

OREGON LIQUOR CONTROL COMMISSION
CHAPTER 845
PROPOSED AMENDMENTS

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

845-025-1030

Application Process

(1) ~~On or after 8:30 a.m. Pacific Time January 4, 2016,~~ a **A** person may submit an application to the Commission, on a form prescribed by the Commission, for a marijuana producer, processor, wholesaler, retail, or laboratory license.

(2) An application for a license and all documentation required in the application instructions and in section (4) of this rule must be submitted ~~electronically, via the Commission's website~~ **in a manner specified by the Commission.** The application fee specified in OAR 845-025-1060 must also be paid ~~through the Commission's on-line payment system at the time of application~~ **in a manner specified by the Commission.**

(3) An application must include the names and other required information for all individuals who are applicants as described in OAR 845-025-1045 and who are not applicants but who have a "financial interest" in the business, as defined in OAR 845-025-1015.

(4) **Any individual or legal entity with a financial interest who holds or controls an interest of ten percent or greater in the business proposed to be licensed must be identified as an applicant and must submit the documents described in (5)(a)(A) and (B) of this rule.**

~~(5) In addition to submitting the application form the following must be submitted~~
Applicants must submit the following:

(a) For all individual applicants, all general partners in a limited partnership, limited partners whose investment commitment is ten percent or more of the total investment commitment, all members in a limited liability company or partnership whose investment commitment or membership interest is ten percent or greater, all directors who own or control three percent or more of the voting stock, principal officers of corporate applicants, and all natural person stockholders owning or controlling ten percent or more of the voting stock of corporate entity:

~~(a) For an individual listed as an applicant:~~

(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080;

(B) An Individual History Form and any information identified in the form that is required to be submitted; and

~~(C) Proof of residency documented by providing:~~

~~(i) Oregon full-year resident tax returns for the last two years; or~~

~~(ii) Utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the applicant dated at least two years prior to the date of application and from the most recent month.~~

~~(b) For an individual listed as a person with a financial interest who holds or controls an interest of ten percent or greater in the business proposed to be licensed, or an individual who is a partner, member or corporate officer of a legal entity with a financial interest in the business proposed to be licensed:~~

~~(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080;~~

~~(B) An Individual History Form and any information identified in the form that is required to be submitted; and~~

~~(b)~~ (e) A map or sketch of the premises proposed for licensure, including the defined boundaries of the premises and the location of any primary residence located on the same tax lot or parcel as the licensed premises;

~~(c)~~ (d) A floor or plot plan sketch of all enclosed areas with clear identification of walls, partitions, counters, windows, all areas of ingress and egress, and all limited access areas;

~~(d)~~ (e) Proof of ~~lawful possession of~~ **legal access to** the premises proposed for licensure;

~~(e)~~ (f) An operating plan that demonstrates at a minimum, how the applicant's proposed premises and business will comply with the applicable laws and rules regarding:

(A) Security;

(B) Employee qualifications and training;

(C) Transportation of product;

(D) Preventing minors from entering the licensed premises; and

(E) Preventing minors from obtaining or attempting to obtain marijuana items.

~~(f)~~ (g) For producers:

(A) The proposed canopy size and tier as described in OAR 845-025-2040 and a designation of the canopy area within the license premises.

(B) A report describing the applicant's electrical and water usage, on a form prescribed by the Commission. **For initial licensure, t**~~The report must describe the estimated~~ **electrical and** water usage taking into account all portions of the premises and expected requirements of the operation. **For renewal, the report must describe the actual electrical and water usage for the previous year taking into account all portions of the premises and expected requirements of the operation.**

(C) A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.

(D) A water right permit or certificate number; a statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.

~~(g)~~ (h) For processors:

(A) On a form prescribed by the Commission, the proposed endorsements as described in OAR 845-025-3210.

(B) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates.

(6) In addition to submitting the application form and the items described in (4) of this rule the Commission may require the following to be submitted:

(a) For an individual ~~listed~~ **identified** as a person with a financial interest, who holds or controls an interest of less than ten percent in the business proposed to be licensed:

(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080;

(B) An Individual History Form and any information identified in the form that is required to be submitted; and

(b) For a legal entity that is identified as having a financial interest of less than ten percent of the business proposed to be licensed:

(A) Information or fingerprints for any individual within the legal entity for a criminal background check in accordance with OAR 845-025-1080;

(B) An Individual History Form for any individual within the legal entity and any information identified in the form that is required to be submitted;

~~(c)~~ Any additional information if there is a reason to believe that the information is needed to determine the merits of the license application.

(7) The Commission must review an application to determine if it is complete. An application will be considered incomplete if an application form is not complete, the full application fee has not been paid, or some or all of the additional information required under section (4) of this rule is not submitted.

(8) An applicant may submit a written request for reconsideration of a decision that an application is incomplete. Such a request must be received by the Commission within ten days of the date the incomplete notice was mailed to the applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(9) If, prior to an application being acted upon by the Commission, there is a change with regard to who is an applicant or who is a person with a financial interest in the proposed business, the new applicant or person with a financial interest must submit a form, prescribed by the Commission, that:

(a) Identifies the individual or person;

(b) Describes the individual's or person's financial interest in the business proposed for licensure; and

(c) Includes any additional information required by the Commission, including but not limited to information and fingerprints required for a criminal background check.

(10) Failure to comply with subsection (6) of this rule may result in an application being denied.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.040, ORS 475B.045, ORS 475B.060, 475B.070, ORS 475B.090, ORS 475B.100, ORS 475B.110, ORS 475B.560

Qualifications of an Applicant

1) True name on application. An application for a license must specify the real and true names of all individuals and legal entities that have an ownership interest in the business proposed to be licensed by identifying all such persons and legal entities as applicants.

(2) License privileges. License privileges are available only to the applicants identified in the application and their authorized representatives and only for the premises designated on the license.

(3) Ownership interest. The Commission may refuse to issue a license if the applicant is not the owner of the business proposed to be licensed or an undisclosed ownership interest exists. For purposes of this rule, an “ownership interest” is indicated by the following behaviors, benefits or obligations:

(a) Any person or legal entity, other than an employee acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;

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

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

(d) Any person or legal entity identified as the lessee of the premises proposed to be licensed.

(1) The following are considered applicants for purposes of these rules:

(a) Any individual that has a financial interest in the business for which licensure is sought and who is directly involved in controlling the ordinary course of business for the business that is proposed to be licensed; and

(b) Any legal entity that has a financial interest in the business for which licensure is sought and is directly involved in controlling the ordinary course of business for the business that is proposed to be licensed;

(2) If an applicant is an individual the individual must also:

(a) Be at least 21 years of age; and

(b) Until January 1, 2020, have been a resident of Oregon for at least two consecutive years prior to the date the initial or renewal application was submitted.

(3) If a legal entity is designated as an applicant, the following individuals must also be listed as applicants on an application:

(a) All partners in a limited partnership;

(b) All members of a limited liability company; and

(c) All directors and principal officers of a corporate entity.

(d) Any individual who owns or controls at least 10% of the legal entity.

~~(4) At least one applicant or the sum of applicants listed on a license application must be a legitimate owner of the business proposed to be licensed or subject to renewal.~~

~~(5) An individual or legal entity will not be considered by the Commission to be directly involved in the ordinary course of business for the business proposed to be licensed solely by virtue of:~~

~~(a) Being a shareholder, director, member or limited partner;~~

~~(b) Being an employee or independent contractor; or~~

~~(c) Participating in matters that are not in the ordinary course of business such as amending organizational documents of the business entity, making distributions, changing the entity's corporate structure, or approving transactions outside of the ordinary course of business as specified in the entity's organizational documents.~~

~~(6) An applicant will be considered by the Commission to be a legitimate owner of the business if:~~

~~(a) The individual applicant or legal entity applicant owns at least 51% of the business proposed to be licensed; or~~

~~(b) One or more individual applicants in sum own at least 51% of the business proposed to be licensed.~~

~~(7) The following factors, in and of themselves, do not constitute ownership:~~

~~(a) Preferential rights to distributions based on return of capital contribution;~~

~~(b) Options to purchase an ownership interest that may be exercised in the future(c)~~

~~Convertible promissory notes; or~~

~~(d) Security interests in an ownership interest.~~

~~(8) For purposes of this rule, "ownership" means direct or indirect ownership of the shares, membership interests, or other ownership interests of the business proposed to be licensed.~~

~~(9) The Commission may consider factors other than those listed in this rule when determining whether an individual or legal entity is directly involved in the operation or management of the business proposed to be licensed or licensed, or is a legitimate owner.~~

~~(10) An individual listed as an applicant on an initial or renewal application, or identified by the Commission as an applicant must maintain Oregon residency while the business is licensed.~~

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.045Sections 8ORS 475B.045, ORS 475B.070, ORS 475B.090, ORS 475B.100, ORS 475B.110, ORS 475B.560

845-025-1090

Application Review

(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with ~~chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015,~~ **ORS Chapter 475B** and these rules.

(2) The Commission:

(a) Must, prior to acting on an application, ~~request~~ **receive** a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located; or ~~request verification that a land use compatibility statement submitted by an applicant is valid and accurate~~ **receive verification that a land use compatibility statement was requested from the city or county in which the applicant's proposed premises is located and the city or county failed to respond within 21 days of the request.**

(b) May, in its discretion, prior to acting on an application:

(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and

(B) Verify any information submitted by the applicant.

(3) The requirements of section (2)(a) of this rule do not apply to applicants for a producer license if:

(a) The applicant is applying for a license at an address where a marijuana grow site

registered under ORS 475B.420 is located;

(b) The address is outside of city limits;

(c) At least one person responsible for a marijuana grow site located at the address first

registered with the Oregon Health Authority under ORS 475B.420 before January 1, 2015;

(d) Each person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475B.420 before February 1, 2016; and

(e) The applicant is applying for a mature marijuana plant grow canopy of:

(A) 5,000 square feet or less, if the marijuana is produced outdoors; or

(B) 1,250 square feet or less, if the marijuana is produced indoors.

(34) The Commission must inspect the proposed premises prior to issuing a license.

(4 **5**) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.

(a) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.

(b) An applicant may request in writing one extension of the 15-day time limit in subsection (a) of this section, not to exceed 30 days.

~~(5~~ 6) If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.

~~(6~~ 7) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.

~~(7~~ 8) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Stat. Auth.: ORS 475B.025

Stats. Implemented: 475B.045, ORS 475B.285 and ORS475B.063

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Denial of Application

(1) The Commission must deny an initial or renewal application if:

~~(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident of Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.~~

~~(a)~~ The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone, **if a land use compatibility statement is required.**

(b) The proposed licensed premises is located:

(A) On federal property.

(B) At the same physical location or address as a:

(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;

(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or

(iii) Medical marijuana dispensary registered under ORS 475.314.

(C) At the same physical location or address as a ~~liquor licensee~~ **premises** licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(c) The proposed licensed premises of a producer applicant who has applied to produce marijuana outdoors is:

(A) On public land; or

(B) On the same lot or parcel, as defined in ORS 92.010, as another producer licensee; or under common ownership; or

(C) On the same lot or parcel, as defined in ORS 92.010, as a retail, processor or wholesale license, unless all of the licenses on the lot or parcel are held or sought by the same applicant.

(d) The proposed licensed premises of a producer applicant who has applied to produce marijuana indoors is on the same lot or parcel, as defined in ORS 92.010, as another producer licensee under common ownership.

(e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(f) The proposed licensed premises of a retail applicant is located:

(A) Within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(h) A city or county has prohibited the license type for which the applicant is applying, in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015.

(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:

(a) The applicant:

(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.

(B) Has made false statements to the Commission.

(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(D) Is not of good repute and moral character.

(E) Does not have a good record of compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules, prior to or after licensure including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of section 49, chapter 614, Oregon Laws 2015;

(ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or

(iv) Violations of local ordinances adopted under section 33, chapter 614, Oregon Laws 2015, pending or adjudicated by the local government that adopted the ordinance.

(F) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(G) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and sections 91 to 99, chapter 614, Oregon Laws 2015. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in Section 29(3), chapter 1, Oregon Laws 2015.

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee. ~~However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection.~~

(4) The Commission will not deny an application under subsections (1)(c)(B) of this rule if the applicant surrenders the registration issued by the Authority prior to being issued an OLCC license.

(5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.

(6) A notice of denial must be issued in accordance with ORS 183.

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS 475B.040, ORS 475B.045, ORS 475B.070, ORS 475B.090, ORS 475B.100, ORS 475B.110, ORS 475B.063, ORS 475B.560, Section 133, Chapter 614, Oregon Laws 215, and ORS 475B.800

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