

COVID-19 Interim Policy: Third-Party (E-commerce) Platforms

Effective: March 19, 2020

Rev: December 17, 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) Platforms 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 Platforms' 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 Platforms in complying with Oregon law during this the COVID-19 pandemic:

- For the purposes of this advisory, the term "Third Party (E-commerce) Platform" or "TPP" 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). TPP does not refer to a credit card processor. TPPs 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. The above description includes "third-party platform" defined in OAR 845-006-0399 (1)(g).
- Given that only licensees may engage in activities for which a license is required, all sales transactions involving TPPs 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 TPP is ultimately responsible for any activities undertaken by the TPP on the licensee's behalf.
- Orders for alcoholic beverages solicited by licensees utilizing TPPs must be transmitted by the TPP 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

TPP 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 directly passed through to the licensee in a manner that gives the licensee control over the ultimate distribution of funds.

- The TPP must pass all funds collected from the consumer for alcohol directly to the licensee conducting the sale. Any service fees that the TPP charges to the licensee for its services must be collected and processed separately. TPP cannot independently collect the funds, retain its fee, and pass the balance on to the licensee.¹
- 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 TPP 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. Importantly, escrow accounts may not be used to hold monies collected for alcohol from multiple licensees.
- 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.
- TPPs 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.](#)
- TPPs who become approved for-hire carriers must follow [OAR 845-005-0424](#) when carrying out deliveries of alcohol on behalf of qualified licensees.
- For more information about For-Hire Carriers and delivering alcohol, see:
 - [Quick Reference: Approved For-Hire Carriers](#)
 - [OLCC's COVID-19 Generally Applicable Alcohol FAQs](#) (section with title "Alcohol Deliveries to Consumers")
 - [Quick Reference: Sales and Delivery of Distilled Liquor to Oregon Residents](#)

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

¹ This policy does not apply to a credit card processor, which may retain its fee in the course of transferring the money paid for alcohol into an account owned and controlled by the licensee.