

FEB 06 2013

PETITION TO AMEND RULE
Oregon Liquor Control Commission
of the State of Oregon

ADMINISTRATIVE
PROCESS DIVISION

In the matter of OAR 845-006-0392) PETITION TO AMEND RULES
) Requirements for Direct Shipment of Wine and
) Cider to a Resident of Oregon

1.) Petitioner: Obanskye, LLC dba Pony Express Restaurant Delivery Services
Erin D Gilfillan, Managing Member
656 Charnelton St
Eugene, OR 97401

A Marketing Company that brokers deliveries to residences for multiple Restaurants in the Eugene/Springfield area.

2.) Guidelines for Direct Shipment of Wine and Cider (845-006-0392) currently exclude Delivery of Wine and Cider if a dinner order is placed with the Retail Outlet after 7:00 pm. Petition is to allow ordering Delivery of Wine and Cider for evening meals from Type O licensees up to 9:00 pm in quantities of two bottles of Wine or Cider containing not more than 750 milliliters per bottle or less to be delivered in compliance with all OLCC Guidelines.

3.) Propose to amend:

845-006-0392

Requirements for Direct Shipment of Wine and Cider to a Resident of Oregon

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

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

(b) An off-premises sales license issued by the Commission.

(2) A person holding a Direct Shipper Permit must ship not more than a total of two cases of wine or cider containing not more than nine liters per case per month to a resident of Oregon who is at least 21 years of age.

(3) A person holding a Direct Shipper Permit or an off-premises sales license must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(4) A person holding a Direct Shipper Permit or an off-premises sales license must ship:

(a) Only wine or cider and only in manufacturer-sealed containers;

PROCESS DIVISION
ADMINISTRATIVE

RECEIVED

OLCC

FEB 04 2013

- (b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;
 - (c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;
 - (d) The product in a container that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;
 - (e) Only pursuant to an order for the wine or cider that is received by the permit holder or licensee prior to shipment of the alcohol;
 - (f) Only for next-day delivery, unless the permit holder or licensee has been approved for same-day delivery; and
 - (g) Only to a home or business where the home or business has a permanent street address.
- (5) If the permit holder or licensee ships 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 sections (2), (3), and (4) of this rule, as applicable.
- (6) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with sections (2), (3), and (4) of this rule, as applicable, the person making the delivery of the wine or cider must:
- (a) Be age 18 or over;
 - (b) Verify by inspecting government-issued photo identification that the person receiving the alcohol is at least 21 years of age;
 - (c) Determine that the person receiving the alcohol is not visibly intoxicated; and
 - (d) Collect information that must be retained by the permit holder or licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information may be collected and retained electronically (if the permit holder or licensee so chooses) and must include:
 - (A) The date and time the alcohol was delivered to the resident;
 - (B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and
 - (C) The name, signature, and delivery address of the person receiving the alcohol.
- (7) Same-day delivery for a permit holder. If a permit holder has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (2), (3), (4), and either (5) or (6) of this rule, the permit holder must receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon (and must also follow section (2) of this rule).
- (8) Same-day delivery for a licensee. If a licensee has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (3), (4), and either (5) or (6) of this rule, the licensee must:
- (a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day per Oregon **residence**; or
 - (b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount

of wine or cider if the alcohol accounts for no more than 25 percent of the retail cost of the order (at least 75 percent of the retail cost of the order must be items other than alcohol); or

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider; or

(d) Receive the order from the resident no later than 9:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 10:00 pm, and deliver not more than a total of two bottles of wine or cider containing not more than 750 milliliters per bottle per day per Oregon residence.

(9) A permit holder must:

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

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

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

(10) If the permit holder is located in a state outside of Oregon, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(11) A violation of section (9) 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 shipping 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 471.289.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.186 & 471.730(1) & (5)

Stats. Implemented: ORS 471.186, 471.282 & 473

4.) Reason to amend rule:

- a. This rule excludes moderate consumption in home by a consumer ordering dinner after 7 pm from a Type O Licensee to be delivered to the residence. The busiest time for ordering dinner is from 6 pm – 8 pm in the winter and as late as 9 pm in the summer. The rule in its current state excludes many consumers. If amended, we expect legal and economic benefit to Type O Retailers. We also expect Convenience and safety benefit to Consumers and Communities.
- b. Consumers who are excluded from the rule in its current state and are unable to order Delivery of Wine and Cider to their home after 7 pm may instead choose to leave their home to consume and/or purchase Wine or Cider. This may increase the likelihood of Consumers driving after Consumption.

5.) The continued need for the existing rule:

- a. Responsible Delivery of Wine and Cider is key to preventing problems with irresponsible consumption and unpermitted festivities. Community Integrity and Relations depend on regulation and control of delivery of larger quantities of Wine and Cider in a responsible manner.
 - b. Quantity reduction of Deliverable Wine and Cider while increasing the window of ordering allows new economic activity, convenience, and community safety without encouraging irresponsible consumption or unpermitted festivity. Whereas no consumer needs two cases of wine or cider delivered with dinner, two bottles (maximum 750 milliliters each) approaches the responsible upper limit of total household consumption.
 - c. Community Safety is enhanced by encouraging consumers to stay home while consuming Wine and Cider, in lieu of consuming them away from the home. The existing rule decreases driving after consumption.
- 6.) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations:
- a. The existing rule has no overlaps, duplicates, or conflicts to the knowledge of the Petitioner.
- 7.) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule:
- a. Online ordering, multiple restaurant delivery services (RMDS), and other integrated services have become prevalent, allowing the consumer numerous cuisine options. Residential dinner delivery has become more commonplace and consumers are frequently choosing to stay home and order dinner in. The restaurant and retail community has an opportunity to offer service and convenience in Beverage Delivery with dinner that will decrease driving after consumption, while maintaining accountability and responsibility of the transaction and delivery.

In closing, we believe that this amendment to the present rule will greatly benefit the restaurant/retailer community, community safety as a whole, and governmental agencies that work with Licensees.

We respectfully request the Oregon Liquor Control Commission to amend this rule.

Petitioner: Obanskye, LLC


Erin D Gilfillan, Managing Member

2/1/15
Date