

Delivery Rulemaking Package

Summary

Rule	Action
845-005-0401	Repeal
845-005-0416	Amend
845-005-0424	Amend
845-005-0451	Adopt
845-006-0391	Amend
845-006-0392	Amend
845-006-0396	Amend
845-006-0399	Amend
845-006-0500	Amend
845-009-0200	Amend
Total	10

~~845-005-0401~~

~~Exemption from License Requirement by Technology Providers~~

~~(1) For the purposes of this rule:~~

~~(a) "Final consumer" means an individual who is at least 21 years of age taking possession of alcoholic beverages for personal or social use and not for resale.~~

~~(b) "Technology provider" means a person who facilitates, or holds itself out as willing to facilitate, sales of alcoholic beverages from the Commission, licensees, retail sales agents, distillery retail outlet agents, or permit holders to a final consumer by using technology such as, but not limited to, a website, mobile application, or other electronic service.~~

~~(2) A technology provider acting on behalf of the Commission or a licensee, retail sales agent, distillery retail outlet agents or permit holder may:~~

~~(a) Import, or cause to be imported, into Oregon alcoholic beverages that are being delivered, on in transit to be delivered, to a final consumer;~~

~~(b) Store or hold alcoholic beverages that are being delivered, on in transit to be delivered, to a final consumer;~~

~~(c) Advertise alcoholic beverages available for sale to a final consumer from the Commission, licensee, retail sales agent, distillery retail outlet agent, or permit holder;~~

~~(d) Solicit, receive, and accept orders for alcoholic beverages from final consumers; and~~

~~(e) Receive payment for alcoholic beverages ordered by final consumers.~~

~~(3) A technology provider may engage in an activity described in section (2) of this rule only if the Commission, licensee, retail sales agent, distillery retail outlet agent, or permit holder:~~

~~(a) Controls, with clear and conspicuous messaging, the advertising of its alcoholic beverages offered for sale and delivery through the technology provider, including but not limited to:~~

~~(A) The price of the available alcoholic beverages; and~~

~~(B) Identifying the name of the seller of the alcoholic beverages and messaging that:~~

~~(i) The offer and sale of the alcoholic beverages is by the Commission, licensee, retail sales agent, distillery retail outlet agent, or permit holder; and~~

~~(ii) The payment made by the final consumer for an alcoholic beverage is paid to the Commission, licensee, retail sales agent, distillery retail outlet agent, or permit holder.~~

~~(C) Following all advertising rules of the Commission.~~

~~(b) Controls the acceptance of orders for alcoholic beverages from final consumers;~~

~~(c) Receives and retains all payments for alcoholic beverages; and~~

~~(d) Provides to the final consumer or to the technology provider for delivery to a final consumer only the types of alcoholic beverages allowed by the license, retail sales agent, distillery retail outlet agent, or permit.~~

~~(4) A technology provider may charge the Commission, licensee, retail sales agent, distillery retail outlet agent, or permit holder a fee for its services.~~

~~(5) A technology provider acting on behalf of the Commission or a licensee, retail sales agent, distillery retail outlet agents or permit holder and providing services pursuant to subsections (2) — (4) of this rule is exempt from obtaining a license under ORS chapter 471.~~

~~(6) A technology provider may deliver, or arrange for the delivery of, alcoholic beverages on behalf of the Commission, licensee, retail sales agent, distillery retail outlet agent, or permit holder to a final consumer only if it:~~

~~(a) Is approved as a for-hire carrier under OAR 845-005-0424; or~~

~~(b) Uses a for-hire carrier approved under OAR 845-005-0424.~~

~~(7) A licensee, retail sales agent, distillery retail outlet agent, or permit holder using a technology provider may be held responsible for the technology provider's failure to follow the requirements of this rule.~~

~~(8) Nothing in this rule allows:~~

~~(a) A financial connection of the type prohibited by statute or rule between licensees, retail sales agents, distillery retail outlet agents, or permit holders unless allowed by exception;~~

~~(b) Any financial assistance of the type prohibited by statute or rule between any licensees, retail sales agents, distillery retail outlet agents, or permit holders unless allowed by exception.~~

845-005-0416

Delivery of Alcoholic Beverages to Individuals — Definitions

As used in OAR 845-005-0416 through 845-005-0426 0424:

~~(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.~~

(1) "Deliver" means to transfer alcoholic beverages from a delivery person, or an individual authorized by Commission rule, to the physical possession of a final consumer at a delivery address.

~~(2) "For-hire carrier" means any person or company who holds itself out to the public as willing to transport property in return for compensation. The term "for-hire carrier" can include a common carrier.~~

(2) "Delivery address" means a location with a permanent street address in Oregon that is not licensed by the Commission under ORS chapter 471, 475C.005 to 475C.525, or 475C.548, or other locations as adopted by Commission rules.

(3) "Delivery person" means an individual who:

(a) Is an employee, agent, or contractor of a third-party delivery facilitator permittee

(b) Holds a valid certificate of completion of an alcohol delivery training program; and

(c) Delivers alcoholic beverages to the physical possession of a final consumer

~~(4)~~ “Resident of Oregon” means an individual residing in Oregon, even if only temporarily.

(4) “Eligible business” means the holder of:

(a) A full on-premises sales license issued under ORS 471.175

(b) A limited on-premises sales license issued under ORS 471.178

(c) An off-premises sales license issued under ORS 471.186

(d) A temporary sales license issued under ORS 471.190

(e) A brewery-public house license issued under ORS 471.200

(f) A brewery license issued under ORS 471.221

(g) A winery license issued under ORS 471.223

(h) A grower sales privilege license issued under ORS 471.227

(i) A direct shipper permit issued under ORS 471.282; and

(j) Any other authorization, as determined by Commission rule.

(5) “Final consumer” means an individual who takes possession of alcoholic beverages at a delivery address for personal or social use, and not for resale. The terms “resident of Oregon” and “resident of this state” have a similar meaning as “final consumer.” The terms “final consumer,” “resident of Oregon,” and “resident of this state” may be used interchangeably.

~~(3)~~ **(6)** “Month” means a calendar month.

(7) “Third-party delivery facilitator” means an individual, person, or company that:

(a) Delivers, or holds itself out as willing to deliver, alcoholic beverages from an eligible business to a final consumer; or

(b) Facilitates, or holds itself out as willing to facilitate, the sale and delivery of alcoholic beverages by an eligible business to a final consumer.

(c) Despite subsections (7)(a)(b) of this rule, a “third-party delivery facilitator” is not a motor carrier as defined in 49 U.S.C. 13102, a freight forwarder as defined in 49 U.S.C. 13102, or an air carrier as defined in 49 U.S.C. 40102.

845-005-0424

Guidelines for Approval of a For-Hire Carrier’s Plan for Delivery of Malt Beverages, Wine, Cider or Distilled Spirits

The Commission will evaluate and may approve a for-hire carrier’s plan to deliver malt beverages, wine, cider or distilled spirits to a resident of Oregon.

(1) Delivery to a resident of Oregon. In order to deliver malt beverages, wine, cider or distilled spirits 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, cider or distilled spirits 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) Deliveries of alcohol will be completed in accordance with the hours and allowable delivery locations in OAR 845-006-0392 and OAR 845-006-0396;

(e) 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

(f) 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.

~~(D) The tradename and licensed or permitted address of the licensee or permittee that sold the alcohol for delivery to the resident.~~

~~(2) 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 sends the notice to the carrier; 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.~~

~~(3) The Commission may suspend, revoke, or refuse 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 suspension, revocation, or refusal under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.~~

Third-Party Delivery Facilitator Permit Qualifications, Requirements, and Authorizations

(1) A third-party delivery facilitator must make application to the Commission and receive and hold a valid third-party delivery facilitator permit from the Commission to:

(a) Deliver, or hold itself out as willing to deliver, alcoholic beverages from an eligible business to a final consumer; or

(b) Facilitate, or hold itself out as willing to facilitate, the sale and delivery of alcoholic beverages by an eligible business to a final consumer.

(2) Applicants for the issuance or renewal of a third-party delivery facilitator permit must submit a complete, accurate, legible, and timely application to the Commission that contains all materials, forms, documents, information, and fees required by the Commission.

(a) The Commission may accept the application if it contains all required materials, forms, documents, information, and fees in a manner that the Commission determines is complete, accurate, legible, and timely; or

(b) The Commission will not accept an incomplete, inaccurate, illegible, or untimely application if it does not contain all required materials, forms, documents, information, and fees. The Commission shall give applicants the opportunity to request a review if the Commission does not accept an

application. A review under this subsection is not subject to the requirements for contested case proceedings of ORS Chapter 183.

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

(a) Require additional materials, forms, documents, information, or fees from an applicant where there is reason to believe that the materials, forms, documents, information, or fees are required by law or rule or may help the Commission determine the merits of an application or to otherwise perform its statutory duties.

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

(4) A third-party delivery facilitator permit is issued for a period of one year that expires at 11:59 pm on December 31 of each year. Notwithstanding this requirement, a third-party delivery facilitator permit issued for the first time is valid beginning on the date of issuance to 11:59 pm on December 31 of the same year.

(5) The annual fee for a third-party delivery facilitator permit is (\$500).

(6) The Commission may refuse to issue or renew a third-party delivery facilitator permit, and may suspend or revoke a permit, if the Commission finds or has reasonable grounds to believe:

(a) The applicant or permittee is, or has a financial interest in, a manufacturer of alcoholic beverages

(b) The applicant or permittee provided material false or misleading information to the commission or omitted information that should have been provided to the commission; or

(c) The applicant or permittee, or any person used by or acting on behalf or at the direction of the applicant or permittee, does not have a good record of compliance under this chapter, as assessed upon initial application for a permit under this section and annually upon application for renewal of a permit issued under this section.

(7) When the Commission finds or has reasonable grounds to believe that an applicant or permittee is, or has a financial interest in, a manufacturer of alcoholic beverages pursuant to (6)(a) of this rule, the Commission will:

(a) Notify the applicant or permittee of the finding or belief and include an explanation of the Commission's findings or belief; and

(b) Give the applicant or permittee 30 calendar days from the date of the Commission's notification to cure the issue.

(8) A third-party delivery facilitator permittee acting on behalf of an eligible business may:

(a) Deliver, or cause to be delivered, alcoholic beverages to a final consumer on behalf of an eligible business

(b) Advertise alcoholic beverages available for retail sale

(c) Solicit, receive, and accept orders for alcoholic beverages from final consumers; and

(d) Receive payment for alcoholic beverages ordered by final consumers provided an eligible business:

(A) Controls, with clear and conspicuous messaging, the advertising of its alcoholic beverages offered for sale and delivery by the third-party delivery facilitator, including but not limited to:

(i) The price of the available alcoholic beverages

(ii) Identifying the name of the eligible business selling the alcoholic beverages

(iii) Messaging that the offer and sale of the alcoholic beverages is by the eligible business

(iv) The payment made by the final consumer for an alcoholic beverage is paid to the eligible business; and

(v) Follows all advertising rules of the Commission.

(B) Controls the acceptance of orders for alcoholic beverages from final consumers

(C) Receives all payments made by the final consumer for alcoholic beverages; and

(D) Provides to the final consumer, or to the third-party delivery facilitator for delivery to a final consumer, only the types of alcoholic beverages allowed to be sold at retail by the eligible business.

(e) A violation of this subsection by an eligible business is a Category III violation.

(9) A third-party delivery facilitator permittee acting on behalf of an eligible business must:

(a) Engage in an activity pursuant to subsection (8) of this rule only when acting on behalf of an eligible business

(b) Use only a delivery person to deliver alcoholic beverages to a final consumer who:

(A) Has completed an alcohol delivery training program within the last three years pursuant to OAR 845-005-0451 that was provided by:

(i) The third-party delivery facilitator permittee; or

(ii) Another party under a contract with the third-party delivery facilitator permittee.

(B) Holds a valid certificate of completion of a Commission-approved alcohol delivery training program issued within the last three years by:

(i) The third-party delivery facilitator permittee; or

(ii) Another party who is under contract with the third-party delivery facilitator permittee to provide the training.

(C) Is at least 18 years of age

(D) Holds a valid driver license or other identification pursuant to Commission rule

(E) Has no felony violent crimes conviction and the incident leading to the conviction occurred within two years of the date of delivery; or two or more violent felony convictions and at least two of the incidents leading to these convictions occurred within four years of the delivery. A “felony violent crimes conviction” means a felony conviction for a crime which causes attempts to cause or threatens to cause physical injury or harm to another person irrespective of the jurisdiction

(F) Has no felony drug convictions and the incident leading to the conviction occurred within two years of the date of delivery; or two or more felony drug convictions and at least two of the incidents leading to these convictions occurred within four years of the delivery. A “felony drug conviction” means a felony conviction for possession, manufacture, delivery, or distribution of a controlled substance, or any other drug-related felony as described in ORS 475 or similar laws in other jurisdictions

(G) Has not had two or more liquor law convictions, or one conviction and one diversion, and at least two of the incidents leading to these convictions or diversions occurred within four years of the date of the delivery; or has a combination of four or more felony or liquor law convictions or diversions and at least four of the incidents leading to these convictions or diversions occurred within ten years of the date of delivery and at least one of the incidents leading to these convictions or diversions occurred within two years of the date of delivery. “Liquor law conviction” means a misdemeanor or felony conviction for violation of any Oregon law regulating alcohol or similar laws in other jurisdictions. Examples of such laws include, but are not limited to: DUI; Providing Alcohol to a Visibly Intoxicated Person; and Sale of Alcohol to a Minor.

(c) In lieu of the requirements of section (9)(b)(A)-(B), a third-party delivery facilitator permittee may use a delivery person to deliver alcoholic beverages to a final consumer who has completed an approved alcohol server education course and passed the examination pursuant to ORS 471.542 within the last three years.

(10) A third-party delivery facilitator permittee shall upon request make a delivery person’s certificate of completion available for immediate inspection by any Commission regulatory specialist or any other peace officer.

(11) When delivering alcoholic beverages to a final consumer, in addition to complying with other all other regulations pursuant to ORS chapter 471 and Commission rules, the third-party delivery facilitator permittee must:

(a) Transfer the alcoholic beverages to the physical possession of a final consumer at a delivery address.

(b) Deliver the alcoholic beverages between the hours of 7:00 am and 10:00 pm. Despite this requirement, if the permittee is delivering on behalf of an eligible business who is an off-premises sales licensee, the permittee must deliver the alcoholic beverages between the hours of 6:00 am and 10:00 pm.

(c) Deliver the alcoholic beverages only to a final consumer who is at least 21 years of age and whose identification matches the identification provided upon creation of the delivery order.

(d) Deliver the alcoholic beverages only to an individual who is not visibly intoxicated at the time of receiving the alcoholic beverages; and

(e) Collect information that must be retained by the permittee for a minimum of two years from the date of delivery of the alcoholic beverages to the final consumer. The information retained must include:

(A) The date and time the alcoholic beverages were delivered to the final consumer

(B) The number of alcoholic beverages contained in each delivery to the final consumer

(C) The name, or information that can be used to determine the name, of the individual delivering the alcoholic beverages to the final consumer; and

(D) The name and delivery address of the final consumer receiving the alcoholic beverages.

(12) A third-party delivery facilitator permittee:

(a) Must allow the Commission to audit the permittee's records which are directly related to alcoholic beverage deliveries in Oregon upon request and shall make those records available to the Commission in Oregon. The permittee must make these records available to the Commission no later than 30 days after the Commission sends the notice to the permittee; 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.

(13) Civil penalties for third-party delivery facilitator permittees.

(a) For any violation other than subsection (7) by a third-party delivery facilitator permittee or a delivery person acting on behalf of the third-party delivery facilitator of ORS chapter 471, or the rules adopted by the Commission under ORS chapter 471, the Commission may assess a civil penalty for each violation in addition to any other penalties, including the suspension or revocation of a third-party delivery facilitator permit. The civil penalty must be at least \$500 per violation and may not be more than \$4,000 per violation. The Commission may consider mitigating or aggravating circumstances in determining the civil penalty. The Commission may decrease or increase the civil penalty to prevent inequity or to take account of particular circumstances in the case.

(b) The first violation by a third-party delivery facilitator permittee for other than subsections (7) and (11)(c) and (d) is subject to a \$500 civil penalty.

(c) The first violation of subsection 11(c) and (d) by a third-party delivery facilitator permittee is \$2,500.

(d) Any subsequent violations within two years of a prior violation will be subject to increasing penalty amounts of \$100 more than the prior civil penalty amount not to exceed \$4,000 per violation.

845-005-0451

Alcohol Delivery Training Program and Certification of Completion

(1) An alcohol delivery training program shall include training on at least the following:

(a) Forms of identification required by ORS 471.130 and Commission rule and methods for identifying, inspecting, accepting or rejecting identification

(b) Signs of visible intoxication and methods for recognizing these signs and for refusing to deliver alcoholic beverages to a final consumer; and

(c) Rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.

(2) When using an alcohol delivery training program to train delivery persons, third-party delivery facilitator permittees and other parties may use an alcohol delivery training program only if the training described in subsections (1)(a)-(c) of this rule has been approved by the Commission. Notwithstanding this requirement, from January 1, 2024 to March 1, 2024, if a permittee has submitted an alcohol delivery training program to the Commission for approval, the alcohol delivery training program will be considered conditionally approved until the Commission either notifies the permittee of a refusal to approve pursuant to subsection (3) of this rule, or issues a final approval.

(3) The Commission may refuse to approve an alcohol delivery training program if the Commission determines that the program does not meet the requirements of subsections (1)(a)-(c) of this rule.

(4) To receive Commission approval of an alcohol delivery training program, a person must submit a training program that meets the requirements of subsections (1)(a)-(c) and a \$250 fee to the Commission. A permittee must resubmit an alcohol delivery training program to the Commission for approval every five years. Notwithstanding this section, a permittee is responsible for updating any approved training program to reflect new or changed rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.

(5) A third-party delivery facilitator permittee who provides an alcohol delivery training program to delivery persons, or another party who is under contract with a third-party delivery facilitator permittee to provide an alcohol delivery training

program to delivery persons, must issue a certificate of completion to a delivery person who has successfully completed the training program.

(6) A third-party delivery facilitator permittee must retain information on delivery persons who have been provided an alcohol delivery training program and been issued a certificate of completion by the permittee, or another party who is under contract with the permittee to provide the alcohol delivery training program, including when a delivery person completes an approved alcohol server education course and passes the examination pursuant to ORS 471.542, for a minimum of three years from the date the delivery person successfully completed the training program, including:

(a) A copy of the certificate of completion, with the name of the delivery person who successfully completed the training, the date the delivery person successfully completed the training, the name of the third-party delivery facilitator permittee, and if applicable, the name of the party under contract with a third-party delivery facilitator who provided the training program; and

(b) Must allow the Commission upon request to audit the permittee's records which are directly related to alcohol delivery training program requirements to delivery persons and shall make those records available to the Commission in Oregon. The permittee must make these records available to the Commission no later than 30 days after the Commission sends notice to the permittee.

(7) The first violation of this rule by a third-party delivery facilitator is subject to a \$500 civil penalty per violation. Any subsequent violations within two years of a prior violation will be subject to increasing penalty amounts of \$100 more than the prior civil penalty amount not to exceed \$4,000 per violation.

845-006-0391

Delivery of Alcoholic Beverages to Individuals — Definitions

As used in OAR 845-006-0391 through 845-006-0401 **0399**:

~~(1) The term "ship" means to cause the delivery or transport of malt beverages, wine or cider to either a resident of Oregon or a licensee of the Commission. The term "deliver" has a similar meaning and includes the transport and handing over of malt beverages, wine or cider to a resident or a licensee of the Commission. The terms ship and deliver may be used interchangeably.~~

(1) "Deliver" means to transfer alcoholic beverages from a delivery person, or an individual authorized by Commission rule, to the physical possession of a final consumer at a delivery address.

~~(2) “For-hire carrier” means any person or company who holds itself out to the public as willing to transport property in return for compensation. The term “for-hire carrier” can include a common carrier.~~

(2) “Delivery address” means a location with a permanent street address in Oregon that is not licensed by the Commission under ORS chapter 471, 475C.005 to 475C.525, or 475C.548, or other locations as adopted by Commission rules.

(3) “Delivery person” means an individual who:

(a) Is an employee, agent, or contractor of a third-party delivery facilitator

(b) Holds a valid certificate of completion of an alcohol delivery training program that was approved by the Commission; and

(c) Delivers alcoholic beverages to the physical possession of a final consumer.

~~(4) “Resident of Oregon” means an individual residing in Oregon, even if only temporarily.~~

(4) “Eligible business” means the holder of:

(a) A full on-premises sales license issued under ORS 471.175

(b) A limited on-premises sales license issued under ORS 471.178

(c) An off-premises sales license issued under ORS 471.186

(d) A temporary sales license issued under ORS 471.190

(e) A brewery-public house license issued under ORS 471.200

(f) A brewery license issued under ORS 471.221

(g) A winery license issued under ORS 471.223

(h) A grower sales privilege license issued under ORS 471.227

(i) A direct shipper permit issued under ORS 471.282; and

(j) Any other authorization, as determined by Commission rule

(5) “Final consumer” means an individual who takes possession of alcoholic beverages at a delivery address for personal or social use, and not for resale. The terms “resident of Oregon” and “resident of this state” have a similar

meaning as “final consumer.” The terms “final consumer,” “resident of Oregon,” and “resident of this state” may be used interchangeably.

~~(3)~~ **(6)** “Month” means a calendar month.

(7) “Third-party delivery facilitator” means an individual, person, or company that:

(a) Delivers, or holds itself out as willing to deliver, alcoholic beverages from an eligible business to a final consumer; or

(b) Facilitates, or holds itself out as willing to facilitate, the sale and delivery of alcoholic beverages by an eligible business to a final consumer.

(c) Despite subsections (7)(a)(b) of this rule, a “third-party delivery facilitator” is not a motor carrier as defined in 49 U.S.C. 13102, a freight forwarder as defined in 49 U.S.C. 13102, or an air carrier as defined in 49 U.S.C. 40102.

845-006-0392

Requirements for Delivery of **Manufacturer-Sealed and Securely-Covered Containers of Wine and Cider to a Resident of Oregon Final Consumer**

~~(1) A person may sell for delivery wine or cider to a resident of Oregon only if the person holds:~~

~~(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or~~

~~(b) An off-premises sales, full on-premises sales, or limited on-premises sales license issued by the Commission; or~~

~~(c) A full on-premises sales or limited on-premises sales license and is operating under a temporary use of the annual license or a catering pre-approval as per OAR 845-005-0405 and OAR 845-005-0410.~~

~~(2) A person described in subsection (1) of this rule must retain a record for a minimum of eighteen months of the amount of wine or cider contained in each order sold for delivery to the resident.~~

~~(3) A person described in subsection (1) of this rule may deliver or cause delivery of wine or cider as follows:~~

~~(a) Only in containers not exceeding two gallons.~~

~~(b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;~~

~~(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the wine or cider;~~

~~(d) The wine or cider is in a container 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;~~

~~(e) Only pursuant to an order for wine or cider that is received by the permit holder or licensee and paid for by the resident prior to removal from the licensed or permitted premises for delivery to the resident;~~

~~(f) To a home or business where the home or business has a permanent street address;
or~~

~~(g) To a location that is within 100 feet of the boundary of the licensed premises.~~

~~(h) If the container is a securely covered container it must be an empty container supplied by the resident. The permit holder or licensee may sell an empty container to the resident prior to or at the time of filling the container.~~

~~(4) If the permit holder or licensee delivers via a for-hire carrier, the permit holder and or licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and must comply with all other requirements of this rule applicable to the permit holder or licensee. When a permit holder or licensee uses a for-hire carrier to deliver wine or cider to a resident of Oregon, the permit holder or licensee may be held responsible for the for-hire carrier's failure to follow the requirements of OAR 845-005-0424.~~

~~(5) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with all other requirements of this rule applicable to the permit holder or licensee, the person making the delivery of the wine or cider must:~~

~~(a) Be age 18 or over;~~

~~(b) Verify that the person receiving the alcohol is at least 21 years of age;~~

~~(c) Determine that the person receiving the alcohol is not visibly intoxicated; and~~

~~(d) Collect information that must be retained by the permit holder or licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information retained must include:~~

~~(A) The date and time the alcohol was delivered to the resident;~~

~~(B) The name or information that 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.~~

~~(6) Delivery.~~

~~(a) A permit holder, in addition to complying with all other requirements of this rule applicable to the permit holder, must:~~

~~(A) Ensure that the wine or cider is delivered between the hours of 7:00 am and 10:00 pm.~~

~~(B) Deliver not more than a total of two cases of cider containing not more than nine liters per case per day to a resident of Oregon and may not deliver more than a total of two cases of cider containing not more than nine liters per case per month to the same resident.~~

~~(C) Deliver not more than a total of five cases of wine containing not more than nine liters per case per day to a resident of Oregon and may not deliver more than a total of five cases of wine containing not more than nine liters per case per month to the same resident.~~

~~(b) An off-premises sales, full on-premises sales and limited on-premises sales licensee, (including those operating with a temporary use of annual license or catering pre-approval), in addition to complying with all other requirements of this rule applicable to the licensee, must:~~

~~(A) Ensure that the wine or cider is delivered between the hours of 7:00 am and 10:00 pm. Despite this requirement, an off-premises sales licensee must ensure the wine or cider is delivered between the hours of 6:00 am to 10:00 pm.~~

~~(B) Deliver not more than a total of two cases of cider containing not more than nine liters per case per day to a resident of Oregon.~~

~~(C) Deliver not more than a total of five cases of wine containing not more than nine liters per case per day to a resident of Oregon.~~

~~(7) A permit holder must:~~

~~(a) Allow the Commission to audit the permit holder's records of wine and cider delivered to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;~~

~~(b) Report to the Commission all deliveries of wine or cider made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and~~

~~(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and delivered directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and delivered pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax to the Commission.~~

~~(8) If the permit holder is located in a state outside of Oregon, it 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.~~

~~(9) A violation of section (7) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for delivering wine or cider without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon license held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.244.~~

(1) Definitions. For this rule:

(a) “Manufacturer-sealed container of wine or cider” means a container holding wine or cider that:

(A) Was sealed upon removal from federal bond; and

(B) Has a label that complies with Commission regulations, including federal labeling regulations, prior to being sold in Oregon.

(b) “Securely covered container of wine or cider” means:

(A) An empty container with a capacity of no more than two gallons filled by a Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, Brewery-Public House, Brewery, Winery, Grower Sales Privilege, or Temporary Sales licensee with wine or cider that was removed from federal bond prior to filling the container and then securely covered so that liquid doesn’t leak from it; and

(B) The empty container was supplied by a final consumer to the licensee, or sold by the licensee to the final consumer, prior to or at the time of filling with wine or cider.

(2) An eligible business may sell for delivery directly to a final consumer:

(a) Manufactured-sealed containers of wine or cider only if the person is a Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, Brewery-Public House, Brewery, Winery, Grower Sales Privilege, Temporary Sales licensee or a Direct Shipper permittee

(b) Securely covered containers of wine or cider only if the person is a Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, Brewery-Public House, Brewery, Winery, Grower Sales Privilege, or Temporary Sales licensee.

(3) An eligible business may deliver or cause the delivery of wine and cider directly to a final consumer only as allowed by this rule.

(4) To deliver, or cause the delivery of, wine or cider directly to a final consumer, an eligible business, in addition to complying with all other requirements of this rule, must use:

(a) A third-party delivery facilitator permittee; or

(b) An individual who is an employee or agent under the direct control of the eligible business.

(5) When an eligible business uses a third-party delivery facilitator permittee to deliver wine or cider on behalf of the eligible business:

(a) The eligible business must collect information that must be retained by the eligible business for a minimum of three years from the date of transferring the wine or cider to the physical possession of the third-party delivery facilitator permittee or any delivery person used by the third-party delivery facilitator permittee. The information retained must include:

(A) The name of the third-party delivery facilitator permittee

(B) The date and time the wine or cider was transferred to the third-party delivery facilitator permittee; and

(C) The name and delivery address of the final consumer receiving the wine or cider.

(b) After transferring the wine or cider to the physical possession of the third-party delivery facilitator permittee, or any delivery person used by the third-party delivery facilitator permittee, the eligible business is not responsible for any failure of the third-party delivery facilitator permittee, or any delivery person used by the third-party delivery facilitator permittee, to follow regulations or rules specific to third-party delivery facilitator permittees.

(6) When an eligible business uses an individual who is an employee or agent under its direct control to deliver wine or cider directly to a final consumer, in

addition to complying with all other requirements of this rule, the eligible business must:

(a) Use an individual who is at least 18 years of age and has a valid driver license or other state-issued identification

(b) Use an individual who has a valid Commission-issued service permit or has completed a training program within the last five years that includes training on at least:

(A) Forms of identification required by ORS 471.130 and Commission rule and methods for identifying, inspecting, accepting or rejecting identification

(B) Signs of visible intoxication and methods for recognizing these signs and for refusing to deliver alcoholic beverages to a final consumer; and

(C) Rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.

(c) Collect information that must be retained by the eligible business for a minimum of three years from the date of delivery of the wine or cider to the final consumer. The information retained must include:

(A) The date and time the wine or cider was delivered to the final consumer

(B) The amount of wine or cider contained in each delivery to the final consumer

(C) The name, or information that can be used to determine the name, of the individual delivering the wine or cider to the final consumer; and

(D) The name and delivery address of the final consumer receiving the wine or cider.

(7) An eligible business, in addition to complying with all other requirements of this rule, may deliver, or cause the delivery of, wine or cider direct to a final consumer only:

(a) If the wine or cider is transferred to the physical possession of a final consumer at a delivery address

(b) In a container not exceeding two gallons

(c) To a final consumer who is at least 21 years of age, whose identification matches the identification provided upon creation of the delivery order, and only if the wine or cider is for personal use and not for the purpose of resale

(d) To an individual who is not visibly intoxicated at the time the individual takes physical possession of the wine or cider

(e) When the wine or cider is in a container 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

(f) Pursuant to an order and payment for wine or cider that are received by the eligible business prior to removal from the eligible business for delivery to the final consumer

(g) To a delivery address or to a location that is within 100 feet of the boundary of the eligible business

(h) When the time of transferring the wine or cider to the physical possession of a final consumer at a delivery address is between the hours of 7:00 am and 10:00 pm. Despite this requirement, an off-premises sales licensee may transfer the wine or cider to the physical possession of a final consumer at a delivery address between the hours of 6:00 am and 10:00 pm.

(i) When the eligible business holds a license or permit issued under ORS 471.200, 471.221, 471.223, 471.227, or 471.282, it must not:

(A) Deliver or cause the delivery of more than a total of two cases of cider containing not more than nine liters per case per day to a final consumer and may not deliver or cause the delivery of more than a total of two cases of cider containing not more than nine liters per case per month to the same final consumer; or

(B) Deliver or cause the delivery of more than a total of five cases of wine containing not more than nine liters per case per day to a final consumer and may not deliver or cause the delivery of more than a total of five cases of wine containing not more than nine liters per case per month to the same final consumer.

(j) When the eligible business holds a license issued under ORS 471.175, 471.178, 471.186, or 471.190, it must not:

(A) Deliver or cause the delivery of more than a total of two cases of cider containing not more than nine liters per case per day to a final consumer; or

(B) Deliver or cause the delivery of more than a total of five cases of wine containing not more than nine liters per case per day to a final consumer.

(8) An eligible business who holds a direct shipper permit issued under ORS 471.282 must:

(a) Allow the Commission to audit the permit holder's records of wine and cider delivered to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice

(b) Report to the Commission all deliveries of wine or cider made to a final consumer under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and delivered directly to a final consumer under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and delivered pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax to the Commission.

(9) An eligible business who holds a direct shipper permit issued under ORS 471.282 and who is located in a state outside of Oregon, 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.

(10) A violation of section (8) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation.

845-006-0396

Requirements for Delivery of **Manufacturer-Sealed and Securely-Covered Containers of** Malt Beverages to a *Resident of Oregon* **Final Consumer**

(1) A person may sell for delivery malt beverages to a resident of Oregon only if the person holds:

(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or

(b) An off-premises sales, full on-premises sales, or limited on-premises sales license; or

(c) A full on-premises sales or limited on-premises sales license and is operating under a temporary use of the annual license or a catering pre-approval as per OAR 845-005-0405 and OAR 845-005-0410.

(2) A person described in subsection (1) of this rule may deliver or cause delivery of malt beverages as follows:

(a) Only in containers not exceeding two gallons.

(b) Only to a resident of Oregon who is at least 21 years of age and only if the malt beverage is for personal use and not for the purpose of resale;

- ~~(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;~~
- ~~(d) The malt beverage must be in a package that 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;~~
- ~~(e) Only pursuant to an order for malt beverage that is received by the licensee or permittee and paid for by the resident prior to removal from the licensed or permitted premises for delivery to the resident;~~
- ~~(f) To a home or business where the home or business has a permanent street address;~~
~~or~~
- ~~(g) To a location that is within 100 feet of the boundary of the licensed premises.~~
- ~~(h) If the container is a securely covered container it must be an empty container supplied by the resident. The permit holder or licensee may sell an empty container to the resident prior to or at the time of filling the container.~~
- ~~(3) A permit holder or licensee must retain a record for a minimum of eighteen months of the amount of malt beverage contained in the shipment to the resident.~~
- ~~(4) If the permit holder or licensee delivers via a for-hire carrier, the permit holder and licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and must comply with all other requirements of this rule applicable to the permit holder or licensee. When a permit holder or licensee uses a for-hire carrier to deliver malt beverages to a resident of Oregon, the permit holder or licensee may be held responsible for the for-hire carrier's failure to follow the requirements of OAR 845-005-0424.~~
- ~~(5) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with all other requirements of this rule applicable to the permit holder or licensee, the person delivering the malt beverage must:~~
- ~~(a) Be age 18 or over;~~
- ~~(b) Verify that the person receiving the alcohol is at least 21 years of age;~~
- ~~(c) Determine that the person receiving the alcohol is not visibly intoxicated; and~~
- ~~(d) Collect information that must be retained by the licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information retained 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.~~
- ~~(6) Delivery. A permit holder and an off-premises sales, full on-premises sales, limited on-premises sales, (including those operating with a temporary use of annual license or catering pre-approval), in addition to complying with all other requirements of this rule applicable to the permit holder or licensee, must:~~
- ~~(a) Ensure that the malt beverages are delivered between the hours of 7:00 am and 10:00 pm. Despite this requirement, an off-premises sales licensee must ensure the malt beverages are delivered between the hours of 6:00 am to 10:00 pm.~~
- ~~(b) If an off-premises sales, full on-premises sales, limited on-premises sales, (including those operating with a temporary use of annual license or catering pre-approval), deliver~~

~~not more than a total of two cases of malt beverages containing not more than nine liters per case per day to a resident of Oregon.~~

~~(c) If a permit holder, deliver not more than a total of two cases of malt beverages containing not more than nine liters per case per day to a resident of Oregon and may not deliver more than a total of two cases of malt beverage containing not more than nine liters per case per month to the same resident.~~

~~(7) A permit holder must:~~

~~(a) Allow the Commission to audit the permit holder's records of malt beverage deliveries to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;~~

~~(b) Report to the Commission all deliveries of malt beverage made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and~~

~~(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on malt beverage sold and delivered directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all malt beverage sold and delivered pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax to the Commission.~~

~~(8) If the permit holder is located in a state outside of Oregon, it 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.~~

~~(9) A violation of section (7) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for delivering malt beverage without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon license held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.244.~~

(1) Definitions. For this rule:

(a) "Manufacturer-sealed container of malt beverages" means a container holding malt beverages that:

(A) Was sealed upon removal from federal bond; and

(B) Has a label that complies with Commission regulations, including federal labeling regulations, prior to being sold in Oregon.

(b) "Securely covered container of malt beverages" means:

(A) An empty container with a capacity of no more than two gallons filled by a Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, Brewery-Public House, Brewery, Winery, Grower Sales Privilege, or Temporary Sales licensee with malt beverages, that was removed from

federal bond prior to filling the container, and then securely covered so that liquid doesn't leak from it; and

(B) The empty container was supplied by a final consumer to the licensee, or sold by the licensee to the final consumer, prior to or at the time of filling with wine or cider.

(2) An eligible business may sell for delivery directly to a final consumer:

(a) Manufactured-sealed containers of malt beverages only if the person is a Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, Brewery-Public House, Brewery, Winery, Grower Sales Privilege, Temporary Sales licensee or a Direct Shipper permittee

(b) Securely covered containers of malt beverages only if the person is a Full On-Premises Sales, Limited On-Premises Sales, Off-Premises Sales, Brewery-Public House, Brewery, Winery, Grower Sales Privilege, or Temporary Sales licensee.

(3) An eligible business may deliver or cause the delivery of malt beverages directly to a final consumer only as allowed by this rule.

(4) To deliver, or cause the delivery of, malt beverages directly to a final consumer, an eligible business, in addition to complying with all other requirements of this rule, must use:

(a) A third-party delivery facilitator permittee; or

(b) An individual who is an employee or agent under the direct control of the eligible business.

(5) When an eligible business uses a third-party delivery facilitator permittee to deliver malt beverages on behalf of the eligible business:

(a) The eligible business must collect information that must be retained by the eligible business for a minimum of three years from the date of transferring the malt beverages to the physical possession of the third-party delivery facilitator permittee or any delivery person used by the third-party delivery facilitator permittee. The information retained must include:

(A) The name of the third-party delivery facilitator permittee

(B) The date and time the malt beverages were transferred to the third-party delivery facilitator permittee; and

(C) The name and delivery address of the final consumer receiving the malt beverages.

(b) After transferring the malt beverages to the physical possession of the third-party delivery facilitator permittee, or any delivery person used by the third-party delivery facilitator permittee, the eligible business is not responsible for any failure of the third-party delivery facilitator permittee, or any delivery person used by the third-party delivery facilitator permittee, to follow regulations or rules specific to third-party delivery facilitator permittees.

(6) When an eligible business uses an individual who is an employee or agent under its direct control to deliver malt beverages directly to a final consumer, in addition to complying with all other requirements of this rule, the eligible business must:

(a) Use an individual who is at least 18 years of age and has a valid driver license or other state-issued identification

(b) Use an individual who has a valid Commission-issued service permit or has completed a training program within the last five years that includes training on at least:

(A) Forms of identification required by ORS 471.130 and Commission rule and methods for identifying, inspecting, accepting or rejecting identification

(B) Signs of visible intoxication and methods for recognizing these signs and for refusing to deliver alcoholic beverages to a final consumer; and

(C) Rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.

(c) Collect information that must be retained by the eligible business for a minimum of three years from the date of delivery of the malt beverages to the final consumer. The information retained must include:

(A) The date and time the malt beverages were delivered to the final consumer

(B) The amount of malt beverages contained in each delivery to the final consumer

(C) The name, or information that can be used to determine the name, of the individual delivering the malt beverages to the final consumer; and

(D) The name and delivery address of the final consumer receiving the malt beverages.

(7) An eligible business, in addition to complying with all other requirements of this rule, may deliver, or cause the delivery of, malt beverages direct to final consumer only:

(a) If the malt beverages are transferred to the physical possession of a final consumer at a delivery address

(b) In a container not exceeding two gallons

(c) To a final consumer who is at least 21 years of age, whose identification matches the identification provided upon creation of the order, and only if the malt beverages are for personal use and not for the purpose of resale

(d) To a final consumer who is not visibly intoxicated at the time the final consumer takes physical possession of the malt beverages

(e) When the malt beverages is in a container 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

(f) Pursuant to an order and payment for malt beverages that are received by the eligible business prior to removal from the eligible business for delivery to the final consumer

(g) To a delivery address or to a location that is within 100 feet of the boundary of the eligible business

(h) When the time of transferring the malt beverages to the physical possession of a final consumer at a delivery address is between the hours of 7:00 am and 10:00 pm. Despite this requirement, an off-premises sales licensee may transfer the malt beverages to the physical possession of a final consumer at a delivery address between the hours of 6:00 am and 10:00 pm.

(i) When the eligible business holds a license or permit issued under ORS 471.200, 471.221, 471.223, 471.227, or 471.282, it must not deliver or cause the delivery of more than two cases of malt beverages containing not more than nine liters per case per day to a final consumer and may not deliver more than a total of two cases of malt beverage containing not more than nine liters per case per month to the same final consumer

(j) When the eligible business holds a license issued under ORS 471.175, 471.178, 471.186, or 471.190, it must not deliver more than a total of two cases of malt beverages containing not more than nine liters per case per day to a final consumer.

(8) An eligible business who holds a direct shipper permit issued under ORS 471.282 must:

(a) Allow the Commission to audit the permit holder’s records of wine and cider delivered to Oregon residents upon request and shall make those records

available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(b) Report to the Commission all deliveries of wine or cider made to a final consumer under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and delivered directly to a final consumer under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and delivered pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax to the Commission.

(9) An eligible business who holds a direct shipper permit issued under ORS 471.282 and who is located in a state outside of Oregon, 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.

(10) A violation of section (8) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation.

845-006-0399

Sale of Mixed Drinks and Single Servings of Wine by Full On-Premises Sales Licenses for Off-Premises Consumption and Delivery to a Final Consumer

(1) Definitions. For the purposes of this rule:

(a) "Manufacturer-sealed container" means a container holding an alcoholic beverage that was sealed upon removal from federal bond.

(b) "Mixed drink" means a beverage that is combined on a licensed premises and sold in a sealed container for consumption off of the licensed premises and is:

(A) A drink where the principal alcoholic liquor is distilled liquor and one or more mixers, and contains no more than three ounces of distilled liquor; or

(B) A drink where the principal alcoholic liquor is wine combined with one or more mixers or distilled liquor that contains no more than six ounces of liquid.

(c) "Mixer" means malt beverages, wine, cider, or nonalcoholic ingredients.

~~(d) "Resident of Oregon" means a person who is in Oregon, even if temporarily.~~

~~(e)~~ **(d)** "Sealed container" means a container with a secure cap or lid that completely covers the opening for the container and a seal designed to make it evident when the seal has been removed or broken. The seal is affixed to the container by the licensee after the container is filled pursuant to a consumer order for the mixed drink.

~~(f)~~ **(e)** "Serving of wine" means a container holding six ounces or less of wine with no mixer and no distilled liquor.

~~(g) "Third party platform" means a website, mobile application or other electronic service that facilitates the order of food and beverages for sale to a consumer by a licensee and that provides one or more the following services:~~

~~(A) Delivering, or arranging for the delivery of, the order to the consumer; or~~

~~(B) Arranging for the pickup of the order by the consumer from the licensee.~~

(2) A Full On-Premises Sales licensee may sell or provide **for off-premises consumption and delivery to a final consumer** no more than a total of either two containers of a mixed drink, two servings of wine, or one mixed drink and one serving of wine per meal as defined in OAR 845-006-0459.

(3) A Full On-Premises Sales licensee that sells mixed drinks or servings of wine to ~~consumers~~ **a final consumer for off-premises consumption and delivery** must prominently post a notice provided by the Commission relating to Oregon's open container laws. The notice must be prominently displayed on the premises and present in whatever manner is necessary to ensure that the consumer purchasing, or a delivery person transporting, such beverages is given notice of this warning. Violation of this section is a Category IV violation.

(4) Mixed drinks and servings of wine may be delivered, **or caused to be delivered,** to a ~~resident of Oregon~~ **final consumer** by a Full On-Premises Sales licensee only as follows:

(a) To a ~~resident of Oregon~~ **final consumer** who is at least 21 years of age and only if the mixed drink or serving of wine is for personal use and not for the purpose of resale

(b) To a ~~resident of Oregon~~ **final consumer** who is not visibly intoxicated at the time of receiving the mixed drink or serving of wine

(c) The mixed drink or serving of wine is in a container or packaging that is conspicuously labeled with the words "Contains alcohol: deliver only to a person age 21 years or older." This message may be directly on the container, on the packaging, or accompanying the container. Examples that meet this labeling requirement include but are not limited to a card, adhesive label or notice, or other medium approved by the Commission

(d) Pursuant to an order for a mixed drink or serving of wine that is received by the licensee and paid for by the ~~resident~~ **final consumer** prior to removal from the licensed premises for delivery to the ~~resident~~ **final consumer**

(e) The mixed drink or serving of wine is delivered between the hours of 7:00 am and 10:00 pm; **and**

~~(f) To a home or business where the home or business has a permanent street address; or to a location that is within 100 feet of the boundary of the licensed premises.~~

(f) To a delivery address or to a location that is within 100 feet of the boundary of the eligible business

~~(5) Licensees may use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 to deliver mixed drinks and servings of wine to residents of Oregon. When a licensee uses a for-hire carrier to deliver a mixed drink or serving of wine to a resident of Oregon, the licensee may be held responsible for the for-hire carrier's failure to follow the requirements of OAR 845-005-0424. If the licensee does not use a for-hire carrier, in addition to complying with all other requirements of this rule applicable to the licensee, the person making the delivery of the mixed drink or serving of wine must:~~

~~(a) Be age 18 or over;~~

~~(b) Verify that the person receiving the mixed drink or serving of wine is at least 21 years of age;~~

~~(c) Determine that the person receiving the mixed drink or serving of wine is not visibly intoxicated; and~~

~~(d) Collect information that must be retained by the licensee for a minimum of 120 days from the date of delivery of the mixed drink or serving of wine to the resident. The information retained must include:~~

~~(A) The date and time the mixed drink or serving of wine was delivered to the resident;~~

~~(B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and~~

~~(C) The name and delivery address of the person receiving the alcohol.~~

(5) To deliver mixed drinks and servings of wine directly to a final consumer, a Full On Premises Sales licensee, in addition to complying with all other requirements of this rule, must use:

(a) A third-party delivery facilitator permittee; or

(b) An individual who is an employee or agent under the direct control of the licensee.

(6) When a licensee uses an individual who is an employee or agent under its direct control to deliver mixed drinks and servings of wine directly to a final consumer, the licensee is responsible for:

(a) Using an individual who is at least 18 years of age and has a valid driver license or other state-issued identification;

(b) Using an individual who has a valid Commission-issued service permit or has completed a training program within the last five years that includes training on at least:

(A) Forms of identification required by ORS 471.130 and Commission rule and methods for identifying, inspecting, accepting or rejecting identification

(B) Signs of visible intoxication and methods for recognizing these signs and for refusing to deliver alcoholic beverages to a final consumer; and

(C) Rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.

(c) Collecting information that must be retained by the eligible business for a minimum of three years from the date of delivery of the mixed drink or serving of wine to the final consumer. The information retained must include:

(A) The date and time the mixed drinks and servings of wine were delivered to the final consumer

(B) The amount of mixed drinks and servings of wine contained in each delivery to the final consumer

(C) The name, or information that can be used to determine the name, of the individual delivering the mixed drinks and servings of wine to the final consumer; and

(D) The name and delivery address of the final consumer receiving the mixed drinks and servings of wine.

(6) A Full On-Premises Sales licensee **who does not receive orders and payment for mixed drinks and servings of wine directly from a final consumer** may receive orders and payment for mixed drinks and servings of wine **only** through a *third-party platform*. ~~The licensee may use a third-party platform to deliver mixed drinks or servings of wine sold to a resident of Oregon only if the third-party platform is approved as a for-hire carrier as defined in OAR 845-005-0424~~ **third-party delivery facilitator permittee**.

(7) A Full On-Premises Sales licensee may not sell manufacturer-sealed containers of distilled liquor of any size. Violation of this subsection is a Category I violation.

(8) This rule does not apply to sales of manufacturer-sealed containers or securely covered containers of malt beverages, wine, or cider for off-premises consumption.

(9) Unless otherwise specified, violation of this rule is a Category III violation

(10) A Full On-Premises Sales licensee may deliver, or cause the delivery of, mixed drinks and servings of wine only directly to a final consumer and only as allowed by Commission rule. Provided this requirement is met, when a Full On-Premises Sales licensee uses a third-party delivery facilitator permittee to deliver mixed drinks and servings of wine on behalf of the Full On-Premises Sales licensee, and after the eligible business has transferred the mixed drinks and servings of wine to the physical possession of the third-party delivery facilitator permittee, or any delivery person used by the third-party delivery facilitator permittee, the Full On-Premises Sales licensee is not responsible for any failure of the third-party delivery facilitator permittee, or any delivery person used by the third-party delivery facilitator permittee, to follow regulations or rules specific to third-party delivery facilitator permittees.

845-006-0500

Suspensions and Civil Penalties

(1) The Commission cancels or suspends a license under its authority in:

(a) ORS 471.315 for violations of any provision of ORS Chapter 471 or any administrative rule (chapter 845) the Commission adopts pursuant to these chapters;

(b) ORS 459.992(4) for violations of any provision of 459A.705, 459A.710 or 459A.720 or any administrative rule the Commission adopts pursuant to these statutes;

(c) ORS 471.315(1)(d) for public interest or necessity reasons.

(2) The Commission cancels or suspends a service permit under its authority in ORS 471.385 for violations of Chapter 471 or any administrative rule (chapter 845) the Commission adopts pursuant to these chapters.

(3) The Commission cancels or suspends an alcohol server education provider certificate under its authority in ORS 471.547.

(4) ORS 471.322 and 471.327 allow the Commission to impose a civil penalty instead of suspension. In most cases, the Commission allows the licensee or permittee the option of serving the suspension or paying the civil penalty.

(5) ORS 471.315 allows the Commission to impose either a suspension or a civil penalty or both. The Commission imposes mandatory suspensions when necessary to ensure future licensee, permittee, or patron compliance.

(6) ORS 471.322 and 471.327 limit the amount of a civil penalty the Commission may impose. To stay within these limits, the Commission usually computes civil penalties by multiplying the number of days in the suspension by \$165 for retail, manufacturer, and wholesale licensees, and by \$25 for service permittees, unless computed differently in section (7) of this rule.

(7) The Commission uses the following violation categories:

(a) I — Violations that make licensee ineligible for a license;

(b) II — Violations that create an immediate threat to public health or safety;

(c) II(a) — Violations for unlawful drug activity;

(d) II(b) – Violations for the sale of alcohol to a minor or failure to check identification. For the first offense in this category, the Commission computes the civil penalty by multiplying the number of days in the suspension by \$250 for retail, manufacturer, and wholesale licensees, and by \$35 for service permittees;

(e) III — Violations that create a potential threat to public health or safety OR violations of the tied house or financial assistance prohibitions;

(f) III(a) — Violations for the sale of alcohol to a minor or failure to check identification when the retail licensee qualifies under the Responsible Vendor Program;

(g) IV — Violations that create a climate conducive to abuses associated with the sale or service of alcoholic beverages;

(h) V — Violations inconsistent with the orderly regulation of the sale or service of alcoholic beverages.

(8) Violation sanctions

(a) The Commission may sanction a licensee or permittee in accordance with the guidelines set forth in Exhibit 1. Exhibit 1 also gives the categories for the most common violations.

(b) Exhibit 1 lists the proposed sanctions for single or multiple violations that occur within a two year period for each category described in subsection (7) of this rule. The Commission may allege multiple violations in a single notice or may count violations alleged in notices issued within the previous two year period toward the total number of violations. In calculating the total number of violations, the Commission may consider a proposed violation for which the Commission has not yet issued a final order.

(c) The proposed sanctions in Exhibit 1 are guidelines. If the Commission finds one or more mitigating or aggravating circumstances, it may assess a lesser or greater sanction, up to and including cancellation. The Commission may decrease or increase a sanction to prevent inequity or to take account of particular circumstances in the case.

(d) Mitigating circumstances include, but are not limited to:

(A) Making a good faith effort to prevent a violation.

(B) Extraordinary cooperation in the violation investigation demonstrating the licensee or permittee accepts responsibility.

(e) Aggravating circumstances include, but are not limited to:

(A) Receiving a prior warning about one or more compliance problems.

(B) Repeated failure to comply with laws.

(C) Failure to use age verification equipment purchased as an offset to a previous penalty.

(D) Efforts by licensee or permittee to conceal a violation.

(E) Intentionally committing a violation.

(F) A violation involving more than one patron or employee.

(G) A violation involving a juvenile.

(H) A violation resulting in injury or death.

(I) Three or more violations within a two-year-period, regardless of the category, where the number of the proposed or final violations indicate a disregard for the law or failure to control the premises.

(9) A licensee may not avoid the sanction for a violation or the application of the provision for successive violations by merely adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar.

[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.]

845-009-0200

Uniform Standards for Minor Decoy Operations

(1) Purpose. ORS 471.346 directs the Oregon Liquor and Cannabis Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees, **permittees**, and agents ~~operating stores on behalf of the Commission under 471.750~~ **appointed by the commission, third-party facilitators and persons delivering alcoholic beverages to final consumers in this state** for violations of the laws of this state prohibiting sales **and deliveries** of alcoholic beverages. It is the Oregon Liquor and Cannabis Commission's intention that decoy operations are to be an impartial test of a licensee or agent's ability and willingness to obey laws on preventing sale or service of alcoholic beverages to minors.

(2) Uniform standards for minors used in minor decoy operations:

(a) The minor must be under 21 years of age; and

(b) The minor may not use false identification; and

(c) The minor must look under the age of 26 years; and

(d) The minor may not lie about their age.

(3) Uniform standards for operations **investigating sales by licensees occurring on licensed premises and in-store sales by agents appointed by the commission**. In cities with populations of 20,000 or more, minor decoy operations must be conducted on either a random or targeted basis.

(a) "Random" decoy operations. Selection of the agent(s) or licensee(s) to be visited will be done using simple random sampling which ensures to the greatest extent possible that each licensee or agent has an equal chance of being selected **subject to a minor decoy operation**. The simple random sampling may be performed using a variety of generally accepted simple random sampling tools, such as a random number table, a random number generator, or other method.

(b) "Targeted" minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance problem with the specific licensee or agent that is the target of the operation.

(4) Uniform standards for coordination with law enforcement agencies. The Oregon Liquor and Cannabis Commission will coordinate with law enforcement agencies to ensure, to the greatest extent possible, that:

(a) Law enforcement agencies are informed of the Commission's uniform standards for minor decoy operations; and

(b) Law enforcement agencies provide the Commission with copies of their minor decoy policies;

(c) In order for the Commission to process violation cases in a timely manner, law enforcement agencies will be encouraged to provide the Commission with the results of their minor decoy operation(s).

(5) DEFINITIONS: Documented compliance problem. For purposes of this rule, "documented compliance problem" means:

(a) OLCC or Law Enforcement has received one or more documented complaints about an agent, licensee or license applicant alleging one or more of the following occurred at the retail sales agency or on the licensed premises:

(A) Failed to check, or failed to properly check identification;

(B) Allowed minors in prohibited areas;

(C) Allowed minors to consume alcohol;

(D) Sold alcohol to minors; or

(b) The agent, licensee or license applicant has received one or more citations, or administrative Notice of Warning or Notice of Violation tickets for one or more of the following:

(A) Failed to check, or failed to properly check identification;

(B) Allowed minors in prohibited areas;

(C) Allowed minors to consume alcohol;

(D) Sold alcohol to minors.

(6) Uniform standards for licensees. A licensee using a person under the age of 21 years for the purpose of investigating possible violations by employees of the licensee for sale of alcoholic beverages to a person or persons who are under the age of 21 years must:

(a) Comply with the uniform standards for minors used in minor decoy operations; and

(b) Notify the Director of OLCC's Regulatory Program and the Chief or Sheriff of their local law enforcement agency of the minor decoy's name, date of birth, provide a current photograph of the minor decoy, and the date(s) and location(s) of the minor decoy operation(s) at least 24 hours prior to the use of the minor decoy.

(7) Licensees, service permittees, licensee's employee(s), agents, ~~and~~ agent's employee(s), **third-party delivery facilitators, or persons delivering alcoholic beverages to final consumers** must immediately return identification presented by the minor decoy upon request of law enforcement or an OLCC representative.