

COVID-19 Interim Policy: Third-Party E-commerce Operators

Effective: March 19, 2020

The Oregon Liquor Control Commission has been working quickly to consider steps the agency can take to help licensees throughout this period of business restrictions due to the COVID-19 pandemic. We are making some temporary modifications to allow businesses to act quickly.

Our intent is to allow additional ways for you to engage your customers without having to have your doors open for business. Please note however, the agency does not have authority to change state laws. Unless indicated otherwise, these temporary modifications are effective until a date to be determined later.

Although the OLCC remains concerned that certain activities by Third Party E-commerce Operators may violate Oregon law, particularly in the areas of sales by a person without a license and the exercise of impermissible control of a licensee by a person without the privilege of that license (see ORS 471.405 and ORS 471.406 and OAR 845-005-0311), the OLCC is temporarily suspending its policy of conducting evaluations of individual Third-Party E-commerce Operators' proposed activities as described in the OLCC's Guide to Delivering Alcohol in Oregon and now issues the following temporary advisory guidelines to assist licensees and unlicensed Third Party E-commerce Operators in complying with Oregon law during this the COVID-19 pandemic:

- For the purposes of this advisory, the term "Third Party E-commerce Provider" refers to unlicensed entities that are involved with the promotion, marketing, and facilitation of sales of alcoholic beverages by licensees to consumers over the Internet (including through a website or mobile application). Third Party E-commerce Providers are involved in one or more of the steps in the transfer of title of an alcoholic beverage from a licensee to a consumer, such as placement of advertising, making recommendations to consumers, directing consumers to licensees, receiving orders and passing them on to licensees for acceptance, processing payments, and assisting with shipping and delivery arrangements.
- Given that only licensees may engage in activities for which a license is required, all sales transactions involving Third Party E-commerce Providers must ultimately be conducted by and under the control of a licensee. This includes decisions concerning the selection of alcoholic beverages to advertise or offer for sale, the pricing of those beverages, and the ultimate acceptance and fulfillment of the sales transaction.
- A licensee working with a Third Party E-commerce Provider is ultimately responsible for any activities undertaken by the Third Party E-commerce Provider on the licensee's behalf.
- Orders for alcoholic beverages solicited by licensees utilizing Third Party E-commerce Provider must be transmitted by the Third Party E-commerce Provider to the licensee involved. The licensee responsible for the sale must be clearly identified and must ultimately control the transaction, including any decisions concerning acceptance or rejection of such orders. Licensees must also be responsible for, and must control, the fulfillment of orders and the shipment/delivery of alcoholic beverages from the licensees' licensed premises.
- The control of funds from a transaction involving the sale of alcoholic beverages constitutes a significant degree of control over a licensed business. As such, while a Third Party E-commerce Operator may act as an agent for the licensee in the collection

of funds (such as receiving credit card information and securing payment authorization), the full amount collected for alcohol must be immediately passed through to the licensee in a manner that gives the licensee control over the ultimate distribution of funds. This means that the Third Party E-commerce Provider cannot independently collect the funds, retain its fee, and pass the balance on to the licensee. The Third Party E-commerce Provider should pass all funds collected from the consumer to the licensee conducting the sale, and that licensee should thereafter pay the Third Party E-commerce Provider for services rendered. Alternatively, the parties may utilize an escrow account, or similar instrument, that disburses the funds upon the instructions of the licensee. So, for example, a Third Party E-commerce Provider may accept consumer credit card information, debit the card, deposit the funds in an account under the licensee's ultimate control, and, upon the licensee's acceptance of the order and direction to the account holder, receive a fee from the account. Given the nature of Internet transactions, the OLCC recognizes that such collection, acceptance, and disbursement of funds will often times be accomplished solely through computer-generated means.

- Third-Party E-commerce Operators who provide alcohol delivery services in addition to processing transactions electronically through mobile application or website must still obtain approval as a for-hire carrier.
 - [Here is a link to the for-hire carrier application.](#)
 - [Here is a link to the approved for-hire carrier list.](#)
- Third-party E-commerce Operators must follow the alcohol delivery rules set forth in OAR 845-006-0392 and OAR 845-006-0396

If you have any questions regarding this advisory, please send your inquiries to olcc.ecommerce@oregon.gov