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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845
OREGON LIQUOR AND CANNABIS COMMISSION

FILED

04/24/2024 12:46 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Permanent rules to implement alcohol delivery training and permitting requirements.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2024 12:00 PM

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

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Filed By:
Nicole Blosse
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/15/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Nicole Blosse

REMOTE HEARING DETAILS

PHONE NUMBER: 323-553-3576

CONFERENCE ID: 631491426

SPECIAL INSTRUCTIONS:

Please visit https://www.oregon.gov/olcc/Pages/public_meetings.aspx for meeting link and call-in information.

NEED FOR THE RULE(S)

During the 2023 Legislative Session, House Bill 3308 was passed by the legislature and required changes in the Oregon Liquor and Cannabis Commission's administrative rules regarding home delivery of alcoholic beverages. Specifically, these rules are needed to permanently enact the temporary rules created to implement the permitting and training of Third-Party Delivery Facilitators. In order to fulfill the need to adopt rules implementing this legislation while seeking additional time for stakeholder outreach and industry input, temporary rules were filed on December 18, 2023. The temporary rules became effective January 2, 2024 through June 28, 2024. The creation of these permanent rules involved additional industry, public health, public safety, and advocacy stakeholder outreach and input in addition to the outreach conducted to implement the temporary rules. These permanent rules will enforce the requirement for training of alcohol delivery drivers and safe third-party delivery of alcohol in Oregon.

Below is a summary of HB 3308 and a summary of the pertinent statutory amendments and the rules that were impacted.

House Bill 3308

Authorizes Oregon Liquor and Cannabis Commission (OLCC) to issue delivery permits to qualified applicants which allow the third-party delivery alcoholic beverages to final consumers. Requires third-party delivery facilitators to hold permits issued by commission in order to facilitate sales and deliveries of alcoholic beverages. Imposes requirements for delivery persons and third-party delivery facilitators, including training requirements. Specifies liability of third-party delivery facilitators and eligible business. Prohibits person or entity that does not hold third-party delivery facilitator permit from engaging in activity that requires third-party delivery facilitator permit. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both. Authorizes commission to impose civil penalty against third-party delivery facilitators for violation committed by facilitator or delivery person on behalf of facilitator. Requires commission to develop uniform standards for minor decoy operations to investigate deliveries of alcoholic beverages to final consumers for violations of laws prohibiting deliveries to minors. Expands categories of persons prohibited from selling, giving or otherwise making available alcoholic liquor to person under 21 years of age. Rules affected: OAR 845-005-0401 (repealed), 845-005-0416, 845-005-0421, 845-005-0424, 845-005-0451, 845-006-0391, 845-006-0392, 845-006-0396, 845-009-0200.

HB 3308

1. Amended ORS 471.175 to include that a holder of a full on-premises sales license that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the holder is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
2. Amended ORS 471.178 to include that the holder of a limited on-premises sales license that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the holder is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
3. Amended ORS 471.186 to include that a holder of an off-premises sales license may use a contractor, an agent or employee of the holder, or may use a delivery person or a third-party delivery facilitator to make alcohol deliveries; and that the holder of an off-premises sales license that uses a third-party delivery facilitator to make deliveries on behalf of the holder is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
4. Amended ORS 471.190 to include that the holder of a temporary sales license that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the holder is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
5. Amended ORS 471.200 to include that the holder of a brewery-public house license that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the holder is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
6. Amended ORS 471.221 to include that a brewery licensee that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the licensee is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
7. Amended ORS 471.223 to include that the holder of a winery license that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the winery licensee is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.
8. Amended ORS 471.227 to include that a grower sales privilege licensee that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the licensee is not responsible for ensuring that the deliveries made by the third-

party delivery facilitator meet any requirements applicable to the deliveries.

9. Amended ORS 471.282 to include that the holder of a direct shipper permit that uses a third-party delivery facilitator to make alcohol deliveries on behalf of the permit holder is not responsible for ensuring that the deliveries made by the third-party delivery facilitator meet any requirements applicable to the deliveries.

10. Amended ORS 471.346 to include that OLCC's requirement to develop uniform standards for minor decoy operations apply to third-party delivery facilitators permittees; and that the requirements for random and targeted operations under this statute do not apply to investigations of deliveries of alcoholic beverages to final consumers.

11. Amended ORS 471.410 to include that mandatory minimum penalties apply to employees or agents of a person licensed or appointed under Chapter 471 who violates section 2 of 471.410 while acting on behalf of or at the direction of the licensee, and to delivery persons who deliver alcoholic beverages to a final consumer.

12. Amended ORS 471.430 to include that the prohibitions of this section do not apply to an eligible business as defined in section 2 of HB 3308 or a third-party delivery facilitator for the purposes of investigating possible violations by employees or agents of the licensee, eligible business, or third-party delivery facilitator of laws prohibiting sales or deliveries of alcoholic beverages to persons who are under 21 years of age.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OLCC rulemaking files (available upon request from the OLCC)

House Bill 3308 (Available from Legislative Counsel)

House Bill 4138 (Available from Legislative Counsel)

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

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

FISCAL AND ECONOMIC IMPACT:

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

(a) Alcohol Retail Licensees: The Commission expects the proposed rule amendments to have an impact upon licensees that choose to engage in the delivery of alcoholic beverages. The additional regulatory requirements imposed on third-party delivery facilitators may increase their administrative costs and potentially limit the pool of drivers available to deliver alcohol in the state of Oregon, which would impact alcohol sales in the state. However, the state imposing regulatory requirements may encourage additional licensees to agree to utilizing third-party delivery services to deliver alcohol now that there are monitoring and enforcement mechanisms in place that clearly delineate liability on any sales to minor or visibly intoxicated customers.

(b) Local Government: The Commission expects the proposed amendments to have a small impact upon local governments. There may be some impact due to coordination with local government necessary for the OLCC to conduct minor decoy operations safely and effectively. However, these rules will also have a positive impact on local government in promoting more public safety and public health, especially among minors and intoxicated people via monitoring and enforcement of alcohol deliveries throughout the state.

(c) State Agencies: The Commission expects the proposed amendments to have a minimal impact upon other state

agencies. There may be impact among agencies in the coordination of minor decoy operations and is at least in part dependent on compliance rates and violations issues by the Commission. The OLCC may experience an impact based upon how many companies register to partake in delivery and how many subsequent violations are found when conducting operations.

(d) The Public: The Commission anticipates the proposed rule amendments will have an impact on the public. For members of the public who are delivery drivers for third party delivery facilitators, there will likely be additional training requirements specific to the state of Oregon that will be imposed by these rules. For all members of the public, these rules will result in more public safety and improved public health via the monitoring and enforcement mechanisms created by these new rules, specifically with regard to minors and intoxicated persons' access to alcohol.

COST OF COMPLIANCE:

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

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Commission anticipates no new costs to comply with the proposed amendments for state agencies and local government. The OLCC may experience an impact based upon how many companies register to partake in delivery and how many subsequent violations are found when conducting operations.

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

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

Oregon has approximately 16,000 licensees in the state, and most will be subject to this rule. Licensees will only be subject to this rule if they utilize a third-party delivery facilitator or an employee or agent of their business to deliver alcohol under the privileges of their license. The OLCC plans to monitor this program to gain more insight into how many licensees are utilizing home delivery.

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

HB 3308 and HB 4138 both created the requirements of record keeping and training for Third Party Facilitators. The OLCC is responsible for reviewing these materials and conducting operations to enforce these requirements. These added layers will have an impact upon those companies and the OLCC itself. The OLCC plans to monitor this program to gain more insight into how many licensees are utilizing home delivery and the impact it has upon the agency.

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

HB 3308 and HB 4138 both created the requirements of record keeping and training for Third Party Facilitators. The OLCC is responsible for reviewing these materials and conducting operations to enforce these requirements. These added layers will have an impact upon those companies and the OLCC itself. The OLCC plans to monitor this program to gain more insight into how many licensees are utilizing home delivery and the impact it has upon the agency.

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

OLCC held three (3) Rules Advisory Committee meetings for this rulemaking package: October 11, 2023; March 15, 2024, and April 12, 2024, to assist in the development of these proposed changes and invited representatives of small businesses impacted by these rules, including licensees, retailers and permit holders.

RULES PROPOSED:

845-005-0401, 845-005-0416, 845-005-0421, 845-005-0424, 845-005-0451, 845-006-0391, 845-006-0392, 845-006-0396, 845-006-0399, 845-009-0200

REPEAL: 845-005-0401

RULE SUMMARY: To allow technology providers to advertise alcoholic beverage products to consumers and accept orders and payment for alcoholic beverages from consumers without a license issued under ORS chapter 471 provided the activity is done on the behalf of the Commission, licensees, permittees, distillery retail outlet agents, or retail sales agents.

CHANGES TO RULE:

~~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 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.

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

Statutes/Other Implemented: ORS 471.405(3), 471.406

AMEND: 845-005-0416

RULE SUMMARY: This rule defines the terms for the delivery of alcoholic beverages to individuals.

CHANGES TO RULE:

845-005-0416

Delivery of Alcoholic Beverages to Individuals - Definitions

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

~~(1) The term "ship" means to cause the delivery or transport of~~ 4 and 845-009-0200:

~~(1) The terms deliver, 'delivery address,' delivery person, 'eligible business,' final consumer,' and 'third-party delivery facilitator' have the meaning given those terms in ORS 471.521 as presently drafted or as malt beverages, wine or cider to be amended in the future.~~

~~(2) Pursuant to ORS 471.521(6), a for-hire carrier' is an individual, person, or company who meets the below criteria. As such, they are 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 not delivery persons' or third party delivery facilitators' and are not subject to the delivery person or third-party delivery facilitator requirements in Oregon law or in these rules. A for-hire carrier' is an individual, person, or company who:~~

~~(a) Is retained or used by a licensee to deliver or ship alcoholic beverages directly from a licensee, retail sales agent, distillery retail outlet agent or permit holder to a resident of Oregon or to a licensee of the Commission. The terms ship and deliver may be used interchangeably.~~

~~(2) "For-hire without the involvement of a third-party delivery facilitator or a delivery person; and~~

~~(b) Is 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" 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, as defined in 49 U.S.C. 40102.~~

~~(3) For the purposes of describing actions taken by for-hire carriers,' these rules use the terms "ship" and "deliver" interchangeably to mean "to cause the transport of malt beverages, wine, cider, or distilled spirits from a licensee, retail sales agent, distillery retail outlet agent or permit holder to a resident of Oregon or to a licensee of the Commission."~~

~~(34) "Month" means a calendar month.~~

~~(45) "Resident of Oregon" means an individual residing in Oregon, even if only temporarily.~~

~~(6) Notwithstanding section (1) above, 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.~~

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

Statutes/Other Implemented: ORS 471.282, 471.521, 2021 OL Ch. 180

RULE SUMMARY: This rule describes the qualifications, requirements, and authorizations for a holder of a Third-Party Delivery Facilitator Permit.

CHANGES TO RULE:

845-005-0421

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 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 may 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 or wholesaler 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 with the Commission, 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 or wholesaler 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 in compliance with these rules and with the identification check process provided in ORS 471.130(1);

(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.

(9) An eligible business using a third-party delivery facilitator must:

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

- (A) Determining the price of the available alcoholic beverages;
- (B) Identifying the name of the eligible business selling the alcoholic beverages;
- (C) Messaging that the offer and sale of the alcoholic beverages is by the eligible business;
- (D) Ensuring that the payment made by the final consumer for an alcoholic beverage is paid to the eligible business; and
- (E) Following all advertising rules of the Commission.

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

(c) Receive all payments made by the final consumer for alcoholic beverages;

(d) Take reasonable measures to ensure that it and any of its authorized delivery persons follow the identification requirements as provided in ORS 471.130(1); and

(e) Provide 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.

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

(10) 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; and
- (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; and
 - (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 and agrees to comply with the alcohol delivery training program requirements including but not limited to the requirement regarding identification checks as provided in ORS 471.130(1); and
 - (D) Holds a valid driver license or other identification pursuant to Commission rule;
 - (E) Has not had a felony violent crimes conviction where the incident leading to the conviction occurred within two years of the date of delivery; or has not had two or more violent felony convictions where at least two of the incidents leading to these convictions occurred within four years of the delivery. As used in this subparagraph, "felony violent crimes conviction" means a felony conviction for a crime where the person causes, attempts to cause, or threatens to cause physical injury or harm to another person irrespective of the jurisdiction;
 - (F) Has not had a felony drug conviction where the incident leading to the conviction occurred within two years of the date of delivery; or has not had two or more felony drug convictions where at least two of the incidents leading to these convictions occurred within four years of the delivery. As used in this subparagraph, "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; and
 - (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. As used in this subsection the term "liquor law conviction" means a misdemeanor or felony conviction for a violation of an Oregon law for Driving Under the Influence of Intoxicants (DUII), providing alcohol to a visibly intoxicated person; or sale of alcohol to a person under 21 as enumerated in ORS 471.410 or similar laws in other jurisdictions.

- (11) A third-party delivery facilitator permittee shall make a delivery person's certificate of completion available for inspection by any Commission regulatory specialist or any other peace officer within 72 hours of receiving a request.
- (12) 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. Notwithstanding 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 pursuant to the identification requirements in ORS 471.130(1) only to a final consumer who is at least 21 years of age.¶

(d) Deliver the alcoholic beverages only to a final consumer who is not visibly intoxicated at the time of receiving the alcoholic beverages; and¶

(e) Collect information that must be retained by the third-party delivery facilitator 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 of the delivery person delivering the alcoholic beverages to the final consumer; and¶

(D) The name and delivery address of the individual placing the order of alcoholic beverages, and the name of the final consumer receiving the alcoholic beverages. ¶

(13) 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 seven 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. ¶

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

(a) For any violation of ORS chapter 471 or for any violation of rules adopted by the Commission under ORS chapter 471, other than a violation of subsection (7), by a third-party delivery facilitator permittee or a delivery person acting on behalf of the third-party delivery facilitator, 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 exceed \$4,000 per violation. The Commission, at its sole discretion, may consider mitigating or aggravating circumstances in determining the applicable civil penalty within the range provided in this subsection. The Commission may decrease or increase the civil penalty within the range provided in this subsection to prevent inequity or to take account of particular circumstances in the case.¶

(b) Notwithstanding anything to the contrary in these rules, the first violation of subsection 11(c) and (d) by a third-party delivery facilitator permittee is subject to a minimum penalty of \$2,500.¶

(c) Any subsequent violations within two years of a prior violation will be subject to increasing penalty amounts which shall range from a minimum increase of \$100 more than the prior civil penalty amount to an amount not to exceed \$4,000 per violation.¶

(d) Third-party delivery facilitator permittees who are assessed a penalty under this section and fail to timely pay as directed by OLCC may be assessed a new penalty for each day the violation continues.

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

Statutes/Other Implemented: ORS 471.282, 471.521, 471.534, 471.537

AMEND: 845-005-0424

RULE SUMMARY: This rule describes the guidelines for approval of a for-hire carrier's plan for shipment of malt beverages, wine, cider or distilled spirits.

CHANGES TO RULE:

845-005-0424

Guidelines for Approval of a For-Hire Carriers Plan for ~~Delivery~~Shipment of Malt Beverages, Wine, Cider or Distilled Spirits.¶

The Commission will evaluate and may approve a for-hire carrier's plan to ~~delivers~~ship malt beverages, wine, cider or distilled spirits to a resident of Oregon.¶

(1) ~~Delivery~~Shipping to a resident of Oregon. In order to ~~delivers~~ship 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 ~~delivers~~shipping any malt beverages, wine, cider or distilled spirits to a resident of Oregon. The application shall include:¶

(a) Certification that the for-hire carrier meets the criteria pursuant to OAR 845-005-0416(2)(b); and¶

(b) The for-hire carrier's plan for ensuring that:¶

(a) Only persons age 18 or over will be used to ~~delivers~~ship the alcohol to the resident;¶

(b) The person used to ~~delivers~~ship 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 ~~delivers~~ship the alcohol will determine that the person receiving the alcohol is not visibly intoxicated;¶

(d) ~~Deliverie~~Shipments of alcohol will be completed in accordance with the hours and allowable ~~delive~~ryshipment 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 ~~delivers~~shipping 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 ~~delivers~~shipped to the resident;¶

(B) The name or information which can be used to determine the name of the person ~~delivers~~shipping the alcohol to the resident; and¶

(C) The name, signature, and ~~delive~~ryshipping 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 ~~delive~~ryshipment 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 ~~delive~~riesshipments 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~~seven 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.

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

Statutes/Other Implemented: ~~ORS 471.282, 71.521~~

RULE SUMMARY: This rule describes the requirements for a Commission-approved alcohol delivery training program.

CHANGES TO RULE:

845-005-0451

Alcohol Delivery Training Program and Certification of Completion

(1) At minimum, an alcohol delivery training program shall include training on 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 guidance and direction on how to refuse 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 that the Commission requires to be included in alcohol delivery training programs.¶

(2) An alcohol delivery training program to train delivery persons, third-party delivery facilitator permittees, and other parties must be preapproved by the Commission.¶

(3) The Commission may refuse to approve an alcohol delivery training program if the Commission determines that the program does not meet the minimum 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 third-party delivery facilitator permittee must resubmit an alcohol delivery training program to the Commission for approval every five years. Upon notification by the Commission, a permittee must update, in a time period designated by the Commission, any approved training program to reflect new or changed statutes or any rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer that the Commission requires to be included in alcohol delivery training programs.¶

(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 and who meets the minimum standards and criteria for a delivery person.¶

(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 third-party delivery facilitator permittee, or another party who is under contract with the permittee to provide the alcohol delivery training program.¶

(a) The information to be retained under this subsection must include 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) A third-party delivery facilitator permittee must allow the Commission upon request to audit the third-party delivery facilitator, or another party with whom the third-party delivery facilitator has contracted to provide alcohol delivery training, 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 seven days after the Commission sends notice to the third-party delivery facilitator permittee.¶

(7) The first violation of this rule by a third-party delivery facilitator permittee 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 a minimum increase of \$100 more than the prior civil penalty amount and not to exceed \$4,000 per violation.

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

Statutes/Other Implemented: ORS 471.282, 471.527

AMEND: 845-006-0391

RULE SUMMARY: This rule defines terms for the delivery of alcoholic beverages to individuals.

CHANGES TO RULE:

845-006-0391

Delivery of Alcoholic Beverages to Individuals - Definitions ¶

~~As used in OAR 845-006-0391 through 845-006-0401:¶~~

~~(1) The term "ship" means to cause the delivery or transport of (1) The terms deliver, 'delivery address,' delivery person, 'eligible business,' final consumer, and 'third-party delivery facilitator' have the meaning given those terms in ORS 471.521 as presently drafted or as malt beverages, wine or cider to be amended in the future. ¶~~

~~(2) Pursuant to ORS 471.521(6), a for-hire carrier' is an individual, person, or company who meets the below criteria. As such, they are 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 not delivery persons' or third-party delivery facilitators' and are not subject to the delivery person or third-party delivery facilitator requirements in Oregon law or these rules. A for-hire carrier' is an individual, person, or company who:¶~~

~~(a) Is retained or used by a licensee to deliver or ship alcoholic beverages directly from a licensee, retail sales agent, distillery retail outlet agent or permit holder to a resident of Oregon or to a licensee of the Commission. The terms ship and deliver may be used interchangeably.¶~~

~~(2) "For-hire, without the involvement of a third-party delivery facilitator or a delivery person; and¶~~

~~(b) Is 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" 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, as defined in 49 U.S.C. 40102.¶~~

~~(3) For the purposes of describing actions taken by for-hire carriers, these rules use the terms "ship" and "deliver" interchangeably to mean "to cause the transport of malt beverages, wine, cider, or distilled spirits from a licensee, retail sales agent, distillery retail outlet agent or permit holder to a resident of Oregon or to a licensee of the Commission."¶~~

~~(34) "Month" means a calendar month.¶~~

~~(45) "Resident of Oregon" means an individual residing in Oregon, even if only temporarily. Notwithstanding section (1) above, 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.~~

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

~~Statutes/Other Implemented: ORS 471.282, 471.521, 2021 OL Ch. 180~~

AMEND: 845-006-0392

RULE SUMMARY: This rule describes the requirements for delivery of manufacturer- sealed and securely covered containers of wine and cider directly to a final consumer.

CHANGES TO RULE:

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
 - (a) "Manufacturer-sealed container of wine or cider" means a container holding wine or cider that:
 - (A) Was sealed by the manufacturer upon removal from federal bond; and
 - (B) Has a label that complies with Commission regulation, issued by this state or another state that authorizes the person to hold a Direct Shipper Permit 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
 - (b) An off-premises sales, or no more than two gallons filled by a 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, 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
 - (2B) 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. 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 the following:
 - (3a) 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 Manufacturer-sealed containers of wine or cider only if the eligible business 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 wine or cider is for personal use and not for the purpose of resale; eligible business 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.
 - (c) Only for delivery to a resident who is not visibly intoxicated. An eligible business may deliver or cause the delivery of wine and cider directly to a final consumer only as allowed at the time of receiving the wine or cider.
 - (d) The wine or cider is in a container conspicuously labeled in accordance with 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 the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission; 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.
 - (e) Only pursuant to an order for wine or cider that is received by the permit holder or licensee. 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 and prepay for by the resident prior to a minimum of two removal years from the licensed or permitted premises for date of delivery the following information:
 - (A) The name of the third-party delivery to the resident facilitator permittee;
 - (B) To a home or business where the home or business has a permanent street the date and time the wine or cider was transferred to the third-party delivery facilitator permittee; and
 - (C) The name and delivery 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 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 permit

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, 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 a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and mustn 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 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; 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 rules 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) Determine that the person receiving the alcohol is not visibly intoxicated; and Rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.¶~~

~~(d) Collect information that must be retained by the permit holder or licensee eligible business for a minimum of eighteen monthtwo years from the date of delivery of the alcohol to the residentwine or cider to the final consumer. The information retained must include:¶~~

~~(A) The date and time the alcoholwine or cider was delivered to the residentfinal 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 personindividual delivering the alcohol to the residentwine or cider to the final consumer; and¶~~

~~(D) The name, signature, and delivery address of the personfinal consumer receiving the alcohol.¶~~

~~(6) Deliverwine or cider.¶~~

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

~~(A) Ensure that, may deliver, or cause the delivery of, wine or cider direct to a final consumer only if:¶~~

~~(a) the wine or cider is delivtrferred between the hours of 7:00 am and 10:00 pm.to the physical possession of a final consumer at a delivery address;¶~~

~~(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 OregonIs in a container not exceeding two gallons;¶~~

~~(c) it is transferred to a final consumer 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;¶~~

~~(d) it is transferred to a final consumer who is not visibly intoxicated at the time the individual takes physical possession of the wine or cider;¶~~

~~(e) 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) it is transferred pursuant to an order and mpay 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.ment 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) it is transferred to a delivery address or to a location, as long as that location is within 100 feet of the boundary of the eligible business; and¶~~

~~(h) if the time of transfer is between the hours of 7:00 am and 10:00 pm. Notwithstanding 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.¶~~

~~(8) 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:¶~~

~~(6a) Deliver not or cause the delivery of more than a total of five two cases of wine cider containing not more than nine liters per case per day to a resident of Oregon final consumer and may not deliver or cause the delivery of more than a total of five two cases of wine cider 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) 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.~~

~~(9) 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 deliver-not of more than a total of two cases of cider containing not more than nine liters per case per day to a resident of Oregon final consumer; or~~

~~(Cb) Deliver not 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 resident of Oregon.~~

~~(7) A permit holder final consumer.~~

~~(10) An eligible business who holds a direct shipper permit issued under ORS 471.282 must:~~

~~(a) Allow the Commission to audit the direct shipper 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 seven days after the Commission mails the notice;~~

~~(b) Report to the Commission all deliveries of wine or cider made to a resident of Oregon 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 resident of Oregon 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 paying the tax to the Commission.~~

~~(8) If the permit holder~~ 11) An eligible business who holds a direct shipper permit issued under ORS 471.282 and who 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) 12) A violation of section (79) 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.~~

Statutory/Other Authority: E.O. 20-07, ORS 471.030, 471.040, 471.186, ORS 471, 471.730 (1), 471.730(5) & (5), ORS 471.186

Statutes/Other Implemented: ORS 471.186, 471.282, 471.473, 2021 OL Ch. 180, 2021 OL Ch. 78, 2023 OL Ch. 539

AMEND: 845-006-0396

RULE SUMMARY: This rule describes the requirements for delivery of manufacturer-sealed and securely covered containers of malt beverages directly to a final consumer.

CHANGES TO RULE:

845-006-0396

Requirements for Delivery of Malt Beverages to a Resident of Oregon
Manufacturer-Sealed and Securely-Covered Containers of Malt Beverages to a 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 Definitions. For this rule:
 - (A) "Manufacturer-sealed container of malt beverages" means a container holding malt beverages that:
 - (A) Was sealed by the manufacturer upon removal from federal bond; and
 - (B) Has a label that complies 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 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 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, 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 receiving the alcohol; filling with wine or cider.
 - (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; An eligible business may sell for delivery directly to a final consumer:
 - (a) Manufacturer-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) 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;
 - (c) To a 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 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, 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:
 - (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; 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:
 - (3a) The eligible business must hold or licensee select information that must be 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 used by the eligible business for a minimum of two 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 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 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, the person delivering the malt beverage may 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:¶

(aA) Be age 18 or over; Forms of identification required by ORS 471.130 and Commission rules and methods for identifying, inspecting, accepting or rejecting identification;¶

(bB) Verify that the person receiving the alcohol is at least 21 years of age; Signs of visible intoxication and methods for recognizing these signs and for refusing to deliver alcoholic beverages to a final consumer; and¶

(cC) Determine that the person receiving the alcohol is not visibly intoxicated; and the delivery of alcoholic beverages to a final consumer.¶

(d) Collect information that must be retained by the eligible business for a minimum of eighteen months two years from the date of delivery of the malt beverages to the resident final consumer. The information retained must include:¶

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

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

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

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

(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, 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 that complies with these rules and does not exceed two gallons;¶

(c) To a final consumer who is at least 21 years of age, 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) Ensure that the malt beverages are delivered 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 must ensure that the malt beverages are delivered to the physical possession of a final consumer at a delivery address between the hours of 6:00 am and 10:00 pm.¶

(i) 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), 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 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, final consumer and may not 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 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 month to the same resident.~~¶

~~(7) A permit holder 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 malt beverage wine and cider deliveries to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 seven days after the Commission mails the notice;~~¶

~~(b) Report to the Commission all deliveries of malt beverage made to a resident of Oregon, 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 malt beverage wine and cider sold and delivered directly to a resident of Oregon final consumer under the permit.~~¶

~~(d) For the purpose of the privilege tax imposed under ORS Chapter 473, all malt beverage 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 paying the tax to the Commission.~~¶

~~(89) If the permit holder~~ An eligible business who holds a direct shipper permit issued under ORS 471.282 and who 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.¶

~~(910) A violation of section (78) 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.~~

Statutory/Other Authority: ORS ~~471~~, 471.030, 471.040, 471.730 (1), ~~471.730 &~~ (5), E.O. 20-07

Statutes/Other Implemented: ORS 471.305, 2021 OL Ch. 180, 2023 OL Ch. 539

AMEND: 845-006-0399

RULE SUMMARY: This rule describes the requirements for the sale and delivery of mixed drinks and single servings of wine by full on-premises sales licensees for off-premises consumption to a final consumer.

CHANGES TO RULE:

845-006-0399

Sale of Mixed Drinks and Single Servings of Wine by Full On-Premises Sales Licensees 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) "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) "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 no more than a total of either A Full On-Premises Sales licensee may sell or provide for off-premises consumption and delivery to a final consumer no more than: 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 be presented 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 to a resident of Oregon, or caused to be delivered, to a 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 delivery address; or to a location that, as long as the location is within 100 feet of the boundary of the licensed premises.~~

~~(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, the licensee must use a for-hire carrier that is a licensed business.~~

~~(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 a mixed drink or servings of wine to a resident of Oregon directly to a final consumer, 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:~~

~~(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 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; 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) Verify that the person receiving the mixed drink or serving of wine is at least 21 years of age; Signs of visible intoxication and methods for recognizing these signs and for refusing to deliver alcoholic beverages to a final consumer; and~~

~~(c) Determine that the person receiving the mixed drink or serving of wine is not visibly intoxicated; and Rules adopted by the Commission relating to the delivery of alcoholic beverages to a final consumer.~~

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

~~(A) The date and time the mixed drink or servings of wine were delivered to the resident 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 person individual delivering the alcohol to the resident mixed drinks and servings of wine to the final consumer; and~~

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

~~(6) A Full On-Premises Sales licensee may who does not receive orders and payment for mixed drinks and servings of wine through a third-party platform. The licensee may use a third-party platform to deliver directly from a final consumer may receive orders and payment for mixed drinks or and 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 only through a 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 to a final consumer and only as allowed by Commission rule. 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.~~

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

~~Statutes/Other Implemented: ORS 471.175, 471.176, 471.534~~

RULE SUMMARY: This rule describes the uniform standards for minor decoy operations.

CHANGES TO RULE:

845-009-0200

Uniform Standards for Minor Decoy Operations ¶¶

(1) Purpose. ORS 471.346 directs the Oregon Liquor ~~Control~~ and Cannabis Commission to develop, through rulemaking, uniform standards for minor decoy operations used to investigate licensees ~~and agents operating, permittees, and agents appointed by the commission, third-party facilitators on behalf of the Commission under 471.750~~ 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 ~~Control~~ and Cannabis Commission's intention that decoy operations are to be an impartial test of a licensee, ~~third-party delivery facilitator permittee~~ 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 operation, except as necessary to create an online order through a third-party delivery facilitator permittee's portal or website when the commission performs a minor decoy operation. ¶¶~~

(3) Uniform standards for operations investigating sales by licensees occurring on licensed premises, in-store sales by agents appointed by the commission, or at delivery addresses where a third-party delivery facilitator permittee delivers alcoholic beverages. 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 or to be purchased from 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 ~~Control~~ 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, third-party delivery facilitator, permittee or permittee 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 and third-party delivery facilitator permittees. A licensee or third-party delivery facilitator permittees using a person under the age of 21 years for the purpose of investigating

possible violations by employees of the licensee or delivery persons of the third-party delivery facilitator 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.

Statutory/Other Authority: ~~ORS 471~~, 471.030, 471.040, 471.346, 471.730(1), & (5)

Statutes/Other Implemented: ORS 165.805, 471.346, 471.430, 471.567, 2023 OL Ch. 539