NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845
OREGON LIQUOR CONTROL COMMISSION

FILING CAPTION: The amendments enable a Retail Sales agent to obtain a Limited License.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/07/2018 5:00 PM
The Agency 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.

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Filed By:
Bryant Haley
Rules Coordinator

HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/24/2018
TIME: 10:00 AM - 11:00 AM
OFFICER: Bryant Haley
ADDRESS: OLCC
9079 SE McLoughlin Blvd.
Portland, OR 97222

NEED FOR THE RULE(S):
ORS 471.710 explicitly prevents a Retail Sales Agent from obtaining or being associated with a Full-On Premises or a Distillery license. The statute is silent regarding a Retail Sales Agent obtaining another license. Many Retail Sales Agents already have an Off-Premises license which allows them to sell cider, malt beverages and wine for consumption off the licensed premises.

This past spring the Commission was petitioned to amend the rules. The petitioner requested that the Commission remove the prohibition on Retail Sales Agents from obtaining a Limited License for a separate location.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:
ORS 471.710
OLCC Rulemaking files (OAR 845-015-010 and 845-015-1115)

FISCAL AND ECONOMIC IMPACT:
This statement takes into account the fiscal impact on: (a) Licensees; (b) Retail Sales Agents (c) Local Government; (d) State Agencies; and (e) the Public.
(a) Licensees.

The Commission forecasts that the amendments would have both a possible positive and negative fiscal impact on Limited Licensees, as they could see increased market competition from Retail Sales Agents entering the market. Conversely, a Limited Licensee, per the proposed amendments, would be eligible to apply for an opportunity to become a Retail Sales Agent of the Commission.

(b) Retail Sales Agents.

The Commission forecasts that the amendments would have a possible positive fiscal impact on Retail Sales Agents. The amendments would enable a Retail Sales Agent to obtain a Limited License. This would allow a Retail Sales Agent to open a separate location to sell whom sell malt beverages, cider or wine by the glass and factory sealed containers of malt beverages and kegs, if they chose to enter that business environment.

(c) Local Government.

The Commission expects the proposed amendments to have no impact upon local governments, as the rules does not apply to them.

(c) State Agencies.

The Commission expects the proposed rule to have a neutral effect. Oregon Health Authority has concerns that more outlets of alcohol will merely lead to more negative alcohol related impacts upon the populace.

(d) The Public.

The Commission expects the proposed rule to have both a possible positive and negative fiscal impact on the public. Consumers of alcoholic beverages may find more retail options available to them. However, the Oregon Health Authority has concerns that more outlets of alcohol will merely lead to more negative alcohol related impacts upon the populace.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
The Commission anticipates no new costs to comply with the proposed amendments for most state agencies and local government. The Oregon Health Authority has concerns that more outlets of alcohol will merely lead to more negative alcohol related impacts upon the populace.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Currently, the Commission has 2,778 limited licensee and approximately 250 Retail Sales Agents.

b. Projected reporting, record keeping and other administrative activities required for compliance, including costs of professional services:

A Retail Sales Agent would need to apply in a form and manner proscribed by the Commission in order to obtain a Limited License, and complete all subsequent licensing requirements. This is a basic expectation of all licensees.

c. Equipment, supplies, labor and increased administration required for compliance:

A Retail Sales Agent would need to apply in a form and manner prescribed by the Commission in order to obtain a Limited License, and complete all subsequent licensing requirements.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Commission held a comment period in response to the original petition from February 27 through March 12, 2018. The Commission also held an advisory committee on the topic on May 22, 2018.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED: 845-015-0101, 845-015-0115

AMEND: 845-015-0101

RULE SUMMARY: The proposed amendments enable a Retail Sales Agent to obtain a Limited License at a separate location.

CHANGES TO RULE:
Definitions

As used in OAR chapter 845, division 015:

(1) "Commission" includes the 5-member body of Commissioners appointed by the Governor, the administrator (director) and agency staff. Any of the actions or decisions specified in this division may be delegated to the administrator (executive director) as provided in ORS 471.040(2).

(2) "Disabled Retail Sales Agent" is one who has a physical or mental impairment that has continued more than one year or is permanent that prevents a retail sales agent from properly performing contractual duties. The Commission determines retail sales agent disability after reviewing medical reports from the retail sales agent's physician. The Commission may require additional medical information from a Commission-selected physician.

(3) "Full On-Premises Sales Licensee" means any person or entity holding a Full On-Premises Sales license.

(4) "Retail Liquor Store" is a premises or a specific area in a premises the Commission approves for the sale of packaged distilled spirits for off-premises consumption, other than an Oregon licensed distillery or portion of such a distillery which has been approved for the sale of packaged distilled spirits manufactured by the distillery.

(5) "Retail Sales Agent" or "Agent" is an individual person or legal entity appointed by the Commission who enters into a retail sales agent agreement to sell packaged distilled spirits on behalf of the Commission in a retail liquor store. When a retail sales agent is a legal entity, the following persons shall also be considered a retail sales agent:

(a) Each individual person who owns 10% or more of the entity; such as stock, membership, or other investment; and

(b) Each individual person who has been designated by the entity to exercise control over, or be entitled to exercise control over, the entity; such as directors, officers, managing members, and general partners.

(6) "Retail Sales Agent Agreement" is a written contract between the Commission and a retail sales agent that specifies the terms, conditions, and obligations between both parties.

(7) "Temporary Retail Sales Agent" or "Temporary Agent" is an individual person or legal entity selected by the Commission to temporarily operate a retail liquor store.

Statutory/Other Authority: ORS 471, 471.030, 471.730(4),(5)
Statutes/Other Implemented: ORS 471.750, 471.752
AMEND: 845-015-0115

RULE SUMMARY: The proposed amendments enable a Retail Sales Agent to obtain a Limited License at a separate location.

CHANGE TO RULE:

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 can may not 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. An ¶
(b) A non-exclusive retail sales agent may be an Off Limited On-Premises Sales licensee provided that the licensed business is separate from the Limited On-Premises Sales license is in a different physical location and address from the retail liquor store; or ¶
(bc) 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 an exclusive retail sales agent may be an Off-Premises Sales licensee and a Limited On-Premises Sales licensee provided that the premises with the Limited On-Premises Sales license or Off-Premises Sales license is in a different physical location in a part of the premises completely separated from the service or consumption of alcoholic beverages and address from the retail liquor store.

Statutory/Other Authority: ORS 471 including 471.030, 471.730(1), (5)
Statutes/Other Implemented: ORS 471.750(4)