OREGON LIQUOR CONTROL COMMISSION
The Commission proposes to adopt and amend the following Oregon Administrative Rules:

Retail Store Package
Adopt: OAR 845-015-0210
Amend: OAR 845-015-0101, OAR 845-015-0105, OAR 845-015-0115, OAR 845-015-0118, OAR 845-015-0190 & OAR 845-015-0196

PUBLIC HEARING:
Commission staff will hold a public hearing on this proposed action:

Date: **October 31, 2011**
Time: 10:00 am
Location: Oregon Liquor Control Commission
9079 SE McLoughlin Boulevard
Portland, OR 97222

Phone: (503) 872-5004 (toll free within Oregon 1-800-452-6522)
Fax: (503) 872-5110
Presiding Officer: Jennifer Huntsman
(Auxiliary aids for persons with disabilities are available upon advance request)

CAPTION: **Amend and adopt rules to update and modernize the distilled spirits retail store system**

Staff's goal with this rule package is to enhance the distilled spirits retail system within the existing context of a control state structure. By updating and modernizing the system the Commission will enhance its ability to both keep up with customers' growing expectations and provide enough incentive to attract & retain effective liquor store agents. This in turn will lead to optimal revenue generation for the state of Oregon.

The proposed amendments in this rule package will provide the flexibility to update the current business model in four key areas:
1) Allowing a corporation to be appointed as a retail sales agent – the proposed amendments to OAR 845-015-0115 Retail Sales Agent Eligibility & OAR 845-015-0118 Retail Sales Agent Prohibited Interests would allow for this additional option while maintaining the ORS 471.710(3) prohibition against a retail sales agent also being a Full On-Premises licensee or a Distillery licensee.
2) Building more flexibility into the retail store classification process – the proposed amendment of OAR 845-015-0105 Types of Retail Liquor Stores would allow the Commission to change a retail liquor store's classification to non-exclusive based on the retail sales agent's business plan in addition to the other factors already considered. The specifics of such a business plan evaluation would be contained in the Retail Operations Manual.

3) Updating the retail liquor agents' resignation buy-out program – the proposed amendments to OAR 845-015-0190 Resignation Buy-Out Program for Retail Liquor Agents would increase the standard buyout percentage to three percent and for those with a current outstanding Annual Evaluation, four percent.
4) Building in additional flexibility to accommodate future pilot programs – to meet this goal staff proposes the adoption of OAR 845-015-0210 Pilot Programs which would give the Commission the flexibility to test new retail sales models through a pilot program of up to three years duration. Staff further proposes the amendment of OAR 845-015-0196 Appointment of a Temporary Agent in order to expand the circumstances under which the Commission may appoint temporary agents beyond just when a current agent becomes unable to operate their liquor store.

Additionally, while this package of Division 15 Retail Sales Agents rules is open, staff proposes housekeeping amendments to OAR 845-015-0101 Definitions.

You can obtain a copy of the proposed amendments by calling the toll-free number listed above. Rule drafts are also available on the OLCC web site: http://oregon.gov/OLCC/ - go to the "Liquor Laws and Rules" button, then follow the link to "Proposed Rulemaking", then "Retail Stores", and finally "Final Staff Rule Draft". If you wish to give your views, arguments, or information on this matter, you may do so at the public hearing, or you can submit comments by November 14, 2011. You can also email your comments to: jennifer.huntsman@state.or.us.

Documents faxed, mailed or emailed must be received by 5:00 pm on November 14, 2011.

ORS 183.335(2)(b)(G) 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. That comment must also be received by 5:00 pm on November 14, 2011.

The Commission reserves the right to request and receive additional comments at any time on or before the date the Commission takes final action on the proposed rule.

Statutory Authority: ORS 471, including ORS 471.030, 471.040, 471.710 & 471.730(1) & (5)
Other Authority: None
Statutes Implemented: ORS 471.710, 471.750 & 471.752

Need for the Rule(s):
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Documents Relied Upon, and where they are available: Minutes of Advisory Committee meeting of August 22, 2011 available from the Commission's rules coordinator, Jennifer Huntsman, at 9079 SE McLoughlin Boulevard Portland, OR 97222.

Fiscal and Economic Impact, including Statement of Cost of Compliance: This statement takes into account the fiscal impact on (a) retail liquor stores; (b) off-premises sales licensees; (c) local government; (d) state agencies; and (e) the public.

(a) Retail Liquor Stores. By modernizing the distilled spirits program and enhancing the customer experience, retail sales agents should realize positive gains in the sale of both distilled spirits and related items from the proposed amendments. The depth and breadth of the positive impacts is uncertain. There is nothing in the proposed rule language that dictates agents selling beer, wine and salty snacks, and it is impossible to predict how many liquor stores will actually expand their related items and exactly what those related items will be. These same positive fiscal impacts would flow to the distilled spirits manufacturer, their representatives, and ultimately to the state of Oregon.

(b) Off-Premises Sales Licensees. To the same degree that there is the potential for positive impact on liquor stores (small businesses), there is also the potential for negative impact on Off-Premises licensees, particularly small grocers, from the proposed amendments. There is a market share issue, and especially for smaller grocers a small sales decrease can equate to a large net profit decrease. Again, however, the depth and breadth of the negative impacts is uncertain. It would partially depend on the total consumer market in the particular geographic area. Some members felt that there must be a less costly alternative to achieving the goals of this rule package, and that pursuing a change to the state's gross profit structure is one such way to accomplish this. However, this would have to be a change enacted by the Oregon legislature.

(c) Local government. The Commission does not anticipate any fiscal impact on local government from the proposed rule amendments.

(d) State agencies. The Commission does not anticipate any fiscal impact on state agencies from the proposed rule amendments.

(e) The public. From the proposed amendments, potential positive impact was also predicted for the public via increased customer service and convenience. There is also the potential for increased sales to create jobs in Oregon's communities. Because the proposed changes would be made within the existing control state structure, no negative impacts on public safety are foreseen.

Cost of Compliance: There should be no costs for anyone to comply with these amendments. There are no reporting or recordkeeping requirements required for compliance. There is no requirement for equipment, supplies, labor, or administration.

Because there is not adequate information available to accurately project the fiscal impact, the Commission is unable to calculate the potential fiscal impacts.

How were small businesses involved in the development of this rule? The Commission assumes the majority of its licensees are small businesses. We invited licensees, retail sales agents, industry representatives, and public safety representatives, including moderation groups, to the Advisory Committee meeting where this matter was discussed.

Administrative Rule Advisory Committee consulted? Yes. An Advisory Committee met on August 22, 2011. Members included industry representatives, licensees, retail sales agents, and members representing moderation and public safety concerns. The Committee assisted in writing this Fiscal Impact Statement.

(This notice mailed September 29, 2011)