

2019 Alcohol Bill and Technical Package

OREGON LIQUOR CONTROL COMMISSION CHAPTER 845 PROPOSED AMENDMENTS

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

OAR 845-006-0345 **Prohibited Conduct**

The Commission holds licensees accountable for the acts of their agents and employees. (OAR 845-006-0362). No employee or agent of a licensee may violate any provision of this rule. A violation of any section of this rule by an employee or agent of a licensee is considered a violation by the licensee.

(1) Drinking on Duty: No licensee, permittee, or agent of a licensee will drink alcoholic beverages or be under the influence of intoxicants while on duty.

(a) "On duty" means from the beginning of a work shift that involves the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including any breaks.

(b) "On duty" also means, for those working outside a scheduled work shift, having the authority to put himself or herself on duty and performing acts on behalf of the licensee which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection.

(c) "A work shift that involves the sale and service of alcoholic beverages" includes supervising those who mix, sell or serve, check identification or control the premises.

(d) Being under the influence of intoxicants on duty is a Category II violation.

(e) Drinking on duty is a Category III violation.

(2) Despite subsection (1) of this rule, a person may self-serve and may taste malt beverages, wine, or cider while on duty or as an agent of a licensee only under the following conditions:

(a) The person is not a minor.

(b) The person is not visibly intoxicated.

(c) The time the alcoholic beverage is consumed is between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(d) The alcoholic beverage consumed is only malt beverages, wine, or cider.

(e) The amount of alcoholic beverage consumed per serving does not exceed one ounce.

(f) The person does not consume more than a total of six ounces of alcoholic beverages pursuant to this section between 7:00 a.m. and 2:30 a.m. on the succeeding calendar day.

(g) The purpose of the consumption is for educational purposes or to test the quality of the alcoholic beverage to ensure the product is not flawed or deteriorated.

(3) No licensee or permittee will fail to call the police when a Commission regulatory employee directs the licensee or permittee to call. Violation of this section is a Category II violation.

(4) Evidence:

(a) No licensee or permittee will:

(A) Destroy, damage, alter, remove, or conceal potential evidence, or attempt to do so;

(B) Refuse to give a Commission regulatory employee or police officer this evidence when the employee or officer lawfully requests it; or

(C) Ask or encourage another person to do subsections (a) or (b) of this section.

(b) Violation of this section is a Category III violation.

(5) Access to Premises:

(a) Both during regular business hours and when a premises is closed, no licensee or permittee will refuse to admit or fail to immediately admit to the licensed premises a Commission regulatory employee or police officer who identifies him/herself and who enters or wants to enter to conduct a reasonable search to ensure compliance with alcoholic beverage law. Examination of premises that are or appear closed occurs only when there is reason to believe an alcoholic beverage law violation is occurring.

(b) Once the regulatory employee or police officer is on the licensed premises, no licensee or permittee will ask the regulatory employee or officer to leave until the regulatory employee or officer has had an opportunity to conduct a reasonable search to ensure compliance with the alcoholic beverage laws.

(c) Violation of this section is a Category II violation.

(6) Open Containers: No licensee or permittee will permit a person to take an open container of alcoholic beverages from the licensed premises, except as ORS 471.175, 471.178, 471.186, 471.190, 471.200, 471.220, 471.223 and 471.227 allow. Except for tastings as allowed in OAR 845-006-0450, no Off-Premises Sales licensee will permit an open container of alcoholic beverages on the licensed premises unless the licensee also holds another license at the premises that allows on-premises consumption. Violation of this section is a Category V violation.

(7) Liquor on Premises: No licensee or permittee will have or permit any alcoholic liquor on the licensed premises which the license does not allow the licensee to sell or serve. Notwithstanding this requirement, a limited on-premises or brewery-public house sales licensee may have distilled spirits on the premises if the distilled spirits are used only for cooking, are kept in a container only in the food preparation area, and the container is clearly marked "for cooking only." Violation of this section is a Category V violation.

(8) Drive-up Window: No licensee or permittee will sell or deliver any alcoholic beverages through a drive-up window. Violation of this section is a Category III violation.

(9) Liquor as a Prize: Except as allowed in ORS 471.408, no licensee or permittee will give or permit any alcoholic beverage as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises. Violation of this section is a Category V violation.

(10) "Good Faith Effort": ORS 471.315(1)(a)(H), and 471.412(1) prohibit a licensee or permittee from allowing a visibly intoxicated person to drink alcoholic beverages. A licensee or permittee who makes a good faith effort to remove the alcoholic beverage does not violate these statutes.

(a) As used in ORS 471.412(2) and this rule, "good faith effort" means:

(A) Placing a hand on the drink and trying to remove it; or

(B) Making a verbal request for the drink, if the server has reason to believe that touching the patron's drink could cause a disturbance;

(b) The Commission will issue letters of reprimand for the first three violations of this section within a two-year period. A fourth violation within a two-year period is a Category III violation assessed at the fourth level (cancellation).

(11) Promotions.

(a) The following practices are prohibited:

(A) The sale, offer or service to any person of an unlimited number of alcoholic beverage(s) during any set period of time for a fixed price;

(B) The sale, offer or service of alcoholic beverages by the drink for a price per drink that is less than the licensee's cost for the alcohol to any person paying a fixed "buy in" price, entry fee, cover or door charge;

(C) Price reductions on alcoholic beverages by the drink from 12:00 midnight until 2:30 a.m. A price reduction is a lower price as compared to the usual, customary, or established non-discounted price the licensee charges for a drink of that type on the licensed premises;

(D) The sale, offer or service of distilled spirits by the bottle for consumption on the premises, except as allowed in OAR 845-006-0433 (Minibars in Hotel Guest Rooms) and 845-006-0434 (Minibars in Arena Suites). This subsection does not prohibit a Full On-Premises Public Location Sales Licensee (F-PL) or Full On-Premises Catering Sales Licensee (F-Cat) from charging clients by the bottle for distilled spirits that are served by the drink at hotel suites, banquets, receptions or catered events where the reasonably projected attendance is at least 20 patrons;

(E) Operating, encouraging or permitting games of chance or skill, contests, exhibitions, or competitions of any kind on the licensed premises that involve drinking alcoholic beverages, (e.g., beer pong, "21 for 21");

(F) Dispensing, pouring or otherwise serving any alcoholic beverage directly into a person's mouth, including through any device such as a "bong"; and

(G) The use of any device or serving technique that produces an alcoholic mist or vapor for consumption by inhalation. An alcohol vaporization device, for example, also called an alcohol without liquid machine, is a device, machine or process which mixes spirits, alcoholic liquors or any product containing alcoholic liquor with oxygen or any other gas to produce a vaporized product for consumption by humans by inhalation.

(b) Violation of this section is a Category III violation.

(12) Self-Service. No licensee or permittee will permit any patron to mix, dispense or serve an alcoholic beverage for or to himself or herself for on-premises or off-premises consumption. Violation of this section is a Category III violation.

(13) Marijuana Use. No licensee or permittee will permit the use, consumption, ingestion, or inhalation of marijuana items as defined in ORS 475B.015 and OAR 845-025-1015 on a premises licensed to sell or serve alcoholic beverages. Violation of this section is a Category III violation.

(14) No licensee or permittee will manufacture, store, transport, sell, or offer to sell an alcoholic beverage that contains any substance derived from cannabis, or cannabinoids derived from any source. Violation of this section is a Category III violation.

Statutory/Other Authority: ORS 471, 471.030, 471.040, 471.730(1) & (5)
Statutes/Other Implemented: ORS 471.030, 471.040 471.175, 471.178, 471.186,
471.200, 471.223, 471.227, 471.315(1)(a)(H), 471.351(1), 471.405(1), 471.408,
471.412, 471.446, 471.675 & 471.730

OAR 845-006-0410
Custom Order Agreements

(1) “Custom order agreement” means an agreement whereby a Brewery or Brewery-Public House licensee agrees to produce or manufacture malt beverages based on certain specifications for a commission licensee authorized by the commission to receive the malt beverages under a custom order agreement.

(2) Malt beverages produced or manufactured under a custom order agreement are produced or manufactured by the producing Brewery or Brewery-Public House licensee and not by the receiving licensee.

(3) Privilege taxes for malt beverages produced or manufactured under a custom order agreement are due from the producing licensee when the producing licensee sells or transfers the malt beverage to the receiving licensee. Despite this requirement, the producing licensee may qualify for nonpayment of privilege taxes under ORS 473.050.

(4) A Brewery licensee:

(a) May not use a custom order agreement to produce or manufacture malt beverages for a retail licensee as defined in ORS 471.392. Despite this requirement, a Brewery licensee may use a custom order agreement to produce or manufacture malt beverages for a Full On-Premises Sales licensee licensed to the same licensee of record as the Brewery licensee.

(b) May use a custom order agreement to produce or manufacture malt beverages for a Brewery-Public House licensee. The custom order agreement must be in writing and both parties must comply with ORS 471.398. The custom order agreement does not absolve the receiving Brewery-Public House licensee from complying with all other laws and rules regulated by the commission. The custom order agreement must identify the malt beverage by a specific formula and it must identify a defined period of time for the agreement that is no longer than 60 days from production to delivery of the malt beverage to the receiving licensee. The agreement may not allow the producing Brewery licensee to store the malt beverage longer than the 60 day time period. The Brewery licensee and Brewery-Public House licensee shall provide the written custom order agreement to the Commission within 10 calendar days of the Commission’s request for the agreement.

(c) May use a custom order agreement to produce or manufacture malt beverages

for a manufacturer or wholesaler as defined in ORS 471.392.

(d) A violation of this section is a Category III violation.

(5) A Brewery-Public House Licensee:

(a) May not use a custom order agreement to produce or manufacture malt beverages for a retail licensee as defined in ORS 471.392. Despite this requirement, a Brewery-Public House licensee may use a custom order agreement to produce or manufacture malt beverages for a retail premises licensed to the same licensee of record as the Brewery-Public House licensee.

(b) May use a custom order agreement to produce or manufacture malt beverages for a different Brewery-Public House licensee. The custom order agreement must be in writing and both parties must comply with ORS 471.398. The custom order agreement does not absolve the receiving Brewery-Public House licensee from complying with all other laws and rules regulated by the commission. The custom order agreement must identify the malt beverage by a specific formula and it must identify a defined period of time for the agreement that is no longer than 60 days from production to delivery of the malt beverage to the receiving licensee. The agreement may not allow the producing Brewery-Public House licensee to store the malt beverage longer than the 60 day time period. The producing Brewery-Public House licensee and receiving Brewery-Public House licensee shall provide the written custom order agreement to the Commission within 10 calendar days of the Commission's request for the agreement.

(c) May use a custom order agreement to produce or manufacture malt beverages for a manufacturer or wholesaler as defined in ORS 471.392. The custom order agreement must be in writing and both parties must comply with ORS 471.398. The Brewery-Public House licensee and receiving licensee shall provide the written custom order agreement to the Commission within 10 calendar days of the Commission's request for the agreement.

(d) A violation of this section is a Category III violation.

Statutory/Other Authority: 2019 OL Ch. 373

Statutes/Other Implemented: 2019 OL Ch. 373

845-006-0485

Public Passenger Carrier Notification of Additional Premises

(1) ORS 471.182(2)(a) allows the Commission to issue a Full On-Premises Sales license or Limited On-Premises Sales license to the owner or operator of an airline for use in operating passenger aircraft, to a railroad corporation for use in operating passenger trains, or to a tour boat owner or operator for use in operating tour boats.

(2) Tour boat licensees licensed under ORS 471.182(2)(c) may add additional tour boats to be operated under the license upon giving the Commission written notice at least ten days before adding any additional vessel, which must itself qualify for licensing under ORS 471.182, and comply with the food service standards of 845-006-0463 if the license is a Full On-Premises Sales license.

(3) Railroad corporation licensees licensed under ORS 471.182(2)(b) may add additional trains to be operated under the license, provided the additional trains comply with the food service standards of OAR 845-006-0463 if the license is a Full On-Premises Sales license. If the additional train is operated primarily as a tour train the operator must give at least ten days advance written notice to the Commission before adding the train for operation under the existing license.

(4) Pursuant to ORS 471.182(4), commercial airlines licensed under ORS 471.182(2)(a) may request approval from the commission to designate off-site storage facilities for the storage of alcohol. More than one commercial airline may use the same designated storage facility.

(a) “Designated Storage Facility” means a facility designated by a commercial airline holding a full on-premises passenger carrier (F-PC) license situated at a location other than the primary premises address listed on the commercial airline’s F-PC license certificate where the airline will store alcohol intended for sale to ticketed passengers aboard the licensee’s aircrafts and that has been approved for such storage by the Commission. The commercial airline F-PC licensee is not required to own or lease the designated storage facility.

(b) “Facility Operator” means a person or entity operating a designated storage facility as the agent of a commercial airline holding an F-PC license. A facility operator meeting the terms of OAR 845-005-0311(6) shall not be required to serve as a co-licensee on the commercial airline’s F-PC license.

(c) “Segregated” means not commingled with inventory of another commercial airline licensee’s alcohol items stored at the designated storage facility. Examples of how segregation of alcohol inventory could be accomplished include palletization of the alcohol inventory according to licensee or discrete stalls or spaces reserved for individual licensee inventory.

(d) A commercial airline that holds an F-PC license who is seeking approval of a designated storage facility must:

(A) Complete any application forms required by the Commission;

(B) Submit any schematic, floor plan, operational plan, or other document for the facility requested by the Commission;

(C) Receive approval from the Commission for the designated storage facility

prior to storing alcohol at the facility;

(D) Confirm that if the facility operator stores alcohol for other airlines at the facility, the alcohol inventory of each commercial airline holding an F-PC license remains segregated;

(E) Ensure that records as required by OAR 845-006-0435 will be available for inspection by the Commission with respect to deliveries made to the commercial airline F-PC licensee at the designated storage facility; and

(F) Ensure that the designated storage facility will be accessible to the Commission for inspection at any time.

(e) Once a designated storage facility is approved, a commercial airline holding an F-PC license may only conduct the following activities with respect to alcohol stored at the approved designated storage facility:

(A) Accept delivery of alcohol from qualified Oregon licensees, permittees, or Oregon retail liquor stores. The facility operator may accept alcohol on behalf of the commercial airline holding an F-PC license, provided that payment has been made by the commercial airline holding an F-PC license to the Oregon licensee or retail store prior to delivery and in compliance with ORS 471.485 and OAR 845-013-0020;

(B) Store alcohol owned by the commercial airline holding an F-PC license; and

(C) Remove alcohol for subsequent retail sale to the airline's ticketed passengers while aboard one of its commercial airplanes.

(f) At the designated storage facility, a commercial airline holding an F-PC license may not:

(A) Collocate at the designated facility with a liquor license or a marijuana license;

(B) Comingle alcohol owned by the approved commercial airline F-PC licensee with alcohol owned by any third-party at the designated storage facility;

(C) Use the designated storage facility to store alcohol for any other license held by the commercial airline F-PC licensee that has not been approved for alcohol storage at the location;

(g) Nothing in this rule limits or prohibits the way in which non-alcohol items may be stored at the designated storage facility.

(h) Any violation of this rule could result in revocation of the designated storage

facility approval. In addition to or in lieu of revocation, the Commission may take administrative action against the commercial airline F-PC licensee. In the event that there is more than one commercial airline F-PC licensee storing alcohol at a designated storage facility, any violation charge will be specific to the commercial airline F-PC licensee whose conduct constitutes a violation. A violation of this rule is a Category IV violation.

Statutory/Other Authority: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Statutes/Other Implemented: ORS 471.175 & 471.182, **2019 OL Ch. 373**