PETITION TO AMEND RULE

Oregon Liquor Control Commission
of the State of Oregon

In the Matter of the Amendment of

OAR 845-015-0115(3)(a)

)  ) PETITION TO AMEND RULES
)  ) Retail Sales Agent Eligibility for
)  ) Licensee Status

1) Petitioner: East Bend Liquor Incorporated
Mark Merrick, President
2220 NE Hwy 20, Suite 1
Bend, OR 97701

Petitioner is a non-exclusive retail sales agent engaged in the sale of distilled liquor, beer, wine, and cider in the Bend area.

2) At present, OAR 845-015-0115(3) precludes a retail sales agent ("RSA") from simultaneously holding a limited on-premises sales license, as defined under ORS 471.178 ("licensee"). The purpose of this petition is to amend OAR 845-015-0115(3)(a) to allow for non-exclusive RSAs to also be licensees.

3) Propose to amend:

"845-015-0115

Retail Sales Agent Eligibility"
(1) A retail sales agent who is an individual person must be at least 21 years old. Retail sales agents must devote enough time to a retail liquor store to ensure its efficient operation and reasonable service to the public.

(2) A retail sales agent may not have a financial interest or business connection that ORS 471.710(3) or OAR 845-015-0118 prohibits.

(3) A retail sales agent cannot be a Commission licensee or an officer, director, substantial stockholder or member of a licensee, except that:

(a) A non-exclusive retail sales agent may be an Off-Premises Sales licensee. **A non-exclusive retail sales agent may be a Limited On-Premises licensee provided that the licensed business is separate from the retail liquor store.** An exclusive retail sales agent may be an Off-Premises Sales licensee provided that the licensed business is separate from the retail liquor store; or

(b) The Commission may appoint a licensee if the licensee is the only suitable applicant for appointment as retail sales agent in a very small town in a remote area. This retail liquor store must be non-exclusive and must be in a part of the premises completely separated from the service or consumption of alcoholic beverages."

**OAR 845-015-0115. NOTE:** In the preceding section, the proposed amending language has been distinguished from the existing OAR as underlined, italicized, and boldfaced.

4) Reason to Amend Rule:

This rule excludes non-exclusive RSAs from lawfully holding a limited on-premises sales license as defined under ORS 471.178.

The OLCC requires that all its RSAs be well-versed in and fully compliant with the statutes and regulations governing distilled spirits at retail in Oregon. RSAs who possess an off premises Licenses are subject to and expected to be compliant with additional regulations in their retailing of beer, wine, and cider. This training and regulatory oversight uniquely positions non-exclusive RSAs to advance, as licensees, the OLCC’s stated mission to issue licenses in a manner that protects and serves the public interest:

**“CRITERIA FOR ISSUANCE AND MAINTENANCE OF LICENSES**

845-005-0301

Purpose and Interpretation

(1) ORS 471.313 is the primary statute that gives the reasons for which the Commission may deny an alcoholic beverage license application. The rules in this Division describe how the Commission applies these and other licensing-related statutes in granting, denying, modifying or renewing alcoholic beverage licenses and related privileges.
(2) The Commission liberally applies these rules to:

(a) Minimize health or safety problems caused by the use and abuse of alcoholic beverages;
(b) Encourage moderation in the use of alcoholic beverages;
(c) Ensure that qualified persons obtain available licenses and operate in compliance with alcoholic beverage laws;
(d) Prevent access to alcoholic beverages by minors;
(e) Provide the opportunity for public participation in license decisions;
(f) Provide guidelines for local governments in making recommendations to the Commission;
(g) Ensure availability of alcoholic beverages to the public.”

OAR 845-005-0301.

As is evident, a central purpose of the OLCC in issuing licenses is to provide for the delivery of alcoholic beverages to the public in manner that balances availability and convenience with safety and abuse prevention. OAR 845-015-0115(3)(a), as currently written prohibits highly qualified persons, namely non-exclusive RSAs, from furthering this purpose of the Commission.

5) The continued need for the current rule:

Responsible delivery of beer, wine, and cider is crucial in preventing problems associated with alcohol abuse and the consumption of alcohol by minors.

6) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations:

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:

The domestic craft beer industry and wine industry have undergone explosive growth in the last decade and are forecast to continue to grow in the future. Recent estimates suggest the number of brewers in the U.S. has doubled since 2011 (and nearly tripled since 2005) to over 4,000 nationally. Meanwhile, the domestic wine industry, already the largest and the most valuable in the world, is expected to increase over 25% to more than $45 billion dollars by 2021. In this environment of burgeoning growth and potentially bewildering choices, sellers with significant knowledge and insights into the nuances of this marketplace are best positioned to optimize the consumer’s buying experience, whether at retail or “by the drink.”
Successful non-exclusive RSAs combine the knowledge of beer, cider, and wine with the compressive understanding of, and adherence too, the laws and regulations governing the beverage alcohol industries in Oregon. Permitting non-exclusive RSAs to hold limited on-premises licenses allows the OLCC to leverage and deploy highly-experienced and knowledgeable personnel to meet the challenges of a rapidly evolving marketplace and provide excellent service to the consumer. Meanwhile, given their knowledge of and adherence to the relevant statutes and regulations, non-exclusive RSAs would be particularly well-suited as licensees to further the OLCC’s mission to provide “by the drink” beer, wine, and cider responsibly and conveniently to the Oregon consumer.

In closing, petitioner believes that the proposed amendment to the existing rule will provide a significant benefit to the alcohol consuming public by removing an obstacle to highly qualified persons becoming licensees.

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

Petitioner: East Bend Liquor Incorporated

Mark Merrick, President

Date

2-21-18