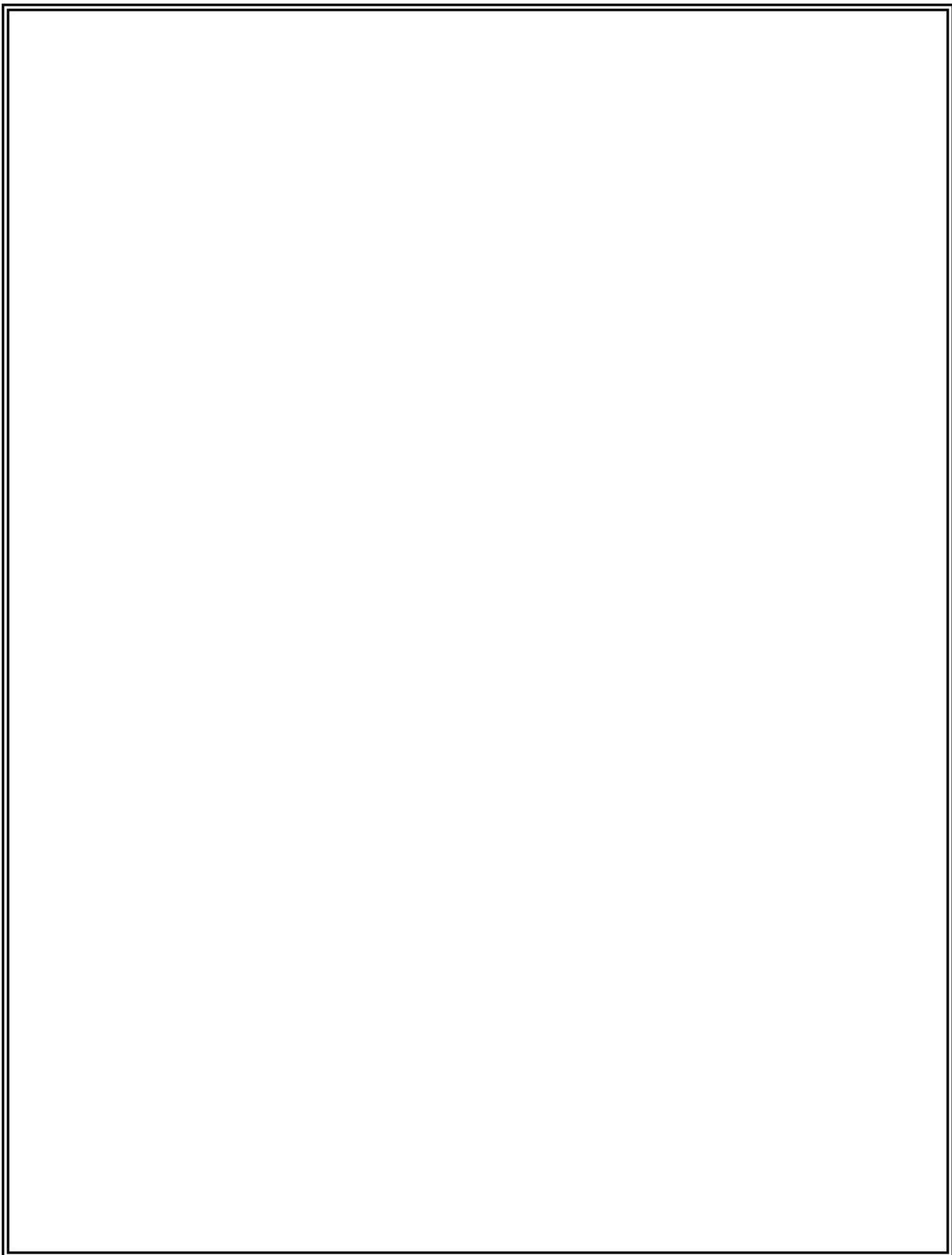


DISTILLERY RETAIL OUTLET MANUAL





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DISTILLERY RETAIL OUTLET MANUAL

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SECTION 1. GENERAL INFORMATION

DISTILLERY RETAIL OUTLET MANUAL

1-A. PURPOSE OF MANUAL

This manual helps explain the obligations of a distillery retail outlet agent (distillery agent) pertaining to liquor laws, regulations and the distillery retail outlet agent agreement.

Distillery agents of the Oregon Liquor Control Commission (OLCC) must obey all laws and rules related to selling liquor and operating a distillery retail outlet. They are required to train personnel thoroughly on the laws and rules. Please note that the Distillery Retail Outlet Manual is intended to supplement the statutes and rules, and must be kept current at all times. Should there be any conflict between the Distillery Retail Outlet Manual and any statute or rule, the statute or rule prevails over the Distillery Retail Outlet Manual.

The underlying intent of this manual, the policies herein, and the Distillery Retail Outlet Agent Agreement (*Exhibit 1*) is to support, augment and fulfill the OLCC's efforts as a regulatory body. As a regulatory body, OLCC provides effective control and regulation selling and distributing distilled spirits products in the State of Oregon.

Please read the manual carefully and direct questions pertaining to the distillery retail outlet to the OLCC district manager assigned to the outlet or to Retail Services Division staff.

1-B. THE DISTILLED SPIRITS PROGRAM

The purpose of the Distilled Spirits Program is to oversee the retail liquor business, meeting the needs of the public while insuring responsible sales of distilled spirits. The program does so by making bottled distilled spirits available for purchase by the public. The Distilled Spirits Program includes two divisions, the Wholesale Operations Division, which includes Purchasing and the Distribution Center, and the Retail Services Division.

Retail Services Division staff has the responsibility to ensure distillery agents comply with statutes, rules, the Distillery Retail Outlet Agent Agreement (Agreement) and the Distillery Retail Outlet Manual pertaining to a distillery retail outlet. Division personnel are available to assist distillery agents in understanding and complying with the various retail outlet requirements.

1-C. DISTILLERY AGENTS AND DISTILLERY RETAIL OUTLETS

1. Distillery Retail Outlet Agents

Pursuant to ORS 471.230, a distillery licensee may apply for appointment as a distillery retail outlet agent. This appointment will allow the distillery retail outlet agent to retail distilled liquor that is manufactured in Oregon by the distillery licensee and is listed by the commission for sale in Oregon.

A distillery agent is an independent contractor and is not an agent, employee, or officer of the Commission or the State of Oregon.

2. Distillery Retail Outlets

A distillery retail outlet (outlet) is a premises approved by the commission for selling packaged distilled spirits for off-premises consumption pursuant to ORS 471.230. The outlet must be located in a premises that has been approved for tasting privileges. An approved premises may be at a distillery's primary location and at no more than five other premises owned or leased by the licensee.

The commission may allow distillery licensees to share use of the outlet area providing:

- The premises is the primary production location of each licensee and that each licensee has been approved for tasting privileges at that location, or
- The licensees are owned by the same entity.

A distillery retail outlet must operate at the same location(s) where tastings have been approved by OLCC. Placement of a distillery retail outlet must not violate any statutes, rules or policies.

3. Distillery Retail Outlet Agent Agreement

When a distillery licensee requests a Distillery Retail Outlet Agent Agreement, a formal process begins with an individual of the distillery licensee submitting an application and other requested documents to Retail Services. When the application is approved and after commission appointment, the distillery licensee will be given a Distillery Retail Outlet Agent Agreement defining OLCC's expectations and the distillery agent's obligations.

When an Agreement is requested by a distillery licensee for an additional distillery retail outlet, the process will be the same as required for the first Agreement.

The Commission may reappoint a distillery agent to an additional term(s) if the Commission determines that the distillery agent has satisfactorily adhered to the terms of the Agreement, the applicable laws of the State of Oregon, the directives of the Commission, and the applicable policies, procedures and rules of the Commission contained in the Distillery Retail Outlet Manual.

The Agreement may be terminated by the agent, by mutual consent, by agent's death, by a distillery closure, by the loss of a distillery license or for cause by the Commission. Distillery agent's performance has a direct effect on maintaining their Agreement. Failure to meet the Commission's requirements may result in disciplinary action and can affect a distillery agent's agreement. A distillery agent may request a hearing per their agreement when a distillery agent receives a Notice of Violation or their agreement is proposed to be terminated.

4. Appointment of a Temporary Agent

In the event of a termination proposed under a Distillery Retail Outlet Agent Agreement, the OLCC may suspend the distillery agent's appointment pending final outcome of the proposed termination. During such suspension period, the OLCC may appoint a temporary agent to operate the outlet and will notify the distillery agent of the effective date of the appointment of a temporary agent. If the OLCC appoints a temporary agent, the suspended agent shall permit outlet operations to continue at the same location and allow the temporary agent to have access to all inventory, books, and records of the outlet.

A temporary agent must be a licensee of record and will be required to submit an application. If the applicant is found to be qualified, the commission may appoint this person as a temporary distillery retail outlet agent.

5. Conduct

Part of the performance expectation for a distillery agent is that the agent and outlet personnel treat customers, OLCC staff, law enforcement and the general public with professional courtesy and respect in all dealings related to the distillery retail outlet.

6. Operating Expenses

All startup and ongoing expenses to operate a distillery retail outlet are the sole responsibility of the distillery agent.

7. Outlet Relocation

A distillery agent must discuss any proposed change of premises location for a distillery retail outlet with their district manager. **The Commission must give prior approval to any relocation.**

8. Outlet Closure

In accordance with the Agreement, Retail Services must be notified in writing at least 30 days in advance if a distillery agent intends to permanently close a distillery retail outlet.

9. Hours of Operation

Distillery retail outlets must not sell liquor before 7:00 a.m. or after 10:00 p.m.

If a distillery retail outlet is located within any Oregon public use airport designated as a Category I – Commercial Service Airport by the Oregon Department of Aviation, liquor may only be sold between the hours of 7:00 a.m. and 10:00 p.m. However, liquor may be sold between the hours of 5 a.m. and 7 a.m. to an individual that is a ticketed airline passenger with a valid same-day boarding pass.

10. Postal Regulations

It is unlawful to ship distilled spirits through the U.S. Postal Service.

11. Customer Service

The distillery agent must operate the distillery retail outlet responsibly and must thoroughly train personnel and routinely support their efforts to develop customer service skills.

OLCC may investigate complaints against the distillery retail outlet if the initial inquiry reveals sufficient information to continue an investigation.

12. Outlet Personnel

Distillery agents shall train all personnel prior to assuming duties; specifically in regard to liquor statutes of the State of Oregon and the OLCC's rules, policies, procedures, and directives as are applicable to their respective duties.

Distillery agents and their personnel must comply with Oregon service permit requirements when involved in the tasting process.

Personnel must be at least 18 years old to sell alcohol by the bottle.

13. Memoranda and Bulletins

Distillery agents must receive, open, read, understand and comply with all memos, bulletins, and correspondence from OLCC, and explain information that may affect outlet personnel's duties.

14. Release of Information

The OLCC's policy on the release of information to the public and the media requires the OLCC's Communications Division to be responsible for what is disseminated. The purpose of this is to ensure consistency, accuracy, and timeliness of information provided on OLCC policies, activities and decisions. Refer any media inquiry regarding the OLCC to the Communications Division.

Any opinion posted or offered in the confines of the distillery retail outlet must clearly state that the opinion is the *distillery agent's* opinion, and does not represent the views of the OLCC or other agents.

15. Public Disclosure

The OLCC keeps a master file of correspondence and operating documents for each distillery retail outlet. The files are available to the public for review upon request. Certain personal information about a distillery agent and outlet personnel is exempt from public disclosure.

16. Business Name

If using a business name other than their own name, distillery agents are required to register the assumed business name with the state Corporation Division. A distillery agent's business name must not include these words: OLCC or State of Oregon.

17. Advertising

The Commission prohibits any advertising that contains material so appealing to minors that it encourages purchase, possession, or consumption of alcoholic beverages. Advertising is prohibited when minors may be the main focus or participants at an event.

Distillery agents are not allowed to offer purchase discounts in exchange for other incentives. Example of prohibited distilled spirit advertising include, but are not limited to dollar discounts for purchasing multiple bottles or offering discounts on distilled spirits if a tasting or other merchandise is purchased. Offering discounts or promotions on distilled spirits through social media, websites, coupons, gift certificates, etc. is prohibited.

A distillery retail outlet can not be named or advertised with the words "**liquor**" or "**liquor store**" including on exterior signage.

When clarification is needed on advertising distilled spirits, contact the district manager assigned to the outlet.

18. Obtaining Product for Tastings

Product that will be used for tastings may be obtained from the bonded distillery inventory with no fee assessed by OLCC. A fee will be applied if product is obtained from the OLCC warehouse.

19. Retention Schedule

The Secretary of State and OLCC require distillery agents to maintain and secure distillery retail outlet records. Distillery agents are to retain some records for OLCC audits or Commission staff inspection and are responsible for safeguarding and maintaining of all records. The required retention times are listed below.

| <u>FORM</u> | <u>RETENTION TIME</u> |
|------------------------------------|--------------------------------------|
| Bulletins/Memoranda/Correspondence | File by date/destroy when superseded |
| Statement of Age Card | Two years |
| Distillery Outlet Sales Report | Two years |
| Licensee Invoices | Two years |
| Detail of Outlet Sales | Two years |

1-D. INDUSTRY REGULATIONS

Distillery retail outlet agents must not give or offer any gift, gratuity, free merchandise, special individualized discount, or other incentive to anyone.

For questions that arise outside the scope of the distillery retail outlet (i.e. distillery or Full-On Premises license), contact the closest OLCC field office or visit <http://www.oregon.gov> for statute or rule information.

SECTION 2. SALES AND REVENUE

2-A. REGULATING LIQUOR SALES

Selling alcoholic beverages is a serious responsibility, regulated by laws to protect against abuses. The law requires distillery agents and outlet personnel to refuse illegal liquor sales while being careful not to violate a customer's civil rights.

1. Refusing Illegal Sales

It is against the law to sell alcoholic beverages to a person who is:

- under 21
- visibly intoxicated
- furnishing alcohol to minors

City ordinances may prohibit sales to people known to drink in public (street corners, parks, etc.).

Distillery agents and outlet personnel must check picture identification (ID) for customers who appear younger than 26. If a customer does not have a valid state motor vehicle license, a valid passport, a valid military ID card, or a valid DMV identification card, distillery agents at their option can have the customer complete a Statement of Age Card (*Exhibit 2*). Expired ID is not considered valid ID.

Refuse to serve disorderly, disruptive or abusive persons and if needed, call the police if they do not leave.

2. Tips on Valid Identification

Since the law requires sellers of alcohol to check ID of anyone who appears younger than 26, it is important to establish a routine to verify the document is valid, unaltered and age of the purchaser.

| Touch the ID | Look at the ID | Ask About the ID |
|---|---|---|
| <p>Ask the person to provide their ID so it can be examined for signs of tampering. If the ID is in a wallet, ask for it to be removed.</p> <p>By running a finger over the ID, it may detect:</p> <ul style="list-style-type: none"> • Raised edges around photo • Altered birth date, expiration date or "Under 21 Until" date • Bumpy surfaces by the picture • Irregular lamination • Obvious cuts or slashes • Unusual thickness and quality | <p>Visually inspect the ID for the following:</p> <p>Date of Expiration - Expired ID is not acceptable.</p> <p>Date of Birth (DOB) - Is the person 21 or older?</p> <p>Photo - Does it look like the person presenting the ID?</p> <p>Font Type - Do all the letters and numbers appear the same?</p> <p>Height and Weight - People can lose or gain weight, but the height should be consistent.</p> <p>Printed information on the back – Oregon and most states have printed information on the back.</p> | <p>While holding the ID, ask the person to state their:</p> <ul style="list-style-type: none"> • Address • ZIP Code • Middle Name • Date of Birth <p>Have the person:</p> <ul style="list-style-type: none"> • Show a second piece of valid ID if in doubt about the first ID • Sign a piece of paper and compare the signature to the ID |

3. Signs of Intoxication

Selling alcohol to a visibly intoxicated person (VIP) is against the law. Visible intoxication is intoxication that personnel can see. If outlet personnel can tell by looking at a customer that they have been drinking or using legal or illegal drugs, the person is visibly intoxicated.

To assist in determining if a person may be visibly intoxicated, personnel should observe a person for possible signs.

| Some Signs of Intoxication | Observe and Interact |
|---|---|
| <ul style="list-style-type: none"> • Slurred speech • Bloodshot, glassy eyes • Unkempt clothing • Mussed hair • Difficulty handling money or making change • Difficulty standing up • Swaying, staggering, stumbling or falling • Difficulty remembering • Speaking loudly, then quietly • Argumentative • Slow response to questions or comments • Rambling train of thought • Depressed/crying/moody | <p>When a person comes into the outlet, watch how they move around the area. Are they:</p> <ul style="list-style-type: none"> • Unsteady • Using fixtures or displays to assist in standing • Swaying, staggering or stumbling • Falling down <p>Does the person have:</p> <ul style="list-style-type: none"> • Bloodshot or glassy eyes? • Ungroomed appearance? • Trouble handling money, keys or other things? <p>By conversing with a person and asking them an open-ended question it may assist in listening to:</p> <ul style="list-style-type: none"> • Any thick or slurred speech • Whether the answer makes sense |

NOTE: One sign alone could be a disability, such as slow speech may be a medical condition or walking abnormally may be a physical disability. Most of the time a combination of signs indicate intoxication.

Distillery agents must train personnel on the possible signs of intoxication and how to apply that training to make legal sales.

4. Non-Discrimination

Do not refuse service based on a person's race, religion, national origin, sex, sexual orientation, marital status, or physical or mental capability.

5. Neighborhood Livability

Distillery agents must monitor the following types of customer behavior outside their business:

- o Public drinking/drunkenness
- o Alcohol or related litter
- o Public urination
- o Obtrusive or excessive noise
- o Fights, harassment
- o Sale of drugs
- o Trespassing

A plan is required to correct problems created by inappropriate customer behavior in and around the outlet.

6. Training on Legal Sales of Alcohol

Agents are required to train all current outlet personnel and any new hires on the responsible sales of alcohol prior to their first sale.

a. Required Training for Store Personnel

OLCC has produced the brochure "What Every Store Clerk Needs to Know About Selling Alcohol" to assist outlet personnel in making legal sales of alcohol. Brochures can be obtained from OLCC.

Responsible Sales Training Program Requirement

Agents shall utilize the steps below, or a different training process that meets or exceeds the OLCC approved seller training program, when training outlet personnel who sell alcoholic products

- All outlet personnel who sell alcoholic products must read the brochure, "What Every Store Clerk Needs to Know About Selling Alcohol" and complete the alcohol selling quiz.
- Outlet personnel sign and date the brochure and completed alcohol selling quiz, acknowledging they have read and understand the brochure.
- **Agents are required to retain** signed brochures and alcohol selling quizzes on file at the outlet.

b. Enhanced Training Due to an Illegal Sale

If a distilled spirits sale to a minor or visibly intoxicated person occurs, the following will be required once notified by OLCC:

- Hold meetings quarterly (at a minimum) for one year to discuss responsible sales of alcohol regardless of whether the original clerk who sold is still employed at the outlet. Keep a record of the meeting and have all personnel that sell distilled spirits sign the document.
- All outlet personnel must read the brochure “What Every Store Clerk Needs to Know About,” complete the alcohol selling quiz and sign the brochure and alcohol selling quiz.

Upon request, distillery agents or a supervisor must show signed brochures and completed alcohol selling quizzes to OLCC staff (such as a district manager or inspector).

7. Minor Decoy Program

A distillery agent’s business is subject to a minor decoy visit without any notice. OLCC and local law enforcement agencies may visit the distillery retail outlet and the premises where tastings occur in an effort to measure a distillery agent’s compliance with state liquor laws.

The OLCC and local law enforcement agencies may use minor decoys (under the age of 21) in an attempt to purchase alcohol. Minor decoys appear under 26 years of age, will not lie about their age and will produce their own, valid identification if asked. Minor decoys are entitled to their ID and a distillery agent or distillery retail outlet personnel must return the ID to the decoy immediately. Failure to do so is a violation of ORS 162.247, Interfering with a peace officer (police officers and OLCC inspectors are classified as peace officers) and/or ORS 164.043, Theft in the third degree.

The OLCC requires a distillery agent and outlet personnel to comply with the law, be courteous and fully cooperate with police officers or OLCC inspectors conducting decoy operations.

OLCC’s goal is to help distillery agents and personnel prevent selling alcohol illegally to minors. If a distillery agent or outlet personnel sells alcohol to a minor decoy, the seller is subject to administrative and/or criminal sanctions for illegal sale to a minor. The distillery agent usually receives a Notice of Violation and the person who sells is cited into criminal court.

If outlet personnel sold and will continue to sell alcohol, an approved training program must be completed within 45 days of notification by Retail Services. Distillery agents will receive and be required to fill out and submit an Alcohol Education Verification form with attached fee when applicable. If distillery agents or outlet personnel would like training in checking identification, they may contact the nearest OLCC regional office.

2-B. SALES, DELIVERY AND SHIPPING

Selling liquor is a serious responsibility that requires a distillery retail outlet agent's best judgment. A distillery agent and outlet personnel must not drink, taste or be under the influence of intoxicants prior to or any time during a scheduled shift.

Each time a distillery agent and outlet personnel sell a bottle of liquor through the retail outlet they use customer service skills, apply the law, and follow fundamental accounting practices. Sales may be made to a consumer customer. In addition, sales may be made to a Full On-Premises Licensee that has the same licensee name as the distillery licensee of record. Sales to all other licensees are prohibited. OLCC does not supply any equipment for the sale of liquor.

1. Sales, Delivery and Shipment of Distilled Spirits to Consumer Customers

a. Sales to Consumer Customers

Individual consumer customers may pay for distilled spirits at a distillery retail outlet or an authorized delivery location.

A distillery retail outlet agent must accept payment for distilled spirits only between 7:00 am and 10:00 pm.

For every consumer sale:

- Be sure the customer is at least 21 years old and is not visibly intoxicated.
- Sell the item for the current monthly price set by OLCC.
- Record all liquor sales by item code at the time of purchase, so totals can be transferred to the appropriate form that will be sent to OLCC.
- Give the customer a receipt upon request (i.e. paper, text, electronic).

When the distillery retail outlet is on a Full On-Premises Sales licensed premises owned by the distillery licensee and the sale is completed on the Full On-Premises Sales licensed premises:

- Payment for the sealed bottle of distilled spirits may be made at any register.
- The distillery retail outlet agent may provide the sealed bottle of distilled spirits to the consumer at any location on the licensed premises.
- The distillery retail outlet agent / licensee must not allow the bottle of distilled spirits to be opened on the licensed premises. Despite this requirement, if the licensed premises includes guest rooms, the licensee may allow the bottle to be opened in a private guest room; however, the service and consumption of alcohol from that bottle is allowed only in a private guest room.

b. Delivery to Consumer Customers

Distillery retail outlet agents may deliver distilled spirits purchased by a consumer customer. Delivery of distilled spirits may occur at a location that is within 100 feet of the boundary of the distillery outlet, or to a permanent street address of a home or business.

When an order is received at the retail outlet and the customer requests delivery:

- Delivery is limited to no more than a total of six (6) products that are manufactured in Oregon by the distillery licensee and no more than two (2) bottles of the same product. All products must be currently listed by the Commission.
- Distillery retail outlet agents may charge a consumer a delivery fee of no more than \$10.00 per order.
- Delivery is limited to once per day at any street address and must be between 7:00 am and 10:00 pm.

The individual taking possession of the delivery must be at least 21 years old and not be visibly intoxicated, or the delivery cannot be made. The purchase must be for personal or social use, and not for resale. The individual taking possession for the delivery of distilled spirits does not need to be the same person that submitted the order.

Delivery Methods

- Distillery agents that offer delivery of distilled spirits to the consumer customer **MUST** use outlet personnel or an approved For-Hire Carrier.
- Distillery retail outlet agents who do not use a Commission-approved for-hire carrier must:
 - Verify consumer customers are at least 21 years of age by using only identification authorized by ORS 471.130 or OAR 845-006-0335 and are not visibly intoxicated at the time of receiving the distilled spirits;
 - Collect information that must be retained by the distillery agent for a minimum of eighteen months from the date of delivery of the distilled spirits to the purchaser. The information retained must include:
 - The date and time the distilled spirits were delivered to the purchaser;
 - The name, or information that can be used to determine the name, of the person delivering the distilled spirits to the purchaser;

- The name and date of birth of the final consumer receiving the distilled spirits (the final consumer that receives the distilled spirits does not need to be the consumer that ordered it); and
 - If the delivery is made to a street address, the address at which the distilled spirits are delivered.
- If a For-Hire-Carrier is used, the distillery agent must retain the name of the carrier for all deliveries for a minimum of eighteen months.

A For-Hire-Carrier:

- Is not required to deliver distilled spirits direct to a consumer customer.
- May not accept payment on behalf of distillery agents for distilled spirits. The distillery agent must receive payment directly from the consumer customer prior to delivering the alcohol to the consumer. See this link for currently approved for-hire carriers
http://www.oregon.gov/OLCC/docs/liquor_license_and_license_process/approved_for_hire_carriers.pdf
- Who wants to deliver distilled spirits direct to a consumer customer but is not an OLCC-approved For-Hire Carrier, click on this link: [For-Hire Carrier application](#)
- Is required to follow all elements of OAR 845-005-0424 when transporting and delivering distilled spirits between distillery outlet agents and consumer customers.

c. Shipment of Distilled Spirits

A distillery agent may ship distilled spirits purchased in-person by a consumer customer who is a resident of Oregon and is at least 21 years of age. When shipping to an Oregon resident, distillery agents must use an approved for-hire carrier. An updated list may be obtained through the web address:

http://www.oregon.gov/OLCC/docs/liquor_license_and_license_process/approved_for_hire_carriers.pdf

In-person purchases may be shipped to a resident of a state other than Oregon only in accordance with the laws of that state.

2. Sales for a Special Event Distillery License

A special event distillery (SED) license allows a distillery licensee to offer sales of their product by the drink at a special event. In addition, if the distillery licensee is a distillery retail outlet they may sell factory-sealed containers of distilled spirits at the special event. In either case, the product must be manufactured in Oregon by the distillery licensee and be listed for sale by the commission. Products for these sales are to be acquired by the following methods:

a. Product for Sales by the Drink

All distilled liquor contained in the drink must be purchased at the retail price set by the Commission and is **not eligible for any discount**. Additional distilled liquor used in the drink must be listed for sale by the commission. Sales reporting and revenue submission for bottle purchases from the distillery retail outlet are subject to the same reporting timelines as all other distillery retail outlet sales.

Sales of distilled spirits by the drink may be conducted between the hours of 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

b. Sales of factory-sealed containers

Factory-sealed containers of distilled spirits may be sold at a SED premises by a distillery retail outlet agent. This product must be obtained from distillery outlet inventory and sold in the same manner as in the distillery outlet. Event sales must be tracked daily and added to distillery outlet sales paperwork. Revenue submission for this type of sale is subject to the same reporting

timelines as all other distillery retail outlet sales.

Sales of factory-sealed containers of distilled spirits may be conducted only between the hours of 7:00 a.m. and 10:00 p.m.

3. Sales to a Full On-Premises Licensee with the Same Name as the Distillery Licensee of Record

a. Sales to a Licensee

For reporting sales to a distillery's Full On-Premises location:

- i. Record all sales each day, using a manual Licensee Invoice (*Exhibit 3*) or a computer generated form.
- ii. Check every licensee invoice and order for accurate prices and quantities. Be sure an employee at the licensed premises signs all licensee invoices legibly.

iii. Distribute four copies of the form as follows:

Original--attach and submit with the Distillery Outlet Sales Report
for the reporting period

Duplicate--keep at outlet

Duplicate--one copy to licensee as receipt

b. Delivery

A distillery agent may deliver or arrange to have delivered alcoholic liquor to their licensed premises. Any person who makes deliveries of distilled spirits must be at least 18 years old.

2-C. DISTILLERY AGENT COMPENSATION

Prior to the start of each biennium, OLCC creates a forecast of projected sales as part of the State budget process. In the budgetary process the legislature establishes an authorized average payout rate and multiplies the forecast to determine the maximum amount of compensation to be paid for the biennium. The approved fund is used to pay agents for their retailing services. This rate is used solely for setting the budget limitation and is not intended to be the actual commission rate for any agent.

Actual compensation for an individual agent is based on a commission approved compensation formula. Distillery agents will receive a fixed base allowance plus a variable sales commission. It may be necessary to adjust the variable commission rate upward or downward when actual sales do not match forecasted sales. The OLCC must adjust the variable rates in order to insure that it only disburses the legislatively authorized limitation by the end of the biennium. If forecasted liquor sales exceed initial projections, the OLCC will ask the Emergency Board to increase the commission fund proportionately to maintain the average authorized system wide payout rate.

1. Compensation

| DISTILLERY AGENT COMPENSATION |
|--|
| <p style="text-align: center;"><u>Fixed Base Allowance</u></p> <p>14.25% of first \$10,000 of monthly sales. This allowance may change in accordance with provisions enacted by the OLCC Commissioners and any other requirements of law.</p> |
| <p style="text-align: center;"><u>Variable Sales Commission</u></p> <p>Two different variable rates are paid, one rate for consumer sales and another rate for licensee sales (if applicable) in addition to the fixed base allowance. These variable commission rates may change in accordance with provisions enacted by the OLCC Commissioners and any other law requirements. The variable rate is subject to change as needed. Distillery agents will be notified of any adjustments in the variable rate.</p> |

2. Calculating Compensation

Distillery agents receive compensation on bottles that are sold at the outlet. Compensation is paid to a distillery agent each reporting period by deducting compensation and the cost of goods from the total retail sales collected. The cost of goods per bottle amount is taken from the Standard Quotation and Specification Form on file at OLCC for the current month. Distillery agents will remit a check to the Commission for the net balance.

The Distillery Outlet Sales Report (*Exhibit 4*) will assist distillery agents in the calculation of compensation.

The example below shows how a distillery agent would calculate their compensation assuming the outlet has the specified sales and the following commission rates: the base rate of 14.25% of the first \$10,000 of total sales, a variable rate for consumer sales of 7.75% and a variable rate for licensee sales of 6.24%.

Example Only: Variable rates below may not be current.

| Sales Period: Thursday September 1 through Saturday September 3 | |
|--|-----------------|
| Consumer Sales during period | \$2,000.00 |
| Licensee Sales during period | \$0 |
| Base (\$2,000.00 x 14.25%) Note: Accumulated sales \$2,000.00 | \$285.00 |
| Variable: Consumer (\$2,000.00 x 7.75%) | \$155.00 |
| Licensee (\$0 x 6.24%) | \$0 |
| Total Compensation (\$285.00 + \$155.00) | \$440.00 |

| Sales Period: Sunday September 4 through Saturday September 10 | |
|---|-------------------|
| Consumer Sales during period | \$5,000.00 |
| Licensee Sales during period | \$100 |
| Base (\$5,000.00 + \$100 x 14.25%) Note: Accumulated sales \$2,000+\$5,000+\$100=\$7,100 | \$726.75 |
| Variable: Consumer (\$5,000.00 x 7.75%) | \$387.50 |
| Licensee (\$100 x 6.24%) | \$6.24 |
| Total Compensation (\$726.75 + \$387.50 + \$6.24) | \$1,120.49 |

| Sales Period: Sunday September 11 through Saturday September 17 | |
|--|-----------------|
| Consumer Sales during period | \$6,000.00 |
| Licensee Sales during period | \$0 |
| Base (\$2,900.00 x 14.25%) Only apply \$2,900 of the sales for this period. Note: Accumulated sales \$2,000+\$5,000+\$100+\$2,900=\$10,000 maximum (Fixed base allowance has been reached for the month) | \$413.25 |
| Variable: Consumer (\$6,000.00 x 7.75%) | \$465.00 |
| Licensee (\$0 x 6.24%) | \$0 |
| Total Compensation (\$413.25+ \$465.00) | \$878.25 |

| Sales Period: Sunday September 18 through Saturday September 24 | |
|--|-----------------|
| Consumer Sales during period | \$3,000.00 |
| Licensee Sales during period | \$0 |
| Base (\$0 x 14.25%) Outlet met the maximum amount of \$10,000 | \$0 |
| Variable: Consumer (\$3,000.00 x 7.75%) | \$232.50 |
| Licensee (\$0 x 6.24%) | \$0 |
| Total Compensation (\$0 + \$232.50) | \$232.50 |

| Sales Period: Sunday September 25 through Friday September 30 | |
|--|----------------|
| Consumer Sales during period | \$200.00 |
| Licensee Sales during period | \$0 |
| Base (\$0 x 14.25%) Outlet met the maximum amount of \$10,000 | \$0 |
| Variable: Consumer (\$200.00 x 7.75%) | \$15.50 |
| Licensee (\$0 x 6.24%) | \$0 |
| Total Compensation (\$0 + \$15.50) | \$15.50 |

| | |
|--|-------------------|
| Total compensation paid by the end of the month | \$2,686.74 |
|--|-------------------|

2-D. REVENUE TRACKING & PROCEEDS

Distillery agents are responsible for maintaining appropriate accounting records that provide accurate information for the OLCC to record sales and inventory transactions.

Prior to selling distilled spirits, a product must be listed with the OLCC and must have a current Standard Quotation and Specification Form on file with the OLCC Purchasing Department. The product must be sold at the current monthly posted retail price.

Distillery agents are not allowed to discount any product without the express permission of the commission. Commission prices are adjusted monthly if needed.

All sales and inventory paperwork will be submitted to OLCC starting with the first bottle sold through the distillery retail outlet.

Failure to meet the OLCC's reporting requirements for revenue tracking and proceeds may result in a Letter of Warning and subsequently a Notice of Violation, and can affect a distillery agent's agreement.

1. Sales Reporting

Generally, sales reporting periods are Sunday through Saturday. However, a sales reporting period at the start of a month is from the first day of the month through the first Saturday and a sales reporting period in the last week of a month is Sunday through the last day of the month.

Distillery agents must:

- a. Prepare a Distillery Outlet Sales Report (*Exhibit 4*) and a Detail of Outlet Sales (*Exhibit 5*) for **each** reporting period. **When there are no sales in a period enter "NO SALES" in the appropriate period column on the Distillery Outlet Sales Report.** If a distillery has more than one outlet, each outlet must submit the required paperwork separately.
- b. Provide payment in check form made payable to OLCC.
Note: If a distillery has more than one outlet, the "Total Net Due OLCC" for each outlet can be combined on one check. However, do not combine this payment with other required payments to OLCC.
- c. Mail the cumulative Distillery Outlet Sales Report(s), and accompanying Detail of Outlet Sales, licensee invoice(s) and check(s) to OLCC, PO Box 22297, Milwaukie, OR 97269-2297, Attention Financial Services. **The envelope must be postmarked no later than the third postal service day after the last day of each reporting period.**

Note: A Distillery Outlet Sales Report is required to be mailed whether or not there were sales for the reporting period.

2. Remittance Error

Distillery agents are responsible for submitting accurate paperwork. If an error occurs OLCC will send out an invoice for the error amount. When invoiced by Financial Services for an error, the distillery agent must enter the appropriate amount on the “OLCC Invoice Adjustment (s)” line on the next Distillery Outlet Sales Report.

3. Distillery Agent Returned Checks

Distillery agents must not present checks to OLCC for which the bank will decline payment (NSF, closed account, etc.). Financial Services will invoice the distillery agent for any check which the bank has declined payment and any related fee or charge. When invoiced by Financial Services for a returned check, the distillery agent must enter the appropriate amount on the “OLCC Invoice Adjustment(s)” line on the next Distillery Outlet Sales Report.

2-E. INVENTORY MANAGEMENT

1. Audits

The OLCC has the right to perform sales and inventory audits at any time. Sales and inventory reports must be available immediately in case of an audit.

Audit shortages not paid within 30 days of notice could result in a Letter of Warning and subsequently a Notice of Violation, and can affect a distillery agent's agreement.

2. Submitting an Inventory

Distillery agents are required to submit a Distillery Outlet Inventory Report (*Exhibit 6*) which includes beginning inventory, receivings, sales, adjustments and ending inventory. **Inventory reports must be postmarked no later than three business days following the end of the month.**

Continued failure to meet the OLCC's reporting requirement may result in a Letter of Warning and subsequently a Notice of Violation.

3. Shipping Product to Liquor Stores

Distilleries are prohibited from shipping or delivering their product directly to liquor stores. All products ordered by liquor stores must be shipped from the OLCC warehouse.

SECTION 3. LIQUOR LAWS AND RULES

Selected Oregon Revised Statutes

This section references state statutes and rules that apply to distillery retail outlet agents. The statutes and rules below may not be the most current version of those laws. In some instances, OLCC has included only those sections of the statute or rule that OLCC would like to highlight for the agent. The full current version of each statute and rule applies to the agent, even if this section contains an outdated or truncated version.

Agents can view all statutes and rules in their entirety at:
http://www.oregon.gov/OLCC/laws_and_rules.shtml.

General Provisions

471.001 Definitions for ORS chapters 471 and 473

(1) “Alcoholic beverage” and “alcoholic liquor” mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(3) “Commission” means the Oregon Liquor Control Commission.

(4) “Distilled liquor” means any alcoholic beverage other than a wine, cider or malt beverage. “Distilled liquor” includes distilled spirits.

(5) “Licensee” means any person holding a license issued under this chapter.

[1995 c.301 §2; 1999 c.351 §42; 2005 c.100 §1; 2010 c.33 §1; 2012 c.54 §1; 2015 c.614 §160; 2016 c.24 §19]

471.105 Purchaser’s qualifications

Before being qualified to purchase alcoholic liquor from the Oregon Liquor Control Commission, a person must be at least 21 years of age.

[Amended by 1961 c.687 §5; 1967 c.577 §1; 1971 c.159 §1; 2005 c.22 §343]

471.115 Limitations on purchasing may be imposed

The Oregon Liquor Control Commission may limit the quantity of alcoholic liquor purchased at any one time by any person. It may limit the amount of purchases within any length of time so as effectually to prevent the resale of such liquors.

471.130 Requiring statement of age or identification from certain purchasers.

(1) All licensees and permittees of the Oregon Liquor Control Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person’s having reached 21 years of age, shall require such person to produce one of the following pieces of identification:

(a) The person’s passport issued by the United States or a foreign government.

(b) The person’s motor vehicle operator’s license issued by this state or another state of the United States.

(c) An identification card issued under ORS 807.400.

(d) A United States military identification card.

(e) An identification card issued by a federally recognized Indian tribe.

(f) Any other identification card issued by a state or territory of the United States that bears a picture of the person, the name of the person, the person’s date of birth and a physical description of the person.

(g) Proof of the person's participation in the Secure Electronic Network for Travelers Rapid Inspection 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) If a person does not have identification as described in subsection (1) of this section, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. The written statement of age shall be on a form furnished or approved by the commission, including but not limited to the following information:

Date _____
I am 21 years of age or over. _____

Signature
Description of evidence in support of age and identity:

____ Identification No. (if any) ____
____ Identification No. (if any) ____

(Fill in information pertaining to any two or more pieces of evidence submitted by the person.)

I hereby certify that I have accurately recorded identification of the evidence submitted to complete this form.

Signature of permittee or licensee

A person under 21 years of age who knowingly misrepresents the person's true age with the intent of obtaining alcohol in violation of ORS chapter 471 may be subject to criminal penalties under ORS 165.805.

[Amended by 1955 c.525 §1; 1961 c.687 §4; 1967 c.171 §1; 1967 c.577 §7; 1979 c.313 §1; 1983 c.338 §939; 1995 c.44 §1; 1999 c.526 §1; 2001 c.785 §6; 2003 c.225 §1; 2017 c.533 §5; 2019 c.658 §1]

471.135 False statement of age; statement of age as defense

(1) No person shall make a written statement of age under ORS 471.130 that is false in whole or in part, or produce any evidence that would falsely indicate the person's age.

(2) If a written statement of age and the information pertaining to the evidence which was exhibited to the permittee or licensee at the time the statement was made that is entered in writing on the statement, are offered as evidence in any administrative or criminal prosecution for sale or service of alcoholic liquor to a person not having reached 21 years of age, the permittee or licensee shall be found to have committed no crime or other wrong unless it is demonstrated that a reasonable person would have determined that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served.

[Amended by 1955 c.525 §2; 1967 c.53 §1; 1979 c.313 §2]

471.230 Distillery license

(1) A distillery license allows the licensee to import, manufacture, distill, rectify, blend, denature and store distilled liquor, to sell the distilled liquor to the Oregon Liquor Control Commission and to transport the distilled liquor out of this state for sale outside this state. Distillery licensees may purchase and sell distilled liquor from or to another distillery licensee in containers having a capacity greater than one U.S. gallon for blending and manufacturing purposes. A distillery licensee may not sell any alcoholic beverage within this state except to the commission or as provided in this section. However, any agricultural producer or association of agricultural producers or the legal agents of an agricultural producer or association of agricultural producers that manufactures and converts agricultural surpluses, by-products and wastes into denatured ethyl and industrial alcohol for use in the arts and industry are not required to obtain a license from the commission.

(2) If a distillery licensee holds a valid distilled spirits plant basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau for the licensed premises, the distillery licensee may:

(a) Permit tastings of distilled liquor approved by the commission for sale in Oregon and manufactured in Oregon by the distillery licensee or by another distillery licensee. Tastings may be of the distilled liquor alone or with a mix of other liquids. If any of the other liquids are distilled liquors, they must be distilled liquors on the list of products approved by the commission for retail sale in Oregon and must be purchased by the licensee at the retail price established by the commission. This paragraph does not authorize sales by the drink of distilled liquor. The tastings may be conducted on the licensed premises of the distillery and at no more than five other premises owned or leased by the licensee. The commission may allow more than one distillery licensee to use the same premises at the same time for conducting tastings if the premises are a primary production location and the licensees share the premises or are owned by the same entity. If the manufacturer of the distilled liquor obtains distilled liquor for conducting tastings from the inventory of the commission, the licensee shall pay the commission a processing fee.

(b) Obtain a special events distillery license.

(c) Apply for appointment by the commission as a distillery retail outlet agent for purposes of retailing distilled liquor at locations where tastings are permitted under paragraph (a) of this subsection or subsection (4)(a) of this section. A distillery retail outlet agent may sell at locations where tastings are allowed under paragraph (a) of this subsection only distilled liquor that is on the list of products approved by the commission for retail sale in Oregon and is manufactured in Oregon by the distillery licensee or by another distillery licensee that uses the same premises as a primary production location or is owned by the same entity as the distillery licensee.

(3) Notwithstanding ORS 471.392 to 471.400, a distillery licensee may hold one or more full on-premises sales licenses. All distilled liquor sold under a full on-premises sales license must be purchased from the commission.

(4) A distillery licensee that holds a special events distillery license may conduct an event on premises designated in the special events distillery license. Except as provided in this subsection, a special events distillery license may be valid for a period not exceeding five

days. The commission shall limit the approval of special events distillery licenses for a distillery licensee at the same location to not more than 62 days during a calendar year. A distillery licensee conducting a special event may:

(a) Permit tastings of distilled liquor approved by the commission for sale in Oregon and manufactured in Oregon by the distillery licensee. Tastings may be of the distilled liquor alone or with a mix of other liquids. If any of the other liquids are distilled liquors, they must be distilled liquors on the list of products approved by the commission for retail sale in Oregon and must be purchased by the licensee at the retail price established by the commission. If the manufacturer of the distilled liquor obtains distilled liquor for conducting tastings from the inventory of the commission, the licensee shall pay the commission a processing fee.

(b) Permit sales by the drink of distilled liquor. A drink that a distillery licensee sells under this paragraph must include distilled liquor that the licensee manufactured in Oregon. Any distilled liquor contained in the drink must be on the list of products approved by the commission for retail sale in Oregon. The distillery licensee selling the drink must purchase all distilled liquor contained in the drink at the retail price set by the commission for the month in which the drink is sold.

(c) If the distillery licensee has been appointed as a distillery retail outlet agent under subsection (2)(c) of this section, sell distilled liquor in factory-sealed containers for consumption off the licensed premises. A distillery retail outlet agent may sell at a location where tastings are allowed under paragraph (a) of this subsection only distilled liquor that is on the list of products approved by the commission for retail sale in Oregon and is manufactured in Oregon by the distillery licensee. The distillery retail outlet agent must sell the distilled liquor at the retail price set by the commission for the month of sale.

[Amended by 1987 c.558 §1; 1995 c.301 §16; 1997 c.803 §1; 2007 c.134 §1; 2009 c.38 §3; 2009 c.237 §2; 2011 c.9 §64; 2012 c.20 §1; 2013 c.253 §1; 2015 c.549 §1; 2017 c.533 §9; 2019 c.658 §2]

PROHIBITIONS RELATING TO LIQUOR

471.405 Prohibited sales, purchases, possession, transportation, importation or solicitation in general; forfeiture upon conviction

(1) No person shall peddle or deliver alcoholic beverages to or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.

(2) No person shall purchase, possess, transport or import, except for sacramental purposes, an alcoholic beverage unless it is procured from or through the Oregon Liquor Control Commission, except as provided otherwise in the Liquor Control Act.

(3) No person not licensed under the Liquor Control Act shall sell, solicit, take orders for or peddle alcoholic beverages.

(4) Notwithstanding the provisions of subsection (2) of this section, an individual entering the state may have in possession an amount not to exceed four liters (135.2 fluid ounces) of distilled liquor, two cases of wine or cider (620 fluid ounces) and two cases of malt beverages (576 fluid ounces). These quantities of alcoholic beverages are exempt from fees collected by the commission.

(5) Upon conviction for unlawfully purchasing or importing alcoholic beverages into this state, the person convicted shall forfeit to the commission the alcoholic beverage so purchased or imported. The commission shall thereupon seize the forfeited beverage and it shall then become the commission's property.

[Amended by 1953 c.120 §6; 1974 c.4 §5; 1981 c.600 §1; 1985 c.592 §2; 1987 c.608 §11; 1995 c.301 §19; 1999 c.351 §72]

471.406 Activities covered by prohibitions on sale of alcoholic beverages

Any prohibition on the sale of alcoholic beverages provided for in this chapter includes:

(1) Soliciting orders for alcoholic beverages or receiving orders for alcoholic beverages.

(2) Keeping alcoholic beverages for sale or exposing alcoholic beverages for sale.

(3) Delivering alcoholic beverages for value or in any way other than purely gratuitously.

(4) Peddling alcoholic beverages.

(5) Keeping alcoholic beverages with intent to sell.

(6) Trafficking in alcoholic beverages.

(7) For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, procuring alcoholic beverages, or allowing alcoholic beverages to be procured, for any other person.

[1995 c.301 §8 (enacted in lieu of 471.025); 1999 c.351 §57]

471.408 Alcoholic liquor may not be given as prize; exception

(1) Except as otherwise provided in this section, alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(2) A nonprofit or charitable organization registered in this state may auction or raffle alcoholic liquor as provided under ORS 471.162 (6) and may deliver or arrange for delivery of the alcoholic liquor to the residence of the successful bidder or raffle winner.

(3) A charitable, fraternal or religious organization may offer alcoholic liquor as a prize, premium or consideration in a contest of chance described in ORS 167.117 (7)(b) or conducted as part of a Monte Carlo event as defined in ORS 167.117.

(4) An auction is not a lottery, contest, game of chance or skill or competition for purposes of this section.

[1995 c.363 §2; 1997 c.191 §1; 1997 c.867 §25; 2013 c.150 §1]

471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties.

(1) A person may not sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian may sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian. A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3) (a) A person who exercises control over private real property may not knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides; and

(C) Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.

(4) This section does not apply to sacramental wine given or provided as part of a religious rite or service.

(5) Except as provided in subsections (6) and (7) of this section, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of at least \$500.

(b) Upon a second conviction, a fine of at least \$1,000.

(c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

(6) (a) A person who violates subsection (2) of this section is subject to the provisions of this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

- (b) For a person described in paragraph (a) of this subsection:
- (A) A first conviction is a Class A violation.
 - (B) A second conviction is a specific fine violation, and the presumptive fine for the violation is \$860.
 - (C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.
 - (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

(7) For an employee of an off-premises sales licensee who violates subsection (2) of this section while operating a checkout device and does not act knowingly or intentionally, a first conviction is a Class A violation.

(8) The court may waive an amount that is at least \$200 but not more than one-third of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of community service.

(9) Except as provided in subsection (8) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or (6) of this section. In addition to the mandatory sentence, the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

(10) (a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (3) of this section commits a Class A violation.

(b) A second or subsequent violation of subsection (3) of this section is a specific fine violation, and the presumptive fine for the violation is \$1,000.

(11) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor.

[Amended by 1963 c.243 §1; 1971 c.159 §5; 1977 c.458 §1; 1977 c.814 §1; 1983 cor. c.736 §1; 1995 c.301 §40; 1995 c.599 §5; 1995 c.756 §1; 1999 c.351 §58; 2009 c.412 §1; 2009 c.587 §4; 2009 c.608 §3; 2011 c.597 §87; 2014 c.20 §3]

471.430 Purchase or possession of alcoholic beverages by person under 21; entry of licensed premises by person under 21; penalty; immunity; suspension of driving privileges; assessment and treatment.

(1) A person under 21 years of age may not attempt to purchase, purchase or acquire alcoholic beverages. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, a person under 21 years of age may not have personal possession of alcoholic beverages.

(2) For the purposes of this section, personal possession of alcoholic beverages includes the acceptance or consumption of a bottle of such beverages, or any portion thereof or a drink of such beverages. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(4) (a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (1) or (3) of this section commits a Class B violation.

- (b) A person commits a Class A violation if the person violates subsection (1) of this section by reason of personal possession of alcoholic beverages while the person is operating a motor vehicle as defined in ORS 801.360.
- (5) In addition to and not in lieu of any other penalty established by law:
- (a) The court may order a person who violates subsection (1) of this section through misrepresentation of age to perform community service; and
 - (b) The court shall order, when a person violates subsection (1) of this section, that the person's driving privileges and right to apply for driving privileges be suspended pursuant to ORS 809.260 and 809.280. The court notification made to the Department of Transportation under this paragraph may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.
- (6) If a person cited under this section is at least 13 years of age but less than 21 years of age at the time the person is found in default under ORS 153.102 or 419C.472 for failure to appear, in addition to and not in lieu of any other penalty established by law, the court shall issue notice under ORS 809.220 to the department for the department to suspend the person's driving privileges under ORS 809.280 (4).
- (7) In addition to and not in lieu of any penalty established by law, the court may order a person who violates this section to undergo assessment and treatment as provided in ORS 471.432. The court shall order a person to undergo assessment and treatment as provided in ORS 471.432 if the person has previously been found to have violated this section.
- (8) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.
- (9) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.
- (10) (a) A person under 21 years of age is not in violation of, and is immune from prosecution under, this section if:
- (A) The person contacted emergency medical services or a law enforcement agency in order to obtain medical assistance for another person who was in need of medical assistance due to alcohol consumption and the evidence of the violation was obtained as a result of the person's having contacted emergency medical services or a law enforcement agency; or
 - (B) The person was in need of medical assistance due to alcohol consumption and the evidence of the violation was obtained as a result of the person's having sought or obtained the medical assistance.
- (b) Paragraph (a) of this subsection does not exclude the use of evidence obtained as a result of a person's having sought medical assistance in proceedings for crimes or offenses other than a violation of this section.

[Amended by 1963 c.243 §2; 1965 c.166 §1; 1971 c.159 §6; 1975 c.493 §1; 1979 c.313 §8; 1991 c.860 §2; 1999 c.646 §1; 1999 c.1051 §186; 2001 c.791 §4; 2007 c.41 §1; 2007 c.298 §1; 2009 c.228 §1; 2011 c.355 §21; 2014 c.11 §1; 2017 c.20 §1]

471.485 Payment required on or before delivery of liquor

No wholesale licensee or agent or employee thereof shall sell or deliver, nor shall any retail licensee purchase or receive any malt beverages, cider or wine for currency on delivery, but such malt beverages, cider or wine shall be paid for prior to delivery thereof, by electronic fund transfer initiated on or before the date of delivery, or by valid check, order, negotiable instrument or voucher payable on the date of delivery. The wholesale licensee may accept cash at the time of delivery if such acceptance does not create or increase the licensee's, or the agents' or employees' of the licensee, exposure to or risk of being victimized by criminal activity.

[1971 c.694 §2; 1995 c.525 §1; 1999 c.351 §74]

ORGANIZATION, POWERS AND DUTIES OF LIQUOR COMMISSION

471.705 Oregon Liquor Control Commission; qualifications; compensation; term; confirmation.

(1) There is created the Oregon Liquor Control Commission, consisting of seven commissioners appointed by the Governor. One commissioner must be from among the residents of each congressional district of this state. One additional commissioner must be from eastern Oregon. One additional commissioner must be from western Oregon. One commissioner must be from the food and alcoholic beverage retail industry. Not more than four commissioners may be of the same political party. The Governor shall designate one commissioner to be chairperson of the commission. The commissioners are entitled to compensation and expenses as provided in ORS 292.495.

(2) Each commissioner at the time of appointment must be a resident of this state and must have resided in this state for at least five years next preceding appointment and qualification. Each commissioner must be an elector in this state and may not be less than 30 years of age. The term of office of a commissioner terminates if the commissioner ceases to possess the residency or industry qualification for appointment. If the term of office of a commissioner terminates under this subsection, the Governor shall appoint a qualified individual to complete the unexpired term of the commissioner.

(3) The term of office of a commissioner is four years from the time of appointment and qualification and until a successor qualifies for appointment. The terms of the commissioners commence April 1. If a commissioner is allowed to hold office after the expiration of a term, the Governor shall appoint the successor for the remainder of the unexpired term. If a vacancy occurs in the commission, the Governor shall appoint the successor for the remainder of the unexpired term. Each commissioner is eligible for reappointment, but an individual is not eligible to serve for more than two full terms.

(4) Appointments of commissioners by the Governor under this section are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

[Amended by 1967 c.577 §11; 1969 c.314 §50; 1973 c.792 §17; 1979 c.251 §1; 1981 c.545 §9; 2017 c.183 §95]

471.710 Removal; prohibited interests of commissioner and employee

(1) The Governor may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving to the commissioner a copy of the charges made and an opportunity of being publicly heard in person or by counsel, in the commissioner's own defense, upon not less than 10 days' notice. If such commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner, the findings thereon, and a complete record of the proceedings.

(2) No person, other than the member appointed in accordance with ORS 471.705 who is designated from the food and alcoholic beverage retail industry, is eligible to hold the office of commissioner, or to be employed by the Oregon Liquor Control Commission if:

(a) The person has any financial interest in any business licensed by the commission or in any business which manufactures alcoholic beverages sold in Oregon;

(b) Anyone in the person's household or immediate family has a financial interest described in paragraph (a) of this subsection;

(c) Anyone in the person's household or immediate family is employed by a business licensed by the commission, unless the person is not in a position to take action or make decisions which could affect the licensed business; or

(d) The person or anyone in the person's household or immediate family has a business connection with any business licensed by the commission, unless the person is not in a position to take action or make decisions which could affect the licensed business.

(3) (a) A retail sales agent appointed by the commission, or a person in the household or immediate family of a retail sales agent, may not have any financial interest in or business connection with:

(A) A person or business that is licensed as a distillery;

(B) A person or business that holds a full on-premises sales license; or

(C) A distillery whose products are sold in Oregon.

(b) Paragraph (a) of this subsection does not apply to a distillery retail outlet agent appointed by the commission under ORS 471.230.

(4) Nothing in this section prohibits a person from having a financial interest resulting from investments made by the Public Employees Retirement System or through mutual funds, blind trusts or similar investments where the person does not exercise control over the nature, amount or timing of the investment.

(5) The commission by rule may establish additional restrictions to prohibit potential conflicts of interest. The commission by rule shall define "immediate family" and "business connection" as used in this section.

[Amended by 1979 c.251 §2; 1983 c.168 §1; 1987 c.511 §7; 2009 c.38 §4]

471.725 Buying, leasing, contracting and borrowing powers of commission

The function, duties and powers of the Oregon Liquor Control Commission include the following:

(1) To buy, have in its possession, bottle, blend, rectify, transport and sell, for present or future delivery, in its own name, alcoholic liquor in the manner set forth in this chapter.

(2) To purchase, acquire, rent, lease or occupy any building, rooms, stores or land and acquire, own, lease and sell equipment and fixtures required for its operations.

(3) To lease or sublet to others property which it acquires or owns and which is not immediately required for its operations. However, no real property shall be purchased without the consent and approval of the Governor.

(4) To borrow money, guarantee the payment thereof and of the interest thereon, by the transfer or pledge of goods or in any other manner required or permitted by law.

(5) To issue, sign, indorse and accept checks, promissory notes, bills of exchange and other negotiable instruments.

(6) In the event the United States Government provides any plan or method whereby the taxes upon alcoholic liquors are collected at the source, to enter into any and all contracts and comply with all regulations, even to the extent of partially or wholly abrogating any statutory provisions which might be in conflict with federal law or regulations, to the end that the commission receives the portion thereof allocated to this state, to be distributed as provided by statute.

(7) To secure and pay for such policies of insurance as may be necessary to adequately protect it from loss by fire, theft or other casualty.

[Amended by 1995 c.301 §44]

471.740 Exclusive right of commission to handle certain liquors

Except as provided in this chapter, the Oregon Liquor Control Commission is vested with the exclusive right to purchase, sell, have in possession for sale, import or transport alcoholic beverages.

[Amended by 1953 c.120 §6; 1974 c.4 §6; 1999 c.351 §77]

471.745 Fixing prices and selling liquor

The Oregon Liquor Control Commission shall fix the prices at which alcoholic liquors containing over five percent alcohol by volume may be purchased from it, and has power to bottle, blend, rectify, manufacture or sell alcoholic liquors for itself, or for or to any person or commission within or without this state.

[Amended by 1995 c.301 §88]

471.750 Liquor stores and warehouses; operation; sales; advertising; rules

(1) The Oregon Liquor Control Commission shall establish such stores and warehouses in such places in the state as in its judgment are required by public convenience or necessity, for the sale of spirituous liquors, wines and other alcoholic liquors containing over five percent alcohol by volume, in sealed containers for consumption off the premises. The commission shall keep on hand in such stores or warehouses such quantities and kinds of alcoholic liquors as are reasonably required to supply the public demand.

(2) Any person qualified to purchase such liquors from the commission has the right to present to the commission, or at any of its stores, an application for any kind or brand of alcoholic liquor that the person may desire and that may be manufactured or obtainable in any place in the United States, and the commission shall obtain such liquor and sell it to the applicant. The commission may not require that an application for a kind or brand of alcoholic liquor include a commitment to purchase a minimum amount of the liquor or require that a purchase be for more than one container of a kind or brand of alcoholic liquor if the liquor:

(a) Except as provided in subsection (5) of this section, has a retail sales price of \$30 or more per container;

(b) Is available through a distributor in the United States that does not require the commission to acquire more than one case of the distilled liquor in a single transaction;

(c) Is not regularly stocked by the commission; and

(d) Is ordered in a 750 milliliter container size if available in that size.

(3) The commission may not establish a store in any county or incorporated city of this state where a local prohibitory law is in effect. The commission shall adopt rules governing advertising by stores operated by the commission. The commission may appoint agents in the sale of said liquor under such agreement as the commission may negotiate with said agents or their representative.

(4) Rules relating to advertising adopted by the commission under subsection (3) of this section shall allow signs and displays within its stores for the purpose of supplying consumer information to customers, including but not limited to discounts, sales and other specials. Commission discretion with respect to those signs and displays shall be limited to regulation of the content, size, number per brand, type and duration of the sign or display. Signs and displays may be supplied by manufacturers, wholesalers or distributors, and may bear the name of a particular distillery, supplier or brand of liquor. The use of signs and displays shall be optional with the agent appointed by the commission. Signs or displays authorized by the commission may not be placed in positions within the store where the sign or display would be readily visible from outside of the store.

(5) The commission may annually adjust the price threshold established in subsection (2)(a) of this section by a percentage equal to the percentage change in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. However, the commission may not adjust the price threshold to be less than \$30.

[Amended by 1977 c.321 §3; 1977 c.608 §2; 1991 c.379 §1; 1995 c.301 §89; 2001 c.785 §11; amendments by 2002 s.s.1 c.11 §1 repealed by 2002 s.s.2 c.1 §3; 2002 s.s.2 c.1 §1; 2011 c.180 §2; 2019 c.57 §28]

Selected Oregon Administrative Rules

845-004-0005

Gifts, Gratuities

(1) Purpose: The Commission expects employees and retail sales agents to do their jobs fairly and impartially and to avoid conduct that compromises or appears to compromise that fairness and impartiality. It is not the intent of this rule to prohibit Commissioners, retail sales agents or Commission employees from interacting with licensees and distillery representatives on the same basis as a customer or the general public.

(2) No Commissioner, employee or retail sales agent will accept any gift, gratuity or thing of value from any alcoholic beverage licensee, or any person representing a distillery which the licensee/representative does not also offer on an equal basis to his/her customers or the general public.

(3) No alcoholic beverage licensee or person representing a distillery will offer or give any gift, gratuity or thing of value to a Commissioner, employee or retail sales agent which the licensee/representative does not also offer on an equal basis to his/her customers or the general public.

(4) Despite sections (2) and (3) of this rule a Commissioner, employee or retail sales agent may accept:

(a) Food and beverages provided for immediate consumption at a convention or a business conference or business meeting that are offered to all participants irrespective of any connection to the Commission;

(b) A non-alcoholic beverage for immediate consumption that a licensee offers at a business meeting;

(c) Items offered to all participants at a convention irrespective of any connection to the Commission.

(5) Despite sections (2) and (3) of this rule, a Commissioner may accept:

(a) Food, beverages, lodging and travel when the Commissioner is participating in an event related to his/her official duties and when appearing in an official capacity, subject to the reporting requirements of ORS 244.060(6);

(b) Food or beverage that the Commissioner consumes in the presence of the purchaser or provider.

Statutory/Other Authority: ORS 471, including 471.030, 471.730(1) & (5)

Statutes/Other Implemented: ORS 471.710(5)

History:

OLCC 17-2003, f. 10-27-03, cert. ef. 12-1-03

LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 34, f. 1-23-70, ef. 2-26-70; LCC 17-1979, f. 9-24-79, ef. 10-1-79; LCC 13-1980(Temp), f. & ef. 4-25-80; LCC 24-1980, f. 9-30-80, ef. 10-1-80; Renumbered from 845-010-0155(9); LCC 3-1981, f. & ef. 9-18-81; LCC 6-1982, f. 7-30-82, ef. 8-1-82; OLCC 7-1989, f. 7-28-89, cert. ef. 8-1-89; OLCC 1-2003, f. 1-27-03, cert. ef. 2-1-03

845-005-0413

Special Events Distillery License

ORS 471.230 authorizes the Commission to issue a Special Events Distillery (SED) license to an Oregon Distillery licensee. This rule sets the qualifications and requirements for a Special Events Distillery license.

(1) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(e) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(f) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(g) "Trade visitor" means a person whose job includes the purchase, or recommended purchase, of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(h) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(2) Only the holder of a Distillery license issued under ORS 471.230 may qualify for a Special Events Distillery license.

(a) A distillery licensee providing tastings of distilled liquor for retailers at an educational seminar that is not open to the public is not required to obtain a SED and is subject to OAR 845-013-0060.

(b) A distillery licensee providing tastings of distilled liquor at a retail liquor store must follow OAR 845-015-0155. A distillery licensee is not eligible for a SED at a retail liquor store.

(3) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

(4) Applicants must apply in writing for a Special Events Distillery license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

- (5) The application for a SED license under this rule shall include:
- (a) A written, dated, and signed plan. An application is not complete if this plan is not approved by the Commission. To approve a plan, the Commission must determine that the plan adequately manages:
 - (A) The event to prevent problems and violations;
 - (B) Patronage by minors as set out in subsection (6) of this rule; and
 - (C) Alcohol consumption by adults.
 - (b) Identification of the individuals to be employed by the licensee to manage events on the SED licensed premises;
 - (c) Identification of the premises or area proposed to be licensed;
 - (d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;
 - (e) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by the use of badges or name tags;
 - (f) The recommendation in writing of the local governing body where the licensed premises will be located; and
 - (g) License fees as established by ORS 471.311.
 - (h) If the licensee will provide distilled liquor by the drink, a written proposal showing compliance with the food service standards of OAR 845-006-0465.
- (6) A plan for managing patronage by minors under subsection (5)(a) of this rule must meet the following requirements:
- (a) If the SED license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.
 - (b) If the SED license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.
- (7) Minors are prohibited from the SED licensed premises or portions of the licensed premises as follows:
- (a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;
 - (b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;
 - (c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.
- (8) The Commission may deny, cancel or restrict a SED license for any reason for which the Commission may deny, cancel or restrict a regular license.
- (9) The Commission may deny or restrict a SED license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(10) The Commission shall limit the issuance of a SED license to the same applicant at the same location to no more than 62 license days from January 1 to December 31 of each year.

(11) The Commission may refund the SED license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(13) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

(14) A distillery licensee with a SED may:

(a) Permit tastings of distilled liquor approved by the Commission for sale in Oregon. The taste must contain distilled liquor manufactured in Oregon by the distillery licensee. Once the taste contains distilled liquor manufactured in Oregon by the distillery licensee, the taste may contain other distilled liquor approved by the Commission for sale in Oregon and may also include malt beverages, wine, cider, and non-alcoholic liquids.

(A) The distillery licensee must pay the Commission a processing fee for any distilled liquor in the taste that is manufactured by the distillery licensee and is obtained from the inventory of the Commission.

(B) The distillery licensee must purchase at the retail price set by the Commission any distilled liquor in the taste that was not manufactured by the distillery licensee.

(b) Permit sales by the drink of distilled liquor approved by the Commission for sale in Oregon. The drink must contain distilled liquor manufactured in Oregon by the distillery licensee. Once the drink contains distilled liquor manufactured in Oregon by the distillery licensee, the drink may contain other distilled liquor approved by the Commission for sale in Oregon and may also include malt beverages, wine, cider, and non-alcoholic liquids. The distillery licensee must purchase the distilled liquor that the licensee uses for sales by the drink at the event at the retail price set by the Commission for the month in which the distilled liquor is sold by the drink.

(c) If the distillery licensee has been appointed as a distillery retail outlet agent, sell factory-sealed containers of distilled liquor manufactured by the licensee for consumption off the licensed premises of the event. The distillery licensee must purchase and sell the factory-sealed containers in accordance with the terms of the Distillery Retail Outlet Agent Agreement and the Commission's Distillery Retail Outlet Manual.

(15) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per license day.

(16) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public. For example, providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, using distinctive glassware for trade visitors, or using badges or name tags to identify trade visitors could be ways a licensee complies with this requirement.

Statutory/Other Authority: ORS 471, 471.030, 471.040, 471.730(1) & (5)
Statutes/Other Implemented: ORS 471.230

History:

OLCC 4-2015, f. 12-22-15, cert. ef. 2-1-16
OLCC 2-2015(Temp), f. 8-4-15, cert. ef. 8-5-15 thru 1-31-16
OLCC 7-2012, f. 9-14-12, cert. ef. 10-1-12
OLCC 2-2012(Temp), f. & cert. ef. 4-5-12 thru 10-1-12
OLCC 1-2010, f. 2-22-10, cert. ef. 3-1-10

845-005-0424

Guidelines for Approval of a For-Hire Carrier's Plan for Delivery of Malt Beverages, Wine or Cider- This rule has been temporarily amended. Visit OLCC's website for current content.

The Commission will evaluate and may approve a for-hire carrier's plan to deliver malt beverages, wine and cider to a resident of Oregon and licensees of the Commission.

(1) Delivery to a resident of Oregon. In order to deliver malt beverages, wine or cider to a resident of Oregon, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine or cider to a resident of Oregon. The application shall include the for-hire carrier's plan for ensuring that:

- (a) Only persons age 18 or over will be used to deliver the alcohol to the resident;
- (b) The person used to deliver the alcohol will verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;
- (c) The person used to deliver the alcohol will determine that the person receiving the alcohol is not visibly intoxicated;
- (d) If the alcohol is delivered on the same day the order is received, the alcohol must be delivered before 9:00 pm;
- (e) The alcohol is delivered only to a home or business where the home or business has a permanent street address;
- (f) Any package containing alcohol is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission; and
- (g) Information is collected that must be retained by the for-hire carrier for a minimum of eighteen months from the date of delivering the alcohol. The information may be collected and retained electronically (if the carrier so chooses) and must include:

- (A) The date and time the alcohol was delivered to the resident;
 - (B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and
 - (C) The name, signature, and delivery address of the person receiving the alcohol.
- (2) Delivery to a licensee of the Commission. In order to deliver malt beverages, wine or cider to a licensee of the Commission, a for-hire carrier must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission before delivering any malt beverages, wine or cider to a licensee.
- (3) A for-hire carrier:
- (a) Must allow the Commission to audit the carrier's records which are directly related to alcohol deliveries in Oregon upon request and shall make those records available to the Commission in Oregon. The for-hire carrier must make these records available to the Commission no later than 60 days after the Commission mails the notice; and
 - (b) Consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.
- (4) The Commission may revoke its approval of a for-hire carrier's plan if the for-hire carrier fails to follow the plan approved by the Commission or comply with the provisions of this rule. A revocation under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

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

Stats. Implemented: ORS 471.282

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08

845-006-0335

Age Verification; Minors on Licensed Premises

- (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 identification are acceptable alone as proof of age:
 - (A) An unexpired, unaltered, and legitimate driver license issued by a U.S. state or the District of Columbia.
 - (B) An unexpired, unaltered, and legitimate identification card or driver license 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 U.S. state, the District of Columbia, or a territory of the U.S..

(C) An unexpired, unaltered, and legitimate 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) An unexpired, unaltered, and legitimate passport or passport card; or

(E) An unexpired, unaltered, and legitimate U.S. military identification card.

(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 III 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 III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To drink any alcoholic beverage on licensed premises;

(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. (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 Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted, such as an area with a Number 3 posting. If there is no break room, dressing room or patron area where minors are permitted, the licensee may, with prior Commission approval, designate space for minor entertainers in an area of the licensed premises normally prohibited to them. At a minimum, this place must be within the bartender's sight but not at the bar, and there must be no alcoholic beverages in this place. If conditions become unsuitable, the Commission may revoke its approval. If a minor entertainer is not performing and is not in a Commission-approved designated area on the licensed premises, then the minor entertainer must leave the licensed premises.

(b) If the minor is under 18 years old, and the licensee proposes to employ that minor 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 and minor must make sure the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840(2).

(c) If the minor is under 18 years old, and the licensee proposes to employ that minor to perform or entertain on the licensed premises in a capacity other than described in (6)(b) of this rule, before allowing the minor to perform on the licensed premises the licensee must apply for and receive prior written permission from the Administrator of the Oregon Liquor Control Commission, or the Administrator's designee. Application must be made upon a form supplied by the Commission. The Administrator or designee shall grant such permission only if:

- (A) The parents or legal guardians of the minor have 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.

(d) 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) of this rule is a Category III violation. A violation of subsection (3)(b) through section (7) of this rule is a Category IV violation.

Statutory/Other Authority: ORS 471, 471.030, 471.040, 471.430, 471.482 & 471.730

Statutes/Other Implemented: ORS 471.130, 471.410, 471.430, 471.480 & 471.482

History:

OLCC 4-2018, amend filed 04/23/2018, effective 05/01/2018

OLCC 19-2016, f. 11-15-16, cert. ef. 12-1-16

OLCC 14-2013, f. 12-12-13, cert. ef. 1-1-14

OLCC 5-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 1-11-14

OLCC 3-2012, f. 4-10-12, cert. ef. 5-1-12

OLCC 2-2009, f. 3-17-09, cert. ef. 4-1-09

OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08

OLCC 9-2005, f. 11-21-05, cert. ef. 1-1-06

OLCC 4-2004, f. & cert. ef. 4-9-04

Reverted to OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03

OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04

OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03

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

845-006-0345

Prohibited Conduct – This rule has been temporarily amended. Visit OLCC's website for current content.

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) Drinking on Duty: No licensee, permittee, or agent of a licensee will drink alcoholic beverages or be under the influence of intoxicants while on duty.

(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.

(d) Being under the influence of intoxicants on duty is a Category II violation.

(e) Drinking on duty is a Category III violation.

(2) Despite subsection (1) 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.

(3) 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.

(4) 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.

(5) 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.

(6) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.175, 471.178, 471.186, 471.190, 471.200, 471.220, 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.

(7) 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.

(8) 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.

(9) 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.

(10) "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).

(11) 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.

(12) Self-Service. No licensee or permittee will permit any patron to mix, dispense or serve an alcoholic beverage for or to himself or herself for on-premises or off-premises consumption. Violation of this section is a Category III violation.

(13) Marijuana Use. No licensee or permittee will permit the use, consumption, ingestion, or inhalation of marijuana items as defined in ORS 475B.015 and OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages. Violation of this section is a Category III violation.

Statutory/Other Authority: ORS 471, 471.030, 471.040, 471.730(1) & (5)

Statutes/Other Implemented: ORS 471.030, 471.040, 471.175, 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

History:

OLCC 18-2016, f. 11-15-16, cert. ef. 12-1-16

OLCC 10-2013, f. 11-14-13, cert. ef. 12-1-13

OLCC 2-2013, f. 3-15-13, cert. ef. 4-1-13

OLCC 8-2011, f. 11-1-11, cert. ef. 1-1-12

OLCC 18-2010, f. 12-22-10, cert. ef. 1-1-11

OLCC 3-2009, f. 4-21-09, cert. ef. 5-1-09

OLCC 5-2007, f. 3-22-07, cert. ef. 4-1-07

OLCC 4-2003, f. 3-31-03 cert. ef. 4-1-03

OLCC 6-2001, f. 8-15-01, cert. ef. 9-1-01

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

845-006-0452

Requirements for Distilled Liquor Tastings Provided by Oregon Distillery Licensee

OAR 845-005-0431 sets the qualifications for an Oregon distillery licensee to obtain approval to provide tastings of distilled liquor manufactured by the distillery licensee for consumption on the distillery licensee's premises and on no more than five other premises owned or leased by the distillery licensee. This rule sets the requirements to provide these tastings.

(1) Definitions.

(a) "Identified tasting area" means a specific defined area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(b) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product in Oregon on the distillery's licensed premises.

(c) "Other premises owned or leased by the distillery licensee" means any other licensed location that is owned or leased by the distillery licensee and separate from its annually licensed location. To qualify under this definition, the distillery licensee must provide proof of ownership or a written contract entitling it to exclusive use and possession of the other location.

(d) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

(e) "Primary Location" means the location where distilled liquor is manufactured by the distillery licensee.

(f) "Trade visitor" means a person whose job includes the purchase or recommended purchase of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(2) Tastings of distilled liquor are allowed only within the identified tasting area or areas approved by the Commission. The identified tasting area or areas may be on the distillery licensee's primary location and on no more than five other premises owned or leased by the distillery licensee. Customers may not remove the tastings from the identified tasting area or areas.

(3) A distillery licensee may provide only tastings as described in this rule.

(4) The distilled liquor in a taste must be approved by the Commission for sale in Oregon. The taste must contain distilled liquor manufactured in Oregon by the distillery licensee or another distillery licensee. Once the taste contains distilled liquor manufactured in Oregon by the distillery licensee or another distillery licensee, the taste may contain other distilled liquor approved by the Commission for sale in Oregon and may also include malt beverages, wine, cider, and non-alcoholic liquids.

(a) The distillery licensee must pay the Commission a processing fee for any distilled liquor in the taste that is manufactured by the distillery licensee and is obtained from the inventory of the Commission.

(b) The distillery licensee must purchase at the retail price set by the Commission any distilled liquor that was not manufactured by the distillery licensee.

(5) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per day.

(6) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public. For example, providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, using distinctive glassware for trade visitors, or using badges or name tags to identify trade visitors could be ways a licensee complies with this requirement.

(7) Minors are permitted in the identified tasting area only if allowed by the Commission's rule on minor postings (see OAR 845-006-0340).

(8) Alcohol servers who pour tastings must have valid service permits and be at least 21 years of age.

(9) Failing to obtain Commission approval as required by OAR 845-005-0431 prior to providing the service of distilled liquor tastings is a Category I violation. A violation of sections (1)–(8) of this rule is a Category III violation.

(10) A violation of a liquor law at any premises owned or leased by the distillery licensee is the responsibility of the distillery licensee.

Statutory/Other Authority: ORS 471, 471.030, 471.040, 471.730(1) & (5)

Statutes/Other Implemented: ORS 471.230

History:

OLCC 4-2015, f. 12-22-15, cert. ef. 2-1-16

OLCC 11-2009 f. 8-26-09 cert. ef. 11-1-09; OLCC 2-2014, f. 2-11-14, cert. ef. 3-1-14; OLCC 2-2015(Temp), f. 8-4-15, cert. ef. 8-5-15 thru 1-31-16

845-007-0035

Removal of Objectionable and Non-Conforming Advertising

(1) Licensees and retail sales agents must remove any sign, display, or advertisement if the Commission finds it violates these rules.

(2) The Commission will specify a reasonable time period in which to remove the objectionable advertisements.

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

Stats. Implemented: ORS 471.730(7)

Hist.: LCC 56, f. 10-20-76, ef. 12-1-76; Renumbered from 845-010-0111; LCC 7-1985, f. 7-30-85, ef. 9-1-85; OLCC 10-2003, f. 7-22-03, cert. ef. 9-1-03

845-009-0145

Clerk Training Courses

(1) ORS 471.341 requires an Off-Premises Sales clerk to complete a Commission-approved training course if the clerk sold alcohol to a minor or if the clerk failed to properly verify identification of a person who purchased alcohol. The clerk must complete the training within the time specified in this rule as a condition of continuing to make alcohol sales. Based on 471.030, 471.040, and 471.750, the Commission requires a liquor store clerk to complete a Commission-approved training course within the time frames specified in this rule if the clerk sold alcohol to a minor or failed to properly verify identification, and requires a liquor agent to comply with the requirements of this rule if a clerk sold alcohol to a minor or failed to properly verify identification. ORS 471.341 requires the Commission to establish timelines for completing the training and to approve all training courses offered for purposes of this rule. This rule establishes notice requirements and times for completing the training, sets standards and approval procedures for training courses, and sets an administrative fee for the expenses incurred by the Commission.

(2) As used in this rule,

(a) "Clerk," "Off-Premises Sales clerk," "liquor store clerk," or "employee" means an Off-Premises Sales or liquor store employee, corporate officer, manager, or any other person whose job includes selling packaged alcohol, but does not include an individual named on the license or on the liquor agent contract;

(b) "Alcohol" means alcoholic beverages;

(c) "Clerk Training Courses," "course," or "approved training course" means a course approved by the Commission for the purposes of ORS 471.341.

(3) Clerk Responsibilities. If the Commission determines that a clerk sold alcohol to a minor or failed to properly verify identification, the clerk must complete a Commission-approved Clerk Training Course within 45 days of the date the Commission notifies the

licensee or liquor agent of the clerk's act. If the clerk does not complete the training within 45 days, the clerk may not continue to sell alcohol.

(4) Licensee and Liquor Agent Responsibilities. If the Commission determines that an Off-Premises Sales licensee's employee or a liquor agent's employee sold alcohol to a minor or failed to properly verify identification, the licensee or liquor agent may not allow that employee to sell alcohol if the employee has not completed an approved training course within the required time.

(5) Notice and Reporting Requirements.

(a) When the Commission determines that a clerk sold alcohol to a minor or failed to properly verify identification, the Commission will notify the licensee or liquor agent in writing that the clerk must complete a Commission-approved training course within 45 days of the notice as a condition of continuing to sell alcohol.

(b) When the clerk has completed the required training, the licensee or liquor agent must:

(A) Notify the Commission within seven days on a Commission-provided form that the employee has completed the training;

(B) Attach a copy of written certification of course completion; and

(C) Include a \$10 administrative fee.

(c) The licensee or liquor agent must notify the Commission using the Commission-provided form if:

(A) The clerk does not complete the training; or

(B) The clerk is no longer employed by the licensee or liquor agent to sell alcohol.

(d) The Commission will put the notification from the licensee or liquor agent in the licensee or liquor agent's Commission file.

(6) Administrative Fee. The Commission assesses a \$10 administrative fee for each employee who completes an approved Clerk Training Course.

(7) Course Approval Standards and Process. A licensee or liquor agent may use a Commission-approved course, or may apply for Commission approval of their own course.

(a) For a course to be approved, a Clerk Training Course applicant must:

(A) Submit a completed application packet provided by the Commission;

(B) Have a course that meets the Commission's Clerk Training Course Minimum Standards (published December 21, 1999, and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR);

(C) Explain in writing how the course will provide written certification of course completion to each student who completes the course.

(b) Commission staff will review the application, and will:

(A) Approve a completed application that meets the requirements in Section (7)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course; or

(B) Return an incomplete application or one that does not meet the requirements of Section (7)(a).

(8) Penalties.

(a) Violation of Section (3) of this rule is a Category III violation.

(b) Violation of Section (4) of this rule is a Category III violation. For a liquor agent, violation of Section (4) may result in a Notice of Violation.

(c) Violation of Section (5)(b), (5)(c)(A), or (5)(c)(B) of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5) & 471.750

Stats. Implemented: ORS 471.341 & ORS 471.750

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02

SECTION 4. INDEX

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Updated April 2020

SECTION 5. EXHIBITS

List of Exhibits

- Exhibit 1 Distillery Retail Outlet Agent Agreement- Exhibit 1-1 is an example of a Distillery Retail Outlet Agent Agreement. Agents should refer to their individual Distillery Retail Outlet Agent Agreement for the contract language that governs the Agent's contractual relationship with OLCC.
- Exhibit 2 Statement of Age Card
- Exhibit 3 Licensee Invoice
- Exhibit 4 Distillery Outlet Sales Report
- Exhibit 5 Detail of Outlet Sales
- Exhibit 6 Distillery Outlet Inventory Report

DISTILLERY RETAIL OUTLET AGENT AGREEMENT

PARTIES

This Distillery Retail Outlet Agent Agreement ("Agreement") is made this _____ day of _____, between the State of Oregon by and through the Oregon Liquor Control Commission ("Commission") and _____ ("Agent").

DEFINITIONS

- "Administrator" means the Administrator or Executive Director of the Commission appointed pursuant to ORS 471.720.
- "Distillery" means the premises licensed to Agent pursuant to ORS 471.230 at which Agent manufactures distills, rectifies, blends, denatures, and/or stores spirits of an alcoholic content greater than 17 percent alcohol by weight.
- "Distillery Retail Outlet" or "Outlet" is the premises approved by the Commission under section 3 of this Agreement for the sale of packaged distilled spirits for off-premises consumption pursuant to ORS 471.230.
- "Distillery Retail Outlet Manual" or "Manual" means the manual described in section 7 including all revisions and amendments adopted by the Commission governing the operations of Distillery Retail Outlets in Oregon.
- "Liquor" means products that are classified as a distilled spirit.

AGREEMENT

1. **AGREEMENT APPOINTS AGENT AS DISTILLERY RETAIL OUTLET AGENT.** Pursuant to its authority under ORS 471.230 and ORS 471.750, the Commission hereby appoints Agent as a Distillery Retail Outlet Agent for the purpose of selling liquor at the premises identified as a Distillery Retail Outlet in section 3 that Agent has manufactured at its licensed distillery in Oregon under ORS 471.230.
2. **DURATION OF AGREEMENT.** Unless extended or terminated earlier in accordance with its terms, the term of this Agreement is from _____ to _____. This Agreement becomes effective on the date it has been fully executed by each party and, when required, approved by the Oregon Department of Justice.
3. **LOCATION OF DISTILLERY RETAIL OUTLET.** The location of the Distillery Retail Outlet, to be known as Distillery Retail Outlet No. _____, shall be located at _____ in the City of _____ County of _____, State of Oregon. Agent shall not change the outlet location without prior approval of the Commission.
4. **DISTILLERY RETAIL OUTLET OPERATIONS.** Agent shall manage the Outlet in accord with good business practices and perform all services required by the Commission in a courteous and competent manner and in accord with this Agreement including applicable laws, rules and regulations.
5. **COMPLIANCE WITH STATUTES AND RULES.** Agent shall comply with and be subject to all statutes of the United States, statutes and applicable rules of the State of Oregon, and all applicable rules, policies, and procedures of the Commission. The Commission's performance under this Agreement is conditioned upon Agent's compliance with the clauses required in every public contract as set forth in ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 which are incorporated by reference herein. Agent shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)). Agent, Agent's subcontractors, if any, and all employers providing work, labor or materials under this Agreement that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Agent shall ensure that each of its subcontractors, if any, complies with these requirements.
6. **SUBCONTRACTORS.**
 - (a) Agent shall not enter into any subcontracts for any of the performance required by this Agreement without the Commission's prior written consent. In addition to any other provisions the Commission may require, Agent shall include in any permitted subcontract under this Agreement provisions to ensure that Agency will receive the benefit of subcontractor performance as if the subcontractor were the Agent with respect to this Agreement. The Commission's consent to any subcontract shall not relieve Agent of any of its duties or obligations under this Agreement.
 - (b) Agent shall not assign, delegate or transfer any of its rights or obligations under this Agreement without the Commission's prior written consent.
 - (c) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.
7. **DISTILLERY RETAIL OUTLET MANUAL.** The Commission has created a Distillery Retail Outlet Manual, which is hereby incorporated by reference and made part of this Agreement. The Commission may revise or amend the Manual at any time. Agent shall comply with the policies and procedures set forth in the Manual and any revisions or amendments thereto. The Commission shall notify Agent in writing of all revisions or amendments to the Manual or any directive or interpretation based thereon. Such notice shall be effective and enforceable fourteen (14) days from the date of mailing to Agent unless otherwise stated in the notice.

8. **SCOPE OF AGENCY.** Agent shall have no authority to act for or represent the Commission except in the retail sale of the Commission's liquor.
9. **INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES AND WITHHOLDING.** Agent is an independent contractor of the Commission and is not an agent, employee, or officer of the Commission or the State of Oregon. Agent shall be responsible for all federal or state taxes applicable to compensation or payments paid to Agent under this Agreement and, unless Agent is subject to back-up withholding, the Commission will not withhold from such compensation or payments any amount(s) to cover Agent's federal or state tax obligations. Agent is not a contributing member of the Public Employees' Retirement System and is responsible for any federal or state taxes applicable to payment under this Agreement. Agent will not be eligible for any federal social security, unemployment insurance, workers' compensation or Public Employees' Retirement System benefits from these Agreement payments, except as a self-employed individual. Agent understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265.
10. **NO PARTNERSHIP.** Nothing in this Agreement shall be construed to make Agent and the Commission partners or joint venture participants.
11. **INDEMNITY.**
- (a) **GENERAL INDEMNITY.** AGENT SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON, THE COMMISSION, AND THEIR OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTIVITIES OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.
 - (b) **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 11(A), AGENT EXPRESSLY AGREES TO DEFEND, INDEMNIFY, AND HOLD THE COMMISSION, THE STATE OF OREGON AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, COSTS, EXPENSES, INCLUDING ATTORNEY FEES, AND DAMAGES ARISING OUT OF OR RELATED TO ANY CLAIMS THAT THE WORK, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO THE COMMISSION BY AGENT THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE COMMISSION'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE AGENT WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM.
 - (c) **CONTROL OF DEFENSE AND SETTLEMENT.** AGENT SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTIONS 11(A) OR (B); HOWEVER, NEITHER AGENT NOR ANY ATTORNEY ENGAGED BY AGENT SHALL DEFEND THE CLAIM IN THE NAME OF THE COMMISSION, THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL AGENT SETTLE ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT AGENT IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE, AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.
12. **INSURANCE.** At all times during the term of this Agreement including any extensions and for any period of Agent liability continuing after the expiration or termination of this Agreement, Agent shall maintain at its own expense all of the insurance set forth below:
- (a) **Commercial General Liability.** Agent shall maintain insurance covering bodily injury and property damage in a form and with coverage limits that are satisfactory to the State. This insurance shall include dram shop liquor liability, personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Agreement. Agent shall procure this coverage on an occurrence basis. Combined single limit per occurrence may not be less than \$1,000,000 (one million dollars) for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000 (two million dollars).
 - (b) **Workers' Compensation.** All employers, including Agent, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Agent shall ensure that each of its subcontractors complies with these requirements.

13. ADDITIONAL INSURANCE REQUIREMENTS.

- (a) **Certificate(s) of Insurance.** As evidence of the insurance coverage required by this Agreement, the Agent shall furnish Certificate(s) of Insurance to the Commission prior to Agent's commencement of work under this Agreement. The Certificate(s) must specify all of the parties endorsed on the policy as Additional Insureds (or Loss Payees). All insurance required under this Agreement shall be obtained from insurance companies authorized to do business in the State of Oregon. The agent shall pay for all deductibles, self-insured retention, and/or self-insurance included hereunder.
- (b) **Notice of Cancellation or Change.** Agent shall not cancel, materially change, or potentially exhaust the aggregate limits of insurance coverage(s) without thirty (30) days' written notice from the Agent or its insurer(s) to the Commission. Any failure to comply with the reporting provisions of this section shall constitute a material breach of this Agreement and shall be grounds for immediate termination of the Agreement by the Commission.
- (c) **Additional Insureds.** With the exception of workers' compensation coverage, the insurance coverages required for performance of this Agreement shall include the State of Oregon, the Commission, and their subdivisions, officers, and employees, as Additional Insureds, but only with respect to the Agent's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

14. EQUIPMENT. Agent shall, at Agent's expense, furnish and install any fixtures required and other equipment necessary to operate the Outlet.

15. PREMISES. Agent shall, at Agent's expense, provide the premises for Outlet operation identified in section 3.

16. UTILITIES. Agent shall supply, at Agent's expense, necessary heat, light, phone, and other utilities and services for Outlet operations.

17. OTHER EXPENSES. In addition to the cost of the premises and utilities, Agent is responsible for all other expenses of the Outlet operations.

18. DISTILLERY RETAIL OUTLET PERSONNEL. Agent shall, at Agent's expense, employ personnel to conduct business at the Outlet. Agent is responsible for the acts or omissions of such personnel within the course and scope of Agent's duties in violation of this Agreement whether willful or negligent. Agent shall train all personnel prior to their assumption of duties and shall specifically train all personnel with regard to the liquor statutes of the State of Oregon and the Commission's rules, policies, procedures, and directives as are applicable to their respective duties.

19. SALE OF DISTILLED LIQUOR MANUFACTURED BY THE DISTILLERY. As authorized by ORS 471.230, Agent shall sell only distilled liquors listed with the Commission that are manufactured by Agent at Agent's licensed distillery. At the time of transaction, the distilled spirits product becomes the property of the Commission, and, therefore, the proceeds from the sale belongs to the Commission. Agent shall execute documentation requested by the Commission to evidence the Commission's ownership interest in the liquor and proceeds therefrom. Agent shall not sell any other liquor or other merchandise furnished by the Commission except upon the terms and conditions and for the amounts prescribed by the Commission. Agent shall not store for a purchaser any such merchandise other than at the Outlet, and shall sell liquor only at the times permitted by the Commission as provided in the Distillery Retail Outlet Manual. Agent shall not deliver liquor to a purchaser other than at the Outlet location identified in section 3 of this Agreement and shall not violate ORS 471.410 relating to sales to visibly intoxicated persons and minors. Agent shall not sell any liquor to the public except upon the terms and conditions and for the amounts prescribed by the Commission as provided in the Distillery Retail Outlet Manual. Agent agrees that liquor sales at the Outlet are meant to be incidental to satisfy the demand of occasional visitors to the premises approved by the Commission.

20. OTHER RESPONSIBILITIES OF AGENT. Agent shall maintain inventory and records. Agent shall account to the Commission for all proceeds received from the sale of the Commission's liquor. At the Commission's request, Agent shall timely submit to the Commission all documents and records, including, but not limited to, inventory reports, sales reports, certificates of compliance, accounting statements, and all other records required by the Commission.

21. RESPONSIBILITY FOR SHORTAGES. If the Commission determines, through audit or otherwise, that a shortage in inventory or proceeds from liquor sales occurred in the operation of the Outlet, the Commission shall give notice of such shortage to the Agent by personal delivery or certified mail, return receipt requested. The notice of shortage shall show the Commission's calculation of the shortage. Agent shall pay the amount of the shortage to the Commission within 30 days of the effective date of the notice of shortage, as provided in section 34.

(a) **Repayment by Agent.** Agent shall pay the amount of the shortage to the Commission within 30 days of receipt of the notice of shortage.

(b) **Good Cause.** If the Agent contends that the shortage resulted from a cause that could not have been prevented or avoided in the exercise of reasonable care, the burden is upon Agent to prove such a cause.

(c) **Right to a Hearing.** If the Agent disputes the responsibility for a shortage or disputes the amount of the shortage, the Agent may request a hearing before the Commission under Oregon statutes and rules. Such a request shall be made within 14 days after the date of mailing by the Commission of the notice of shortage.

(d) Payment Pending Hearing. Payment shall be made to the Commission within the 30-day period described above regardless of the request for a hearing. Payment shall be refunded to the Agent in whole or in part if the Commission determines after hearing that good cause exists and that Agent is not responsible for all or part of the shortage as provided in section 14(b). If the Commissioners, acting on the hearings record, find that the Agent is not responsible for all or part of the shortage amount, the Commission will refund to the Agent the overpaid portion together with the legal interest rate commencing at the date that the money was paid to the Commission.

22. **AUDIT.** The Commission may perform sales and inventory audits at any time. Agent shall maintain all fiscal records relating to the operation of the Outlet in accordance with generally accepted accounting principles. Agent shall maintain any other records pertinent to the operation of the Outlet in such a manner so as to clearly document Agent's performance. The Commission, the Oregon Secretary of State, and their duly authorized representatives shall have access to inventory and the right to inspect and remove all liquor sales books, documents, papers, and records which are pertinent to the Outlet operations. The Commission shall safeguard and promptly return the books, documents, papers, and records to Agent. Agent shall cooperate in such audit or examination. Agent shall retain and keep accessible all fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

23. **COMPENSATION.** As compensation for all services under this Agreement, the Commission shall pay Agent the sum for all services using the Distillery Agent Compensation commission formula established by the Commission described in the Distillery Retail Outlet Manual. Agent understands that the compensation commission may change in accordance with budgetary provisions enacted by the Legislature and any other requirements of law.

24. **TERMINATION.**

- (a) **By Agent.** Agent may voluntarily terminate this Agreement with not less than 30 days' notice in writing to the Commission specifying a date of termination.
- (b) **By mutual consent.** This Agreement may be terminated immediately by the mutual consent of the parties in writing.
- (c) **By distillery closure.** This Agreement terminates immediately upon permanent closure of the Distillery.
- (d) **By loss of license.** This Agreement is terminated immediately when Agent is no longer a licensee of record.
- (e) **By death.** This Agreement is terminated immediately upon death of Agent.
- (f) **By the Commission "for cause."** The Commission may terminate this Agreement for good cause. Good cause includes, but is not limited to the following:
 - (i) The Commission may, in its reasonable administrative discretion, terminate this Agreement immediately in the event the legislature does not continue funding at levels sufficient to allow the Commission to continue to fulfill its obligations under this Agreement;
 - (ii) The Commission may, in its reasonable discretion, terminate this Agreement immediately in the event that a statute, ordinance or regulation is enacted, changed or interpreted in such a way that the services called for under this Agreement are prohibited or no longer allowable or appropriate for purchase or are no longer eligible for the funding contemplated for payments authorized by this Agreement;
 - (iii) The Commission may terminate this Agreement in the event that Agent becomes insolvent, unable or unwilling to pay Outlet debts, is adjudged bankrupt, applies for or consents to the appointment of a receiver or trustee or makes a general assignment for the benefit of creditors;
 - (iv) The Commission may terminate this Agreement in the event that Agent commits a substantial and deliberate violation of any term of this Agreement, any applicable statute or rule, or any policy or procedure of the Commission;
 - (v) The Commission may terminate this Agreement in the event that Agent commits a violation of any term of this Agreement, or any applicable Oregon statute, or applicable rule, or any policy or procedure, after having received two written Notices of Violation from the Commission within a 36-month period;
 - (vi) The Commission may terminate this Agreement in the event that Agent fails to adhere to the standards set forth by any policy or directive of the Commission after having received two written notices of violation from the Commission within a 36-month period;
 - (vii) The Commission may terminate this Agreement immediately in the event that Agent misappropriates or participates in misappropriation of money or other property of the Commission, or intentionally or negligently violates any policy or procedure of the Commission with regard to liquor sales proceeds or inventory which causes or is likely to cause a financial loss to the Commission, including, but not limited to, losses covered in whole or in part by insurance or bond;

- (viii) The Commission may terminate this Agreement in the event that Agent commits any felony, or commits a misdemeanor which is related to the Agent's fitness to operate the Outlet including but not limited to a violation of ORS 471.410;
- (ix) The Commission may terminate this Agreement in the event that Agent becomes physically or mentally impaired to the extent that Agent can no longer operate the Outlet in a manner consistent with the terms of this Agreement or the provisions of the Distillery Retail Outlet Manual;
- (x) The Commission may terminate this Agreement if it determines that Agent is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.

25. REMEDIES.

- (a) **Agent's Remedies.** In the event of termination of this Agreement pursuant to section 24(f)(i) or (ii), Agent's sole remedy shall be a claim for compensation due to Agent through the date of termination. In the event that it is determined for any reason that Agent was not in default under section 24(f)(iii)-(x) the rights and obligations of the parties shall be the same as if the Agreement was terminated pursuant to section 24(f)(i) or (ii), although Agent shall retain, in such event, the option of seeking reinstatement.
- (b) **The Commission's Remedies.** In the event of termination of this Agreement pursuant to section 24(f)(iii)-(x) The Commission shall have any remedy available to it in law or equity, including, but not limited to, temporary restraining orders and preliminary injunctions, the appointment of a receiver, provisional process, attachment, claim and delivery and set-off. The Commission shall be entitled to the appointment of a receiver as a matter of right. Employment by the Commission shall not disqualify a person from serving as receiver. Agent consents to the appointment of a receiver at the Commission's option and waives any and all defenses to such an appointment.
- (c) **Effect of Termination.** In the event of a termination of this Agreement or a suspension in lieu of termination of Agent for any reason, the Commission is entitled to receive all of its property that is in the possession and under the control of the Agent within 14 days. The Commission may seek all remedies for the recovery of such property.

26. LIMITATION OF LIABILITIES. Except for liability arising under section 11, neither party to this Agreement shall be liable for (i) any direct, indirect, incidental, special or consequential damages, including but not limited to, lost profits, under the Agreement, or (ii) any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

27. NOTICE OF VIOLATION. If the Commission determines that Agent has committed one or more of the violations described in section 24(f)(iii)-(x), the Commission may send a Notice of Violation by certified mail, return receipt requested, or by personal delivery. The decision not to send a Notice of Violation does not constitute a waiver by the Commission. Any waiver by the Commission of any default or breach does not excuse any subsequent default or breach, and shall not be considered a change to the terms of this Agreement. If the Agent disputes the Notice of Violation, the Agent may request a hearing before the Commission under Oregon statutes and rules. Such request shall be made within 14 days of the effective date of the Notice of Violation, as described in section 34.

28. FINE OR SUSPENSION IN LIEU OF TERMINATION. Upon finding a good cause pursuant to section 24(f) herein which would otherwise justify termination, the Commission may elect, in its sole discretion, to suspend the Agent's appointment, impose a fine, or both, in lieu of termination.

29. PROCEDURE FOR TERMINATION OR SUSPENSION IN LIEU OF TERMINATION BY THE COMMISSION. In the event that the Commission desires to terminate the Agreement for good cause under section 24(f) or suspend the Agent under section 28, the Commission shall notify the Agent in writing by certified mail return receipt requested or by personal delivery, specifying the grounds of the proposed action and the effective date of the proposed termination or suspension. If Agent wishes to dispute the proposed termination or suspension in lieu of termination, Agent may request in writing a hearing before the Commission within 14 days of the effective date of the Notice of Termination or Suspension in Lieu of Termination as provided in section 34. During the term of such suspension, Agent shall cease all retail operations of the Outlet, unless otherwise directed by the Commission.

30. EMERGENCY SUSPENSION; APPOINTMENT OF TEMPORARY AGENT. In the event of a termination proposed under section 24(f) (i), (ii), (iii) and (vii), the Commission may suspend the Agent's appointment under this Agreement pending final determination of the proposed termination under section 29. During such suspension period, the Commission may appoint a temporary agent to operate the Outlet as provided in the Distillery Retail Outlet Manual and shall notify the Agent of the effective date of the appointment of a temporary agent. If the Commission appoints a temporary agent, the suspended Agent shall permit Outlet operations to continue at the same location and shall permit the temporary Agent to have access to all inventory, books, and records of the Outlet.

31. NONWAIVER. The failure of the Commission to enforce any provision of this Agreement shall not constitute a waiver by the Commission of that or any other provision.

32. RETURN OF PROPERTY. Upon termination of this Agreement, the Commission will be permitted to retake all property owned by it including inventory, sales proceeds, books and records. Any compensation owing to Agent will be paid only after the Commission has determined that there is no shortage in inventory or sales proceeds, or if a shortage exists, only after payment of the shortage has been made or the amount deducted under section 21.

- 33. **NONDISCRIMINATION.** Agent shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 34. **NOTICE.** Except as otherwise expressly provided in this Agreement, any notice or communication required by this Agreement to the Commission must be in writing and directed to following address:

OLCC Retail Services
 9079 SE McLoughlin Blvd.
 P.O. Box 22297
 Portland, OR 97269-2297
 Email: OLCC.RetailServices@state.or.us

Unless otherwise expressly provided in this Agreement, the Commission shall send all communications and notices provided for in this Agreement to the Agent (or agent's designated representative) to the following address:

 Email: _____

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by mailing the same, postage prepaid, to Agent or the Commission at the addresses set forth in this Agreement, or to such other addresses as either party may indicate pursuant to Section 34. Unless otherwise specified in this Agreement, any communication or notice so addressed and mailed is deemed effective five (5) days after mailing.

- 35. **SEVERABILITY.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- 36. **REAPPOINTMENT.** The Commission may reappoint Agent to an additional term if the Commission determines that Agent has satisfactorily adhered to the terms of this Agreement, the applicable laws of the State of Oregon, the directives of the Commission, and the applicable policies, procedures and rules of the Commission contained in the Distillery Retail Outlet Manual.
 - (a) At least 120 days before the end of the term of this Agreement, the Commission shall notify Agent whether in the Commission's determination, Agent has met the reappointment conditions and whether or not the Commission intends to reappoint. If the Commission gives notice of reappointment, the Agent shall sign a new Agreement approved by the Commission prior to the expiration of the term of this Agreement.
 - (b) If the Commission gives notice of the intention not to reappoint or if the Agent does not sign a new Agreement the Commission shall terminate the Outlet upon the expiration of this Agreement.
- 37. **GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Commission (and/or any other agency or department of the State of Oregon) and Agent that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. AGENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SAID COURTS.
- 38. **NO THIRD PARTY BENEFICIARIES.** The State of Oregon, by and through the Commission, and Agent are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 39. **FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS.** Agent shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon. The Commission certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the Commission's current biennial appropriation or limitation. Agent understands and agrees that the Commission's payment of amounts under this Agreement is contingent on the Commission receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow the Commission, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- 40. **SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 11, 15, 19, 20-30, 32, 35, 40, and 42.
- 41. **TERMINATION OF PRIOR AGREEMENT.** This Agreement supersedes and terminates any other Agent Agreement between the parties previously in force. The parties have signed this Agreement which shall become effective on the date this Agreement has been signed by every party to this document and all necessary State approvals have been obtained.

42. **ENTIRE AGREEMENT.** This Agreement, including the Distillery Retail Outlet Manual herein incorporated by reference, constitutes the entire Agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Any amendments, supplements or modifications to this Agreement shall comply with section 7, be in writing, signed by the parties, and all necessary State approvals shall have been given before becoming effective.
43. **CERTIFICATION OF COMPLIANCE WITH TAX LAWS.** The Agent certifies and swears under penalty of perjury: that to the best of Agent's knowledge, Agent is not in violation of any Oregon Tax Laws and shall remain in compliance therewith for the term of this agreement. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

AGENT

COMMISSION

Signed: _____ Signed: _____
Name: _____ Name: _____
Date: _____ Date: _____

Executive Director
Oregon Liquor Control Commission

SAMPLE



Oregon Liquor Control Commission
STATEMENT OF AGE

Please Print Your Name, Address, Date of Birth and Phone Number:

First Middle Last

Address City State Zip Code

Date of Birth: / / Phone Number:

I SWEAR OR AFFIRM THAT I AM 21 YEARS OF AGE OR OVER. I understand that the penalty under ORS 165.805 for misrepresentation of age is a Class C misdemeanor punishable by a fine of up to \$1,000 and/or 30 days imprisonment. Further, I understand that false swearing under ORS 162.075 is a Class A misdemeanor punishable by a fine of up to \$5,000 and/or six months imprisonment.

Date Signature

Licensee/permittee/clerk fill in the information on the pieces of ID submitted by the person (read the instructions below).

Type of Descriptive ID: Number (if any)

Type of Support/Back-UP ID: Number (if any)

I hereby certify that I have accurately recorded identification of the evidence submitted to complete this form.

Date Signature of Licensee, Permittee or Clerk

Instructions to Licensees, Permittees and Clerks

- 1. If a person appears under age 26, before selling or serving alcoholic liquor to that person, you must require the person to produce a valid state drivers license with photo, OR valid passport, OR a valid U.S. Military identification card with the person's name, photo, and date of birth, OR a valid state-issued DMV identification card with the person's name, photo, date of birth, and physical description.
2. If the person does not have one of the stand-alone identifications mentioned in #1 above, the person must complete a Statement of Age card.
3. The person must furnish at least one descriptive piece of ID which shows the name, address, date of birth, physical description or photo, signature AND a second piece of ID that is supportive or back-up ID to verify the questioned person's identity. Each form of evidence must be examined carefully to determine that:
(a) it is correctly transcribed to the Statement of Age form;
(b) it has not been altered, erased or changed in any manner;
(c) the physical description and signature match that of the person whose age is questioned; and
(d) the person is 21 years of age or older.

MAIL ORDER OR SIMILAR UNOFFICIAL IDENTIFICATION CARDS ARE NOT ACCEPTABLE.

- 4. After completion of steps 1 through 3, if you are not satisfied that the person is 21 years of age or over, DO NOT SELL OR SERVICE ALCOHOLIC LIQUOR TO THAT PERSON.

DISTILLERY OUTLET SALES REPORT

Outlet Number _____ Distillery _____

Reporting Month/Year _____

Use this form to track cumulative sales and compensation for each period of the month. Attach the Detail Summary to this report after **each** sales period and mail to OLCC, PO Box 22297, Milwaukie OR 97269-2297, Attn: Financial Services. Note: If there are no sales for a period, write "**NO SALES**" in the appropriate period column and mail per required timeframe.

| Sales Period | Period 1 | Period 2 | Period 3 | Period 4 | Period 5 | Period 6 |
|--|----------|----------|----------|----------|----------|----------|
| End of Period Date | | | | | | |
| 1 Total Consumer Sales <small>(From Detail of Outlet Sales column "C Totals")</small> | | | | | | |
| 2 Total Licensee Sales <small>(From Detail of Outlet Sales column "E Totals")</small> | | | | | | |
| 3 Total Consumer and Licensee Sales + | | | | | | |
| Track Cumulative Sales For The Month | | | | | | |
| 4 Base on Total Sales <small>(Total Sales up to \$10,000 per month (Line 3) X Current %)</small> | | | | | | |
| 5 Variable <small>Consumer (Total Consumer Sales (Line 1) X Current %)</small> | | | | | | |
| 6 Licensee <small>(Total Licensee Sales (Line 2) x Current %)</small> | | | | | | |
| 7 Total Compensation (Base + Variable) <small>(Add Lines 4, 5 and 6)</small> - | | | | | | |
| 8 Total Cost of Goods Sold <small>(From Detail of Outlet Sales column "H Totals")</small> - | | | | | | |
| 9 Total 5% Deducted from Licensee Sales <small>(Add all 5% discounts from Licensee Invoices)</small> - | | | | | | |
| 10 Total Due OLCC From Retail Sales <small>(Line 3, minus line 7,8 & 9)</small> | | | | | | |
| 11 OLCC Invoice Adjustment(s) +/- | | | | | | |
| TOTAL NET DUE OLCC <small>(Line 10, plus/minus line 11)</small> | | | | | | |

(Rev. 09/15)

Exhibit 4

