

**OREGON LIQUOR & CANNABIS COMMISSION**  
**CHAPTER 845**  
**PROPOSED AMENDMENTS**

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

**Division 15**  
**RETAIL SALES AGENTS**

**845-015-0101**

**Definitions**

As used in OAR chapter 845, division 015:

- (1) "Commission" includes the 7 member body of Commissioners appointed by the Governor, the administrator (executive director) and agency staff. Any of the actions or decisions specified in this division may be delegated to the administrator (executive director) as provided in ORS 471.040(2).
- (2) "Disabled Retail Sales Agent" is one who has a physical or mental impairment that has continued more than one year or is permanent that prevents a retail sales agent from properly performing contractual duties. The Commission determines retail sales agent disability after reviewing medical reports from the retail sales agent's physician. The Commission may require additional medical information from a Commission-selected physician.
- (3) "Full On-Premises Sales Licensee" means any person or entity holding a Full On-Premises Sales license.
- (4) "Retail Liquor Store" is a premises or a specific area in a premises the Commission approves for the sale of packaged distilled spirits for off-premises consumption, other than an Oregon licensed distillery or portion of such a distillery which has been approved for the sale of packaged distilled spirits manufactured by the distillery. **This also includes the related business, which may sell related items set forth in OAR 845-015-0143.**
- (5) "Retail Sales Agent" or "Agent" is an individual person or legal entity appointed by the Commission who enters into a retail sales agent agreement to sell packaged distilled spirits on behalf of the Commission in a retail liquor store. When a retail sales agent is a legal entity, the following persons shall also be considered a retail sales agent:
  - (a) Each individual person who owns 10% or more of the entity; such as stock, membership, or other investment; and
  - (b) Each individual person who has been designated by the entity to exercise control over, or be entitled to exercise control over, the entity; such as directors, officers, managing members, and general partners.
- (6) "Retail Sales Agent Agreement" is a written contract between the Commission and a retail sales agent that specifies the terms, conditions, and obligations between both parties.

(7) "Temporary Retail Sales Agent" or "Temporary Agent" is an individual person or legal entity selected by the Commission to temporarily operate a retail liquor store.

**Statutory/Other Authority:** ORS 471.030 & 471.730

**Statutes/Other Implemented:** ORS 471.040, 471.705, 471,750, & 471.752

## **845-015-0125**

### **Retail Sales Agent Selection Criteria**

(1) When the Commission selects a retail sales agent using the procedure in OAR 845-015-0120, the Commission evaluates the knowledge, skills and abilities of all applicants in the following areas:

(a) Retail business experience including, but not limited to, responsibility for inventory control, cash accountability, supervision of personnel and customer service;

(b) Knowledge of retail operations or business management, including study or training in those or related fields;

(c) Customer service skills and ability to communicate and work effectively with the public;

(d) Whether the applicant's health permits full-time supervision of a retail liquor store;

(e) The applicant's record of felony conviction, conviction of crime relating to money management fraud, or a history of conviction of crimes relating to the abuse of alcohol or controlled substances;

(f) The applicant's financial ability to purchase ~~or lease~~ and equip the retail liquor **and related business** ~~store~~ at a Commission approved location, **including reasonable lease expenses**. The applicant's ability to provide the necessary funds to meet the operating expenses of the retail liquor **store and related business** ~~be bonded under the Commission's blanket position-fidelity bond.~~

(2) In appointing a successor to a deceased or disabled retail sales agent, the Commission gives the preference in ORS 471.752. The Commission evaluates the qualifications of the applicant. After review of the application documents and personal interviews, the Commissioners decide if the applicant is qualified.

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

**Statutes/Other Implemented:** ORS 471.750(1)

## 845-015-0190

### Resignation Buy-Out Program for Retail Sales Agents

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

(2) Definitions.

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

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

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

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

(3) Calculating the Buy-Out. The Resignation Buy-Out Program requires the incoming retail sales agent to pay the outgoing agent, or the agent's estate, an amount of money (called the buy-out). **The buy-out amount will include consideration for retail liquor store and shall be based on fair-market value. The value will be calculated by the method outlined in the Retail Operations Manual and/or Retail Sales Agreement.** ~~Except as provided in section (4), the Commission calculates the buy-out by taking three percent of the stores average annual gross distilled spirits sales for the last five years. If a Retail Sales Agent's most current Annual Evaluation is outstanding, they will be eligible for a four percent buy-out percentage. The Commission includes the buy-out amount as part of the financial requirement in the information sheet that all applicants receive.~~

(4) Recruiting Qualified Applicants. The outgoing agent may supplement the Commission's recruiting process to assure finding qualified applicants. If the Commission's recruiting process does not generate a qualified applicant the outgoing agent will choose to postpone the resignation or to accept a lower buy-out amount. If the agent chooses to accept a lower buy-out, then the outgoing

agent and the Commission will agree on a reasonable buy-out amount reduction. The Commission will then re-advertise the store vacancy with the reduced buy-out amount.

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

(6) Family Transfer of Retail Liquor Store When Agent Dies or is Disabled. If an agent dies or becomes unable to operate a retail liquor store due to the agent's disability, ORS 471.752(2) allows the Commission to give preference to a qualified surviving spouse, Domestic Partner, or child, or a qualified spouse, Domestic Partner, or child of the disabled agent, in the appointment of a successor agent. If the Commission does appoint a spouse, Domestic Partner, or child in this situation, the Commission may waive the buy-out requirement at the request of the outgoing agent or the agent's estate after the Commission has estimated any debt reimbursements to the Commission or the State of Oregon.

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

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

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

(a) The Commission has terminated the agent for cause relating to fiscal irresponsibility, a history of high shortages exists, or the final estimated audit shortage exceeds the estimated amount of compensation due that agent. In these situations, the incoming agent will be instructed to hold payment until the Commission calculates any dollars owed the Commission or the State of Oregon. At that time the Commission will instruct the incoming agent as to the disbursement of

the buy-out fund to the outgoing agent and the Commission. Any amount sent to the Commission in excess of the amount due to the Commission or the State of Oregon will be returned to the outgoing agent upon final financial settlement;

(b) The agent is under suspension;

(c) The agent is a temporary retail sales agent;

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

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

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

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

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

(c) Apply only within:

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

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

(d) Do not prohibit an agent's ability to advertise under OAR 845-015-0175.

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

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

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

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

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

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

Stats. Implemented: ORS 471.750 & 471.752(2)