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RULES:

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AMEND: 845-005-0308

RULE TITLE: Valid Bases for Adverse Local Government Recommendations and for Commission Use of Information Received from the Public

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: This rule references valid bases a local government may rely on when making an unfavorable recommendation on a license application and limits the Commission to consider only those bases when making an unfavorable determination.

RULE TEXT:

(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(1)(d)-(e), OAR 845-005-0320, 845-005-0325 or 845-005-0326, or the license restriction bases of 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.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.166, 471.313

AMEND: 845-005-0311

RULE TITLE: True Name on Application; Interest in Business

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Provides for the disclosure of all persons who have an ownership or financial interest in the business.

RULE TEXT:

(1) Definitions.

(a) "Licensee of record" means an individual or entity who the Commission has listed on the license certificate as a license holder for a license. There may be more than one licensee of record for the same license.

(b) "Entity" means an association, corporation, limited liability company, partnership, trust, or any similar entity that has legal standing under the laws of Oregon or another state within the United States.

(2) True name on application. An application for a license must include as an applicant all persons who have an ownership interest in the business as defined in this rule. Despite this requirement, the Commission may waive the type of ownership interests specified in section (6) of this rule.

(3) License privileges. License privileges are available only to a licensee of record and only for the premises designated on the license certificate

(4) Ownership Interest. Under ORS 471.313(1)(d)(H), the Commission may refuse to issue a license if an 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) Unless allowed by a waiver of the ownership interest under (6) of this rule, any person or entity, other than an employee, agent, or representative of the applicant or licensee acting under the direction of the applicant or licensee, that exercises control or responsibility over, or is entitled to exercise control or responsibility over, the business or the premises;

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

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

(d) Unless allowed by a waiver of the ownership interest under (6) of this rule, any person or entity, other than an employee, agent, or representative of the applicant or licensee acting under the direction of the applicant or licensee, who exercises or is entitled to exercise at the premises any activity requiring a license under ORS chapter 471;

(e) Unless allowed by a waiver of the ownership interest under (6) of this rule, any person or entity identified as a lessee, tenant, or renter (or similar term) of the premises proposed to be licensed;

(f) Unless allowed by a waiver of the ownership interest under (6) of this rule, any person or entity owning the real or personal property of the premises proposed to be licensed, unless the owner of the property has given control over the property to another party via a lease or rental agreement or similar agreement; or

(g) When an applicant is an entity, any person in that entity defined as an applicant or licensee under Commission rules.

(5) Financial Interest. Under ORS 471.757, the Commission may require the licensee or applicant to identify the persons and entities with a financial interest in the business. The Commission may evaluate any such person as if the person 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 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 a licensee, or individual with a financial interest. For purposes of this subsection, "domestic partners" includes adults who share the same regular and permanent address and would be financially affected by the success or failure of the business as well as adults who qualify for a "domestic partnership" as defined under ORS 106.310.

(h) Any person with any ownership of an entity who is an applicant or licensee under Commission rules.

(6) Despite subsections (3) – (4) of this rule, the Commission may waive:

(a) The ownership interest of a non-applicant who has a right of access to a common area shared with an applicant or licensee; however, the non-applicant does not manage or control the sale, service, or manufacturer of alcoholic beverages in the common area. For purposes of this rule, "common area" means an area on private property that is adjacent to or in the immediate vicinity of an area leased or rented by one or more tenants and it is an area that is equally available to multiple tenants and/or the landlord for various uses.

(b) The ownership interest of a non-applicant who manages or controls, or is responsible for managing or controlling, the premises or aspects of the business at the premises provided the management or control does not involve, directly or indirectly, the sale, service, or manufacture of alcoholic beverages at the premises, or importation of alcoholic beverages to the premises, and there is at least one other party licensed at the premises who is listed by the Commission on the license certificate as a license holder for a license. Examples of non-applicants who may qualify for a waiver under this section include:

(A) Operators selling and serving food, nonalcoholic beverages, and other nonalcoholic items on the premises; or

(B) Operators who lease, rent, or otherwise occupy a portion of the licensed premises in order to provide services as a part of the business that don't involve the sale, service, or manufacture of alcoholic beverages on the license premises.

(c) The ownership interest of a non-applicant who holds, or will hold, its own manufacturing or wholesaling license issued under ORS chapter 471 at the premises. For purposes of this subsection, a brewery-public licensee is a manufacturer.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.757, 471.313

AMEND: 845-005-0312

RULE TITLE: Application for Issuance of an Annual License or Request for Change to License

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Addresses the issuance of an annual license or a request for a change to a license.

RULE TEXT:

- (1) An applicant for issuance of an annual license under ORS chapter 471 must submit to the Commission all materials, forms, documents, information, and fees required by the Commission in a manner that are complete, accurate, legible, timely, and correct.
- (2) In order to accept an application for issuance of an annual license, an applicant must submit to the Commission at a minimum the edition of the Liquor License Application form posted on the Commission's website that has been completed and includes from the local government as described in OAR 845-005-0304 either:
 - (a) The local government's written recommendation;
 - (b) Documentation from the local government that it received the written notice provided from the applicant pursuant to OAR 845-005-0304 and the date of receiving that notice; or
 - (c) Documentation from the local government that the applicant is not required to submit a notice to the local government.
- (3) A licensee requesting approval of a change as required by Commission rules must submit to the Commission a written and dated request and include all materials, forms, documents, information, and fees required by the Commission for that request and submit them in a manner that are complete, accurate, legible, timely, and correct.
- (4) Upon the Commission's receipt of materials submitted pursuant to sections (1), (2), and (3), the Commission will decide if the materials contains all required forms, documents, information, or fees in a manner that are complete, accurate, legible, timely, and correct.
 - (a) The Commission may accept the submitted materials if they contain all required forms, documents, information, or fees in a manner that are complete, accurate, legible, timely, and correct may be accepted; or
 - (b) The Commission will be unable to accept the submitted materials if they don't contain all required forms, documents, information, or fees in a manner that are complete, accurate, legible, timely, and correct. The Commission's inability to accept an application or request is not subject to the requirements of ORS chapter 183.
- (5) After accepting the submitted materials, the Commission may:
 - (a) Require additional forms, documents, information, or fees from an applicant, licensee, or other persons where there is reason to believe that the forms, documents, information, or fees are required by law or rule or may help the Commission determine the merits of an application or request or to otherwise perform its statutory duties;
 - (b) Inactivate an application form or request when the Commission determines the applicant or licensee fails to provide to the Commission all required materials, forms, documents, information, or fees in a manner that are complete, accurate, legible, and correct within 10 calendar days of the Commission's notice to the applicant or licensee. Despite the requirement, the Commission may grant an applicant or licensee additional time based on the merits of the case. The Commission shall give applicants the opportunity to request a review if the Commission inactivates an application or request. A review under this subsection is not subject to the requirements for contested case proceedings of ORS chapter 183; or
 - (c) Grant, refuse, or restrict the license or request.
- (6) Examples of materials, forms, documents, information, and fees the Commission may require include but are not limited to:
 - (a) Individual History form from all individuals who are an applicant or licensee as per Commission rules. The Commission may waive this requirement when it determines it does not need the materials to perform its statutory duties. Examples of this waiver include but are not limited to:
 - (A) When an applicant is an entity, for all individuals within the entity who are an applicant per Commission rules when the applicant entity provides proof to the Commission that it is listed on an exchange registered with the U.S. Securities

and Exchange Commission; or

(B) When the Commission determines that an individual has provided written documentation to the Commission showing that control of the day-to-day operation of the business has been relinquished through a written management agreement, or similar written agreement, by the individual to one or more parties who are an applicant or licensee for the same license at the same premises. Relinquishing control over the day-to-day operation of the business includes not managing or controlling the sale or service of alcohol or directly supervising any person who sells or serves alcohol.

(b) An entity questionnaire from all entity applicants. The Commission may waive this requirement when it determines it does not need the form to perform its statutory duties.

(c) Documents necessary to define the licensed premises and, if relevant, assign minor postings.

(d) License fees as required by ORS 471.311.

(e) Proof of liquor liability insurance or bond as required by ORS 471.168 or Commission rules.

(f) The bond or equivalent as required by ORS chapters 471 and 473.

(7) When the Commission inactivates an application form or request under this rule:

(a) Any person wanting a license or approval at the same address as the inactivated application or request must resubmit the application materials required by this rule; and

(b) Any authority issued by the Commission to the applicant based on the application form or request is no longer valid.

(8) An applicant or licensee may submit a written request to the Commission to withdraw an application form or request. Upon the Commission's acceptance of the request, any authority issued by the Commission to the applicant or licensee based on the application or request is no longer valid.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.311

AMEND: 845-005-0320

RULE TITLE: License Refusal Reasons that Can Not Be Overcome

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes the criteria that preclude issuing or renewing a license.

RULE TEXT:

The following criteria will preclude issuing or renewing a license. Intervening circumstances do not apply to these criteria.

(1) The applicant has or would have an interest in another liquor business that ORS 471.313(1)(c), 471.394, or 471.396 prohibits and no exception applies.

(2) The applicant seeks a license 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 for that license.

(3) 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.

(4) The applicant is a retail sales agent of the Commission. Despite this requirement, a retail sales agent may obtain a license as allowed by Commission rules.

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

(6) The applicant has not paid an outstanding fine to the Commission.

(7) 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.

(8) 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.

(9) The applicant for an initial license has not completed Commission-given law orientation or been granted a waiver by the Commission

(10) An applicant or licensee has failed to define the boundaries of the licensed premises as required by ORS 471.159(1).

(11) An applicant or licensee holds a full on-premises, caterer license issued under ORS 471.175(2)(e) and serves, or will serve, alcoholic beverages for consumption on the annually licensed premises.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.168, 471.313

AMEND: 845-005-0417

RULE TITLE: Qualifications for Direct Shipper Permit

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: This rule describes qualifications for a direct shipper permit.

RULE TEXT:

(1) A Direct Shipper Permit allows the delivery of only the type of alcohol allowed by the license that authorizes the person to hold a Direct Shipper Permit. Only the following persons may qualify for a Direct Shipper Permit:

(a) A person holding a temporary sales license issued under ORS 471.190, brewery-public house license issued under ORS 471.200, a brewery license issued under ORS 471.221, a winery license issued under ORS 471.223, or a grower sales privilege license issued under 471.227.

(b) A person holding a license issued by another state within the United States that authorizes the manufacture of malt beverages, wine, or cider.

(c) 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.

(d) A person holding a license issued by another state within the United States that authorizes the sale of malt beverages, wine, or cider at retail for consumption off the licensed premises.

(2) Application for a Direct Shipper Permit.

(a) A person who applies for a temporary sales license issued under ORS 471.190, brewery-public house license issued under ORS 471.200, a brewery license issued under ORS 471.221, a winery license issued under ORS 471.223, or a grower sales privilege license issued under 471.227 also applies for a Direct Shipper Permit.

(b) A person described under subsections (1)(b)–(d) of this rule must make application to the Commission and receive a Direct Shipper Permit from the Commission before shipping any malt beverages, wine, or cider directly to a resident of Oregon. Applicants must submit a complete, legible, timely, and accurate application to the Commission that contains all materials, forms, documents, information, and fees required by the Commission. The Commission will not accept an incomplete, illegible, untimely, or inaccurate application or an application that doesn't contain all required materials, forms, documents, information, or fees. The Commission shall give applicants the opportunity to request a review if the Commission does not accept an application it determines is incomplete. A review under this subsection is not subject to the requirements for contested case proceedings of ORS chapter 183.

(3) After accepting an application, the Commission may:

(a) Require additional materials, forms, documents, information, or fees from the applicant or other persons when the Commission determines that the materials, forms, documents, information, or fees are required by law or rule or may help the Commission determine the merits of an application or to otherwise perform its statutory duties;

(b) Inactivate an application when the Commission determines that the applicant failed to provide to the Commission all required materials, forms, documents, information, and fees in a manner that are complete, accurate, legible, and timely. The Commission shall give applicants the opportunity to request a review if the Commission inactivates an application. A review under this subsection is not subject to the requirements for contested case proceedings of ORS chapter 183.

(4) 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 intervening circumstances do not overcome the refusal basis.

(5) 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 applying in writing using the forms provided by the Commission and submitting the required fee. The Commission may require additional forms, documents, or information as part of the application.

(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.

(6) Delivery. Permit-holders may deliver malt beverages, wine, and cider to a resident of Oregon only as allowed by OAR

845-006-0392 and 845-006-0396.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.186, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.155, 471.186, 471.282, 471.305, 2021 OL Ch. 180

AMEND: 845-005-0425

RULE TITLE: Qualifications for Direct to Retailer Permit

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: This rule describes qualifications for direct sale, shipment and delivery of malt beverages, wine or cider to retailers.

RULE TEXT:

(1) In order to qualify for a Direct to Retailer Permit, a person must:

(a) Be a resident of another state or territory of the United States;

(b) Hold a valid license issued by the other state or territory of the United States that authorizes the manufacture of malt beverages, wine or cider;

(c) Hold a valid standard Certificate of Approval issued under ORS 471.244; and

(d) 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 an application to the Commission and receive a Direct to Retailer Permit from the Commission before shipping any malt beverages, wine or cider directly to retail licensees of the Commission. The application shall include: all materials, forms, documents, information, and fees required by the Commission and be complete, accurate, legible, and timely. The Commission will not accept an incomplete, inaccurate, illegible, or untimely application if it doesn't contain all required materials, forms, documents, information, and fees. The Commission shall give applicants the opportunity to request a review if the Commission does not accept an application it determines is incomplete. A review under this subsection is not subject to the requirements for contested case proceedings of ORS chapter 183.

(3) After accepting an application, the Commission may:

(a) Require additional materials, forms, documents, information, or fees from the applicant or other persons when the Commission determines that the materials, forms, documents, information, or fees are required by law or rule or may help the Commission determine the merits of an application or to otherwise perform its statutory duties

(b) Inactivate an application when the Commission determines that the applicant failed to provide to the Commission all required materials, forms, documents, information, and fees in a manner that are complete, accurate, legible, and timely. The Commission shall give applicants the opportunity to request a review if the Commission inactivates an application. A review under this subsection is not subject to the requirements for contested case proceedings of ORS chapter 183.

(4) The Commission may revoke or refuse to issue or renew a Direct to Retailer 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 intervening circumstances do not overcome the refusal basis.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.272, 471.274, 471.311

REPEAL: 845-005-0426

RULE TITLE: Qualifications for Retailer Endorsement to Receive Wine or Cider from the Holder of a Wine Self-Distribution Permit

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes the requirements of a retailer endorsement to receive wine or cider from the holder of a wine self distribution permit.

RULE TEXT:

ORS 471.274 allows a retail licensee to receive wine or cider from the holder of a Wine Self-Distribution Permit if the retail licensee has received prior authorization from the Commission via license endorsement. This rule sets the qualifications to obtain this endorsement.

(1) Only retail licensees with one or more of the following licenses may qualify to receive wine or cider at the licensed premises from the holder of a Wine Self-Distribution Permit:

- (a) An off-premises license issued under ORS 471.186.
- (b) A full on-premises licensed issued under ORS 471.175.
- (c) A limited on-premises license issued under ORS 471.178.
- (d) A brewery-public house license issued under ORS 471.200.
- (e) A temporary sales license issued under ORS 471.190.

(2)(a) 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:

(b) 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.

STATUTORY/OTHER AUTHORITY: ORS 471, including 471.030, 471.040, 471.730(1), (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.274, 471.404

AMEND: 845-006-0335

RULE TITLE: Age Verification, Minors on Licensed Premises

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes age verification requirements and the circumstances under which minors are allowed on a premises or portion of a premises that is prohibited to minors.

RULE TEXT:

(1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages, or is in an area prohibited to minors, if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

(d) Only the following forms of unexpired, unaltered, and legitimate identification that have the person's name, picture, and date of birth are acceptable alone as proof of age:

(A) A driver license issued by a U.S. state, the District of Columbia, or a province or territory of Canada;

(B) An identification card that includes a physical description of the person and is issued by a U.S. state, the District of Columbia, or a territory of the U.S., or a province or territory of Canada;

(C) An identification card that has a picture of the person, the name of the person, the person's date of birth, and a physical description of the person and is issued by a federally recognized Indian tribe;

(D) A passport or passport card

(E) A U.S. military identification card; or

(F) An identification card that is proof of the person's participation in the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program operated by United States Customs and Border Protection, the NEXUS program jointly operated by that agency and the Canada Border Services Agency, or a successor to either of those programs that is recognized by the Commission.

(2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys, is served or drinks an alcoholic beverage at the licensed premises (Category (IIb) violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for one or more of the following violations under this rule: Failure to verify the age of a minor; Allowing a minor to drink; or Allowing a minor in an area prohibited to minors, the Commission will not sanction the licensee or permittee separately under ORS 471.130 or 471.410(2) for the same conduct. The Commission may charge a licensee or permittee for one or more violations under this rule and also charge violation of one or more of the statutes in the alternative.

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category (IIb) violation.

(3) Minors on Premises: General Prohibitions.

(a) No licensee, permittee, or licensee's employee will permit a minor:

(A) To drink any alcoholic beverage on licensed premises; or

(B) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482, OAR 845-006-0340 and this rule.

(b) The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0340, Minor Postings.

(4) Minor Employee and Minor Service Permittee:

(a) A Number 1 minor posting. Minor employees and minor service permittees are prohibited from the entire licensed premises at all times.

(b) A Number 2 minor posting. Minor employees and minor service permittees may be in this area of the premises only if they are performing work duties or going to or returning from a rest room. The minor employee or minor service permittee may not remain in the prohibited area longer than is necessary to perform the work duties or go to or return from a rest room and while in the area may not check identification, control conduct in the area, or mix, sell, or serve alcoholic beverages or directly supervise any person who does mix, sell, or serve alcoholic beverages.

(c) A Number 3A, 4, 6, and 7 minor posting during the times when minors are prohibited. Minor employees and minor service permittees may be in areas of the premises during the times prohibited to them only if they are performing work duties or going to or returning from a rest room. The minor employee or minor service permittee may not remain in the prohibited area longer than is necessary to perform the work duties or go to or return from a rest room and while in the area may not check identification, control conduct in the area, or mix, sell, or serve alcoholic beverages or directly supervise any person who does mix, sell, or serve alcoholic beverages.

(d) A Number 3A, 4, 6, and 7 minor posting in the areas and during the times when minors are permitted. Minor employees and minor service permittees are permitted in the areas and during the times when minors are allowed. The primary duty of minor service permittees must be food service.

(e) A Number 3 minor posting. Minor employees and minor service permittees are allowed at all times in the area. The primary duty of minor service permittees must be food service.

(f) A Number 5 minor posting. Minor employees and minor service permittees are allowed at all times in the area.

(g) If a premises has one or more areas where minors are prohibited and one or more areas where minors are allowed, minor employees and minor service permittees may be in areas of the premises prohibited to them during the times prohibited to them only if they are performing work duties or going to or returning from a rest room. The minor employee or minor service permittee may not remain in the prohibited area longer than is necessary to perform the work duties or go to or return from a rest room and while in the area may not check identification, control conduct on the premises, or mix, sell, or serve alcoholic beverages or directly supervise any person who does mix, sell, or serve alcoholic beverages.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose, may be in the area of the licensed premises normally prohibited to minors. (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

(6) Minor Entertainers:

(a) A minor entertainer may perform on a licensed premises, including in areas that are prohibited to minors, provided the requirements in this rule are followed. "Performing" means when a minor entertainer is entertaining. Examples include dancing, playing a musical instrument, and singing. Performing does not include when a minor entertainer is not entertaining; such as, but not limited to, soliciting dances, selling merchandise, and mingling with patrons or employees.

(b) Licensees allowing minor entertainers to perform on the licensed premises where minors would normally be prohibited must verify the minor's identification and age, maintain proof of the minor entertainer's identification and age on the premises, and make this information available for Commission inspection upon request. Licensees may accept only the forms of identification that are set forth in Section 1(d) of this rule.

(c) If the minor entertainer stays on the premises when not performing, the minor entertainer must stay in an area where minors are permitted under OAR 845-006-0340 or in an approved designated area set forth in subsection (6)(d). If a minor entertainer is not performing and is not in an area permitted to minors or in a Commission-approved designated area on the licensed premises, then the minor entertainer is prohibited from being on the licensed premises.

(d) In order for licensees to allow minor entertainers in areas of the licensed premises that are prohibited to minors, the licensee must first obtain approval from the Commission.

(A) To obtain approval, licensee must submit a plan to the Commission, in a form and manner prescribed by the Commission, showing all areas where minors will perform, and all areas designated for minors when not performing.

(B) When minor entertainers are on the premises as allowed under this subsection, but are not performing and are in a Commission-approved designated area, alcoholic beverages are prohibited in the Commission-approved designated area.

(C) The Commission may refuse to provide approval for minor entertainers to perform at a licensed premises in areas prohibited to minors, and may revoke such approval, if the licensee fails to follow the requirements of this rule or the Commission has a reasonable belief that conditions exist which do or could cause or contribute to a serious danger to the health and safety of minors. Examples of a serious danger to the health and safety of minors include, but are not limited to, when the Commission reasonably believes that the following activities are happening in the premises or in the near vicinity of the premises: sex or labor trafficking, unlawful drug activity, violence or the threat of violence, minors obtaining access to alcoholic beverages, and minors unlawfully in an area prohibited to minors. The Commission's refusal or revocation of approval under this rule is not subject to the requirements of ORS Chapter 183.

(e) Before allowing a minor who is under 18 years old to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, the licensee must first verify that the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840(2). Licensees must maintain this verification on the premises and make it available for Commission inspection upon request.

(f) Before allowing a minor who is under 18 years old to perform or entertain on the licensed premises in a capacity other than described in (6)(e) of this rule, the licensee must first receive prior written permission from the Commission's Administrator or the Administrator's designee for each minor. The licensee must apply to the Commission on a form and manner prescribed by the Commission. The Administrator or designee shall grant such permission only if:

(A) A parent or legal guardian of the minor has consented to the child's participation in such activity; and

(B) The Administrator or designee has found that participation in such activity will not be inconsistent with the health, safety and morals of the minor.

(g) Minors under 14 years old must also get a work permit if one is required by the Oregon Bureau of Labor and Industries.

(7) Minor Patron. If the licensee permits it, a minor may be in the immediate company of his/her spouse or Domestic Partner who is at least 21 years old. "Domestic Partner" means an individual who, along with another individual of the same sex, has received a Certificate of Registered Domestic Partnership pursuant to the Oregon Family Fairness Act. The minor must not buy, possess or drink alcoholic beverages.

(8) Sanctions: A violation of subsection (3)(a)(A) of this rule is a Category III violation. A violation of subsection (3)(a)(B) through section (7) of this rule is a Category IV violation.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.430, 471.482, 471.730

STATUTES/OTHER IMPLEMENTED: 471.430, 471.482, ORS 471.130, 471.410, 471.480, 471.482

AMEND: 845-006-0345

RULE TITLE: Prohibited Conduct

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes licensee and permittee conduct that is prohibited.

RULE TEXT:

The Commission holds licensees accountable for the acts of their agents and employees. (OAR 845-006-0362). No employee or agent of a licensee may violate any provision of this rule. A violation of any section of this rule by an employee or agent of a licensee is considered a violation by the licensee.

(1) Definitions. For this rule:

(a) "On-duty" means from the beginning of a work shift that involves the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including any breaks.

(b) "On-duty" also means, for those working outside a scheduled work shift, having the authority to put himself or herself on-duty and performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on-duty" under this subsection.

(c) "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who mix, sell or serve, check identification or control the premises.

(2) Under the Influence of an Intoxicating Substance On-Duty.

(a) No licensee, permittee, or agent of a licensee will be under the influence of an intoxicating substance while on-duty.

(b) A violation of this section is a Category II violation.

3) Consuming an Intoxicating Substance On-Duty.

(a) No licensee, permittee, or agent of a licensee will consume any intoxicating substance while on-duty. Despite this requirement, a licensee, permittee, or agent of a licensee:

(A) May consume an intoxicating substance while on-duty provided:

(i) An attending provider licensed to dispense the intoxicating substance has determined the substance is medically necessary for the individual and has prescribed the substance for the individual

(ii) The individual is consuming the substance pursuant to the prescription

(iii) The individual is not visibly intoxicated while on-duty; and

(iv) The individual is not smoking, combusting, inhaling, vaporizing, or aerosolizing a marijuana item.

(B) May consume tastes of alcoholic beverages as allowed by subsection (4) of this rule.

(b) A violation of this section is a Category III violation.

(4) Despite subsection (3) of this rule, a person may self-serve and may taste malt beverages, wine, or cider while on-duty or as an agent of a licensee only under the following conditions:

(a) The person is not a minor.

(b) The person is not visibly intoxicated.

(c) The time the alcoholic beverage is consumed is between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(d) The alcoholic beverage consumed is only malt beverages, wine, or cider.

(e) The amount of alcoholic beverage consumed per serving does not exceed one ounce.

(f) The person does not consume more than a total of six ounces of alcoholic beverages pursuant to this section between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(g) The purpose of the consumption is for educational purposes or to test the quality of the alcoholic beverage to ensure the product is not flawed or deteriorated.

(5) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. Violation of this section is a Category II violation.

(6) Evidence:

(a) No licensee or permittee will:

- (A) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;
 - (B) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or
 - (C) Ask or encourage another person to do subsections (a) or (b) of this section.
- (b) Violation of this section is a Category III violation.
- (7) Access to Premises:
- (a) Both during regular business hours and when a premises is closed, no licensee or permittee will refuse to admit or fail to immediately admit to the licensed premises a Commission regulatory employee or police officer who identifies him/herself and who enters or wants to enter to conduct a reasonable search to ensure compliance with alcoholic beverage law. Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring.
 - (b) Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.
 - (c) Violation of this section is a Category II violation.
- (8) Open Containers: No licensee or permittee will permit a patron to take an open container of alcoholic beverages from the licensed premises or through an unlicensed area, except as ORS 471.175, 471.176, 471.178, 471.186, 471.190, 471.200, 471.221, 471.223 and 471.227 allow. Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.
- (9) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve. Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only." Violation of this section is a Category V violation.
- (10) Drive-up Window: No licensee or permittee will sell or deliver any alcoholic beverages through a drive-up window. Violation of this section is a Category III violation.
- (11) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises. Violation of this section is a Category V violation.
- (12) "Good Faith Effort": ORS 471.315(1)(a)(H), and 471.412(1) prohibit a licensee or permittee from allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes.
- (a) As used in ORS 471.412(2) and this rule, "good faith effort" means:
 - (A) Placing a hand on the drink and trying to remove it; or
 - (B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance;
 - (b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).
- (13) Promotions.
- (a) The following practices are prohibited:
 - (A) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;
 - (B) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;
 - (C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower

price as compared to the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events where the reasonably projected attendance is at least 20 patrons;

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (e.g., beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong"; and

(G) The use of any device or serving technique that produces an alcoholic mist or vapor for consumption by inhalation. An alcohol vaporization device, for example, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

(14) Self-Service. No licensee, permittee, or agent of a licensee will permit any patron to mix, dispense or serve an alcoholic beverage for or to himself or herself or to another patron for on-premises consumption. Despite this requirement, a patron may mix or serve alcoholic beverages for or to himself or herself or for or to another patron, and the patron is not required to have a Commission-issued service permit, provided:

(a) An on-duty licensee, permittee, or agent of the licensee served or provided the alcoholic beverages to the patron;

(b) The alcoholic beverages are served or provided to the patron in an open container that is not an open bottle of distilled spirits or a securely covered container of malt beverages, wine, or cider;

(c) The alcoholic beverages are only for on-premises consumption; and

(d) The licensee, permittee, and agent of the licensee follow all other regulations pursuant to the sale and service of alcoholic beverages.

(e) A violation of (a) – (c) of this section is a Category III violation

(15) Marijuana Use. No licensee or permittee will permit the use, consumption, ingestion, or inhalation of marijuana items as defined in ORS 475C.009 and OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages. Violation of this section is a Category III violation.

(16) No licensee or permittee will manufacture, store, transport, sell, or offer to sell an alcoholic beverage that is manufactured with any substance derived from cannabis, or cannabinoids derived from any source, unless the substance has been approved for use in alcoholic beverages by the Alcohol and Tobacco Tax and Trade Bureau (TTB) and the U.S. Food and Drug Administration (FDA). Violation of this section is a Category III violation.

(17) No licensee or permittee will engage in or permit any activity relating to the manufacture, possession, sale, purchase, transportation, importation or delivery of alcoholic liquor that violates an order issued by the Governor. A licensee's or permittee's failure to follow this rule creates an immediate and serious danger to the health and safety of all patrons and employees on the premises. Violation of this section is a Category II violation.

(18) No licensee or permittee will engage in or permit any activity relating to the manufacture, possession, sale, purchase, transportation, importation or delivery of alcoholic liquor that violates a public health law, as defined in ORS 431A.005, that is created pursuant to an order issued by the Governor. This rule only applies to activity that occurs during a state of emergency declared by the Governor. A licensee's or permittee's failure to follow this rule creates an immediate and serious danger to the health and safety of all patrons and employees on the premises. Violation of this section is a Category II violation.

(19) No licensee or permittee will mix or combine an adult use cannabinoid as defined in OAR 845-026-0100, an industrial hemp commodity as defined in OAR 845-026-0300, or a product that contains cannabinoids and is intended for human consumption with an alcoholic beverage. Violation of this section is a Category III violation.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1), 471.175

STATUTES/OTHER IMPLEMENTED: ORS 471.030, 471.040, ORS 471.178, 471.186, 471.200, 471.223, 471.227, 471.315(1)(a)(H), 471.351(1), 471.405(1), 471.408, 471.412, 471.675, 471.730, 471.446

AMEND: 845-006-0350

RULE TITLE: Service Permittee Required Reporting of Trafficking and Unlawful Employment of Minors

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes the conditions under which a service permittee at a premises with a full on-premises sales or limited on-premises sales must report sex trafficking or other human trafficking that is occurring at the premises to law enforcement and the Commission.

RULE TEXT:

Permittee Required Reporting of Trafficking and Unlawful Employment of Minors

(1) Definitions.

(a) "Commercial sex act" means any sex act on account of which anything of value is given to or received by any individual.

(b) "Human trafficking" means the recruitment, enticement, intimidation, harboring, transportation, provision, or obtaining of a person for the purpose of subjecting the person to involuntary servitude.

(c) "Sex trafficking" means the recruitment, enticement, intimidation, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. "Sex Trafficking" also includes such actions by means of force or fraud.

(2) An employee of a full on-premises sales or limited on-premises sales licensee who holds a service permit issued under ORS 471.360 to 471.385 and who has a reasonable belief that sex trafficking or other human trafficking is occurring at the premises must report that belief in a timely manner to:

(a) A law enforcement agency; and

(b) The Oregon Liquor and Cannabis Commission.

(3) An employee of a full on-premises sales or limited on-premises sales licensee who holds a service permit issued under ORS 471.360 to 471.385 and who has a reasonable belief that an individual who is employed or contracted as a performer at the premises is under the age of 18 and who conducts any public dance at the premises but does not have the written permission of a juvenile court judge as required in ORS 167.840 must report that belief in a timely manner to the Oregon Liquor and Cannabis Commission.

STATUTORY/OTHER AUTHORITY: ORS 471.385, 471.217

STATUTES/OTHER IMPLEMENTED: ORS 471.385, 471.217

AMEND: 845-006-0400

RULE TITLE: Requirements for Direct to Retailer Permit

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes the requirements for a direct to retailer permit.

RULE TEXT:

(1) The holder of a Direct to Retailer permit may sell at wholesale and transport directly to the holder of a license issued under ORS 471.175, 471.178, 471.186, 471.190, or 471.200 and only to an address where the licensee holds an annual or special license issued by the Commission:

(a) Wine or cider that the holder of the permit produced, fermented, manufactured, or blended

(b) A brand of malt beverages that the holder of the permit produced, fermented, manufactured, or blended provided the brand of malt beverages is not covered under a wholesale distribution agreement pursuant to ORS chapter 474.

(2) The holder of a Direct to Retailer permit may not in a calendar year sell at wholesale and transport directly to the holder of a license issued under ORS 471.175, 471.178, 471.186, 471.190, or 471.200 a combined total of more than 7,500 barrels (232,500 gallons) of malt beverages.

(3) The holder of a Direct to Retailer permit:

(a) Is responsible for paying all taxes imposed under ORS chapter 473 as a manufacturer or importing distributor, and for complying with all reporting requirements imposed by ORS chapter 473, for all malt beverages, wine, and cider sold and transported directly to the holder of a license issued under ORS 471.175, 471.178, 471.186, 471.190, or 471.200

(b) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of ORS chapters 471, 473, 459A.700 to 459A.744, 474.005 to 474.095, and 474.115 and any related laws or rules; and

(c) Must allow the Commission to audit the permit holder's records upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission sends the notice.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.272, 471.274

AMEND: 845-006-0401

RULE TITLE: Requirements for Oregon Retailers to Receive Malt Beverages, Wine or Cider from the Holder of a Direct to Retailer Permit

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes the requirements for Oregon Retailers to receive malt beverages, wine or cider from a holder of a direct to retailer permit.

RULE TEXT:

(1) The holder of a license issued under ORS 471.175, 471.178, 471.186, 471.190, or 471.200 may purchase and receive malt beverages, wine, and cider directly from the holder of a Direct to Retailer permit provided:

(a) The malt beverages, wine, and cider are received only at an address where the licensee holds a valid annual license issued under ORS 471.175, 471.178, 471.186, 471.190, or 471.200 or at an address where the licensee holds a special license issued by the Commission; and

(b) The malt beverages, wine, and cider are only for retail sale and service by the licensee at the address at which they were received.

(2) A person described in subsection (1) of this rule shall submit to the Commission on or before the 20th day of each month a report showing the quantity of malt beverages, wine, or cider received directly from holders of a Direct to Retailer permit during the immediately preceding calendar month, and any other information required by the Commission. This subsection does not apply to a person who receives in one month no more than a combined total of 10 liters of malt beverages, wine, or cider from all holders of a Direct to Retailer permit.

(3) ORS chapter 474 does not apply to a person described in subsection (1) of this rule when the retail licensee receives malt beverages, wine, or cider directly from the holder of a Direct to Retailer permit.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.274, 471.404

AMEND: 845-009-0010

RULE TITLE: Service Permit Requirements

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes the requirements for holding a service permit and circumstances in which a waiver is allowed.

RULE TEXT:

(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:
 - (A) 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);
 - (B) The holders of some temporary sales licenses pursuant to OAR 845-005-0440, including employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization with a temporary sales license; and
 - (C) Licensees serving or providing alcoholic beverages for on-premises consumption at a location that does not have a Commission-issued liquor license and the activity does not require a Commission-issued liquor license.

(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 transmits 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.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.190, 471.730 (1)

STATUTES/OTHER IMPLEMENTED: ORS 471.190, 471.360, 471.365 (2), 471.375

AMEND: 845-009-0140

RULE TITLE: Age Verification Equipment

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: Describes age verification equipment requirements and circumstances in which a retailer licensee may receive credit for installing the equipment in lieu a civil penalty or suspension for violation of ORS 471.410(2) or OAR 845-006-0335(1).

RULE TEXT:

- (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 IIb sanction, not to exceed 10 days of the suspension or \$2500 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 \$2500 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.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.342

AMEND: 845-013-0020

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

NOTICE FILED DATE: 10/30/2023

RULE SUMMARY: The rule describes when a manufacturer or wholesaler may give credit or cash for return of stock that a retailer returns.

RULE TEXT:

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

(2) For the purposes of this rule, "retailer" means a:

(a) Full on-premises sales license issued pursuant to ORS 471.175, including events held by the licensee pursuant to OAR 845-005-0405 and 845-005-0410

(b) Limited on-premises sales license issued pursuant to ORS 471.178, including events held by the licensee pursuant to OAR 845-005-0405 and 845-005-0410;

(c) Off-premises sales license issued pursuant to ORS 471.186; and

(d) Temporary sales license issued pursuant to ORS 471.190.

(3) Despite section (1) of this rule, a manufacturer or wholesaler may, but is not required to:

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

(A) When the retailer is a full on-premises, limited on-premises, or off-premises sales license and permanently terminates all activity at the premises that would require a liquor license. Examples of activities that must be permanently terminated include, but are not limited to, the sale, service, and storage of alcoholic beverages at the premises.

(B) When the retailer temporarily stops all retail sales of alcoholic beverages at a premises due to an order issued by the Governor or a natural disaster. Examples of a natural disaster include but are not limited to fire, flood, and earthquake.

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

(D) After holding an event with a temporary sales license issued pursuant to ORS 471.190, except for an event with a temporary sales license held by a full on-premises sales, limited on-premises sales, off-premises sales, or brewery-public house license; or

(E) When the retailer is a full on-premises sales or limited on-premises sales licensee, after holding an event with a temporary use of an annual license issued pursuant to OAR 845-005-0410 and for the event the licensee has a written contract with a client to provide alcoholic beverages for sale at retail and the client is a:

(i) Nonprofit or charitable organization registered in this state

(ii) State agency, local government, or agency or department of a local government; or

(iii) District pursuant to ORS 198.010.

(b) Give credit for wine, cider, 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 retailer's next purchase;

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

(4) "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.

(5) Price Lists. The manufacturer or wholesaler must follow OAR 845-010-0210.

(6) Despite section (5) 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.

STATUTORY/OTHER AUTHORITY: ORS 471.030, 471.040, 471.730 (1) & (5)

STATUTES/OTHER IMPLEMENTED: ORS 471.398(2), 471.400(3)(a)