efforts fail to result in a qualified applicant after 30 days, the outgoing agent will choose to postpone the resignation or to accept a lower buy-out amount. If the agent chooses to accept a lower buy-out, then the outgoing agent and the Commission will agree on a reasonable buy-out amount reduction. The Commission will then re-advertise the store vacancy with the reduced buy-out amount.

(5) Paying the Buy-Out. An incoming agent must pay a buy-out if the effective date of the incoming agent's appointment occurs when the program is in effect. The incoming agent provides full payment to the outgoing agent at the time of the store takeover. As a condition of eligibility for the buy-out, the outgoing agent must allow the incoming agent to spend a minimum of 12 working days in the store working productively together before the store takeover, unless the incoming agent declines the opportunity. During the 12-day period, the outgoing agent will introduce the incoming agent to Full On-Premises Sales licensees and commercial accounts, and orient the incoming agent to all aspects of the store operation except the required training and information provided by Commission staff.

(6) Family Transfer of Agency When Agent Dies or is Disabled. If an agent dies or becomes unable to operate an agency due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse or Domestic Partner, or child, or a qualified spouse or Domestic Partner, or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse or Domestic Partner, or child in this situation, the Commission will waive the buy-out requirement at the request of the outgoing agent or the agent's estate.

(7) Probationary Agents. Except as provided in section (9), an agent who resigns during their probationary period is eligible for a buy-out.

(8) Relocating, Adding, or Closing Stores. The Commission reserves the right to relocate any store, and to add or close stores. Neither the State of Oregon nor the Commission is liable for any changes in the volume of alcohol sales that may occur following the relocation of one or more stores, or from the addition or closure of one or more stores.

(9) Exceptions. Despite sections (1) and (3), a retail liquor agent is not eligible for a buy-out if:

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility or the agent has shortages that exceed the estimated amount of compensation due that agent. In these situations, the Commission receives the buy-out amount, deducts any dollars owed the State of Oregon, and gives the outgoing agent whatever dollars, if any, remain from the buy-out amount;

(b) The agent is under suspension;

(c) The agent is a temporary agent;

(d) The Commission takes over a store for reasons other than suspension or termination. In this situation, the outgoing agent is not eligible for a buy-out until the agent resigns and an incoming agent is appointed and takes over the store.

(e) The store does not turn over during the time the program is in effect; turnover occurs on the date of the final audit.

(10) Non-Compete Provision. If an outgoing agent participates in the buy-out program, the outgoing agent shall not solicit any Full On-Premises Sales licensee or commercial account (customers) of the retail liquor store the outgoing agent is leaving (store) for the purpose of selling or attempting to sell distilled spirits to such customers. The outgoing agent is also prohibited from using a customer list or any other information about the stores customers to assist any agent (other than the incoming agent) in soliciting the stores customers for the purpose of selling distilled spirits. The outgoing agent recognizes that she/he receives consideration for compliance with this section. The prohibitions in this section:

(a) Are limited to a two-year period. The Commission calculates the two-year prohibition beginning on the date the store is turned over to the incoming agent;

(b) Relate only to Full On-Premises Sales licensees and commercial accounts that have made a purchase from the store within the twelve months immediately preceding turnover of the store to the incoming agent;

(c) Apply only within:

(A) A geographic radius of ten miles from the location of the store if the store is located in a metropolitan or suburban area;

(B) A geographic radius of twenty-five miles from the location of the store for all other areas of the state;

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0130.

(11) Violation of Section (10). If, during the two-year period:

(a) An outgoing agent violates section (10) of this rule, the incoming agent may take legal action against the outgoing agent;

(b) An outgoing agent violates section (10) of this rule, the Commission may take legal action against the outgoing agent;

(c) The Commission terminates the Resignation Buy-Out Program, the non-compete provisions in section (10) remain in effect.

(12) No Contract Rights in Buy-Out. No agent shall have any entitlement to, or expectation of receiving, any buy-out. The institution and continuation or termination of the buy-out program constitutes unilateral regulatory action by the Commission, and gives no agent any contractual right or expectation in any buy-out payment. The Commission reserves the right to repeal or modify this rule, or otherwise terminate the buy-out program at any time.

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

Stats. Implemented: ORS 471.750 & 471.752(2)

845-015-0196

Appointment of a Temporary Agent or Operation by Commission Staff

(1) ~~When~~ **The Commission may appoint a temporary agent or operate a store temporarily with Commission staff when** the Commission decides that a retail sales agent is unable to operate a retail liquor store, ~~the Commission appoints a temporary agent or operates a store temporarily with Commission staff. The~~ **In these circumstances the** Commission considers any candidate for temporary agent nominated by a retail sales agent but may choose someone else. The Commission sets a temporary agent's compensation and deducts it from the pay due a retail sales agent unless the Commission and retail sales agent agree to some other compensation plan. A retail sales agent's contract continues until the termination date. ~~(2)~~ A temporary agent or Commission staff operates a retail liquor store until the Commission decides a retail sales agent can resume store duties or until a new retail sales agent is appointed and can assume retail liquor store operations.

(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, ~~ORS 472, ORS~~ 471.030, ~~ORS~~ 471.730(1) **& (5)**, ~~ORS~~ 471.730(5), ~~ORS 472.030, ORS 472.060(1), & ORS 472.060(2)(d)~~

Stats. Implemented: ORS 471.750(1)

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:

(i) OAR 845-015-0110 Establishment of a Retail Liquor Store;

(ii) OAR 845-015-0120 Retail Sales Agent Selection Procedure;

(iii) OAR 845-015-0135 Public Opinion on Retail Liquor Store Location;

(iv) OAR 845-015-0140 Hours and Days of Operation;

(v) OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents;

(vi) OAR 845-015-0193(1) & (2) Terminating an Agency Agreement;

(vii) OAR 845-015-0196 Appointment of a Temporary Agent.

(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.

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

Stats. Implemented: ORS 471.750(1)