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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845  
OREGON LIQUOR AND CANNABIS COMMISSION

**FILED**

03/28/2024 2:02 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: The amendments adopt Oregon Department of Justice standards for using lay representatives in contested cases.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/30/2024 12:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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NEED FOR THE RULE(S)

ORS 183.452 allows an agency to represent itself using lay persons instead of the Department of Justice where the Attorney General has consented to the representation of a particular matter or class of matters. To use lay persons in contested cases, an agency must adopt a rule authorizing a representative to appear on the agency's behalf for authorized matters. The Commission needs to make technical fixes to align the lay representative authorization for Commission employees to represent the agency in contested case hearings in rule with the authorization provided by the Department of Justice. In addition, the Commission needs to make a technical fix to delegate the authority to issue all Final Orders by Default to the administrator.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OLCC rulemaking files (available upon request from the OLCC)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

At this time, the Commission has no data to suggest that this rule will impact racial equity in the state.

FISCAL AND ECONOMIC IMPACT:

This statement takes into account the fiscal impact on (a) Licensees; (b) Local Government; (c) State Agencies; and (d) the Public.

(a) Licensees: The Commission expects the proposed rule amendments to have no impact upon licensees.

(b) Local Government: The Commission expects the proposed amendments to have no impact upon local governments,

as the rules do not apply to them.

(c) State Agencies: The Commission expects the proposed amendments to have no impact upon other state agencies, as the rules do not apply to them. The Oregon Liquor and Cannabis Commission forecasts minimal impact for the agency.

(d) The Public: The Commission does not anticipate the proposed rule amendments will have an impact on the public.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): The Commission anticipates no new costs to comply with the proposed amendments for state agencies and local government.

2. Cost of compliance on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries subject to the rule:

The Commission does not anticipate the proposed rule amendments will have an impact on small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The Commission does not anticipate these activities having any additional recordkeeping or reporting costs.

c. Equipment, supplies, labor and increased administration required for compliance:

The Commission does not anticipate any increased costs for equipment, supplies, labor and administration to comply with these rules.

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

These changes are housekeeping in nature, and the Commission anticipates no fiscal impact to the industry. The Commission looks forward to receiving comments during the subsequent comment period.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?**

These changes are housekeeping in nature, and the Commission anticipates no fiscal impact to the industry. The Commission looks forward to receiving comments during the subsequent comment period.

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**RULES PROPOSED:**

845-003-0331, 845-003-0670

AMEND: 845-003-0331

**RULE SUMMARY:** This rule authorizes the types of contested case hearings Commission employees can present on behalf of the Commission and what actions a Commission employee is and is not allowed to perform during a hearing.

**CHANGES TO RULE:**

845-003-0331

Employee Representation at Contested Case Hearings ¶¶

- (1) As authorized by the Attorney General pursuant to ORS 183.452, Commission employees may appear and participate on behalf of the Commission in the following types of contested case hearings:¶¶
- (a) The grant or denial of a new or renewed license, permit, certification, endorsement, approval or other authorization applied for or requested under ORS Chapters 459A, 471, 473, 475BC and OAR Chapter 845;¶¶
  - (b) A withdrawal, suspension, revocation, cancellation, civil penalty or other sanction pursuant to ORS Chapter 471, ORS Chapter 473, ORS Chapter 475BC, ~~459A.700 to 459A.740~~ORS Chapter 459, ORS 474.115, ORS 459.992, or OAR Chapter 845;¶¶
  - (c) A violation or dispute based on a retail sales agent agreement; but not a matter where the Commission has proposed to terminate or suspend performance on the agreement; and¶¶
  - (d) Privilege Tax disputes under ORS 473.060(4); ~~and~~¶¶
  - (e) Orders for destruction, dispossession, seizure, transfer, or sale of marijuana items pursuant to ORS 475C.021.¶¶
- (2) The employee representative's responsibilities include, but are not limited to:¶¶
- (a) Presenting evidence;¶¶
  - (b) Asking questions of all witnesses;¶¶
  - (c) Presenting information about the facts, and advocating for the Commission's position surrounding the facts;¶¶
  - (d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;¶¶
  - (e) Presenting information comparing Commission actions in similar situations;¶¶
  - (f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and¶¶
  - (g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.¶¶
- (3) The employee representative may not make legal arguments. "Legal arguments" include, but are not limited to, arguments on:¶¶
- (a) The jurisdiction of the Commission to hear the contested case;¶¶
  - (b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Commission; and¶¶
  - (c) The application of court precedent to the facts of the particular contested case proceeding.¶¶
- (4) When the Commission determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument.
- Statutory/Other Authority: ~~ORS 183.341(2), 183.452 & 471.730(5) & (6), 475B.025(2)(e)~~ORS 183.341(2), 183.452 & 471.730(5) & (6)
- Statutes/Other Implemented: ORS 183.341(2), 183.452

AMEND: 845-003-0670

RULE SUMMARY: This rule specifies what authority is retained by the Commissioners and what authority is delegated to the Administrator.

CHANGES TO RULE:

845-003-0670

### Retained Authority of Commissioners ¶

- (1) The Commissioners retain all authority not specifically delegated.¶
- (2) The Commissioners delegate to the Administrator the authority to grant or deny late hearing requests (frequently called Requests for Relief From Default) as provided in OAR 137-003-0528.¶
- (3) The Commissioners delegate to the Administrator the authority to grant or deny requests to participate as a party, limited party or interested agency in a contested case under OAR 137-003-0535 or 137-003-0540 and to make all decisions incidental to the request, including, but not limited to, specifying the areas of participation and procedural limitations of participation, granting or denying late petitions, shortening the time within which responses to the petition shall be filed and/or postponing the hearing until disposition is made of the petition.¶
- (4) The Commissioners delegate to the Administrator the authority to grant or deny a petition for an order to take a deposition of a party pursuant to OAR 137-003-0572. This authority includes, but is not limited to, the ability to designate the terms of the deposition such as the location, manner of recording, time of day and persons permitted to be present during the deposition.¶
- (5) The Commissioners delegate to the Administrator the authority to grant or deny discovery motions pursuant to OAR 137-003-0568 submitted prior to referral of the contested case to the Office of Administrative Hearings and, if applicable, after the assigned administrative law judge issues a proposed order.¶
- (6) The Commissioners delegate to the Administrator the authority to respond to questions transmitted to the agency as set forth in OAR 137-003-0635. The scope of the issues that may be transmitted to the agency includes the agency's interpretation of its rules and applicable statutes and which rules or statutes apply to a proceeding.¶
- (7) The Commissioners delegate to the Administrator the authority to adopt a Final Order based upon an informal disposition by settlement.¶
- (8) The Commissioners delegate to the Administrator the authority to ~~adopt a Final Order by Default when the default is the result of a party's failure to request a hearing or withdrawal of a hearing request; or when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.~~¶
- (9) The Commissioners delegate to the administrative law judge the authority to prepare and issue a ~~issue~~ Final Orders by Default when the default is the result of a party's failure to appear at the time scheduled for hearing and the agency file constitutes the sole record.¶
- ~~(10)~~ The Commissioners delegate to the Administrator the authority to adopt a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.¶
- ~~(11)~~ The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).¶
- ~~(12)~~ The Commissioners delegate to the Administrator the authority to grant or deny a motion to postpone oral argument to the Commissioners on any comments or exceptions to a proposed order.¶
- ~~(13)~~ The Commissioners delegate to the Administrator the authority to grant or deny requests for reconsideration or rehearing and any stay request based on these requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.¶
- ~~(14)~~ The Commissioners delegate to the Administrator the authority to grant or deny a request to stay the enforcement of a Final Order pending judicial review and in cases where judicial review has not been requested. Statutory/Other Authority: ORS 183.341(2), 471.730(5), ~~(6 & (6), 475C.017(2)(d)~~ Statutes/Other Implemented: ORS 183.341(2)