



# SB 408 MARIJUANA PLASTIC REPORT

December, 2022



## EXECUTIVE SUMMARY

During the 2021 regular session, the Oregon Legislature passed Senate Bill 408, section 18 requires the Oregon Liquor & Cannabis Commission (OLCC) to submit a report to an interim committee of the Legislative Assembly related to the environment by December 31, 2022. The report must study the laws of this state and the Commission's rules related to recreational marijuana and identify laws or rules that would further reduce the use of plastics by the recreational marijuana industry.

There is a growing recognition of the environmental concerns associated with the usage of plastics, which are not exclusive to the marijuana industry. Plastic is used in various ways by the marijuana industry; including cultivation, storage, and retail sales.

The two main components discussed in this report are the "seed to sale" tracking system, which requires each marijuana plant to have a plastic tracking tag affixed to it. The second component is the requirement for child resistant packaging for marijuana and hemp items sold to consumers and patients. The child resistant packaging is not required to be plastic, most packages available in the market are made of plastic.

Oregon's tracking system is known as the Oregon's Cannabis Tracking System (CTS). CTS utilizes physical tags with radio-frequency identification (RFID) technology, and are currently plastic due to needing to better withstand the elements on both indoor and outdoor producer licenses. Currently the CTS vendor is field testing new plant tags that will be made of paper fiber, post-consumer waste and hemp. To further reduce the use of plastic, OLCC is in rulemaking to change the plant tagging requirement from each individual plant to batches of no more than 100 plants. OLCC anticipates the rule as proposed would reduce the number of plant tags used by licensees by as much as 75%.

The requirement for use of child resistant packaging can be found in ORS 475C, and was made part of statute as a safeguard against children accessing marijuana items. 2021 SB 408 did loosen the requirement that flower cannabis material needed to be in a child resistant package, but all other marijuana items still have the requirement. In an attempt to reduce the use of plastic, the OLCC early on in marijuana regulation allowed for consumers to reuse packaging, it is unknown how many consumers and businesses are using this allowance.

At this time OLCC licensees are free to use child resistant packaging made of any material, and the OLCC would be hesitant to mandate the use of certain materials over others due to cost and supply chain issues.

The mission of the OLCC is to support businesses, public safety and community livability through public education and the enforcement of marijuana laws. The OLCC realizes the environmental impacts of plastics touch on all aspects of our mission. This report illustrates the steps the agency is taking to reduce plastic, while keeping public health and safety at the forefront.

## **INTRODUCTION**

During the 2021 regular session, the Oregon Legislature passed Senate Bill 408, which created new provisions regarding marijuana enforcement reform, plant diversity, possession and concentration limits, and packaging requirements. Section 18 of 2021 SB 408 requires the Oregon Liquor & Cannabis Commission (OLCC) to submit a report to an interim committee of the Legislative Assembly related to the environment by December 31, 2022. The report must study the laws of this state and the Commission's rules related to recreational marijuana and identify laws or rules that would further reduce the use of plastics by the recreational marijuana industry.

The following report provides an overview of the regulations that involve the use of plastics by the recreational marijuana industry. OLCC staff have also developed statutory and administrative rule changes to reduce the amount of plastics used by the industry.

---

## **BACKGROUND**

There is a growing recognition of the environmental concerns associated with the usage of plastics, which are not exclusive to the marijuana industry. Plastic is used in various ways by the marijuana industry; including cultivation, storage, and retail sales. ORS 475C is the chapter that governs marijuana regulations, and the OLCC has adopted administrative rules under OAR Chapter 845, Divisions 25 and 26.

There are two main components to the regulatory scheme that indirectly encourage or require the usage of plastics by the marijuana industry. First is the "seed to sale" tracking system, which is mandated by statute. By rule, the OLCC requires each plant to have a tracking tag affixed to it, which currently is made from plastic. Second is child resistant packaging requirements for marijuana and hemp items sold to consumers and patients. By statute, most marijuana and hemp items must leave an OLCC licensed retailer in a child resistant package. A great deal of child resistant packaging contains some amount of plastic. Recently, the OLCC has undertaken rulemaking and listened to industry feedback to lessen these requirements, which are discussed below.

---

## **SEED TO SALE TRACKING**

In order to track the growth and distribution of legal marijuana, the Oregon legislature passed 475C.177 which requires all marijuana plants and items to be tracked. Oregon's "seed to sale" tracking is known as the Oregon's Cannabis Tracking System (CTS). To meet this requirement OLCC contracted with Metrc which, utilizes physical tags with radio-frequency identification (RFID) technology. Currently, by OLCC rule a RFID tag must be attached to each individual marijuana plant above 36 inches tall ("plant tags"), and all other forms of marijuana items must be associated with a similar RFID tag ("package tag") on each receptacle. Plant tags are plastic due to needing to better withstand the elements on both indoor and outdoor producer licenses.

In late 2022, Metrc entered a pilot phase to field test the adoption of a new and more sustainable plant tag. Rather than plastic, the new plant tag design contains 60% Forest Stewardship Council-certified paper fiber, 30% post-consumer waste, and 10% hemp. The new plant tag design also utilizes 33% less material than the current plant tag design. While still in the pilot stage, Metrc's current timeline is to replace the existing plant tag with the new design in 2023.

OLCC is also proposing rule changes that would reduce the amount of plastic required for seed-to-sale tracking. In December 2022, OLCC began soliciting public comment on a [rule change](#) that would reduce the plant tagging requirement from each individual plant to batches of no more than 100 plants. OLCC anticipates the rule as proposed would reduce the number of plant tags used by licensees by as much as 75%. Formally adopting the rule and implementing the transition to batch plant tagging would require further conversations with stakeholders, including a contract amendment with Metrc; OLCC anticipates these conversations to continue through 2023.

---

## **MARIJUANA PACKAGING**

Keeping marijuana out of the hands of minors was one of the most important public safety aspects of cannabis legalization. ORS 475C requires most marijuana and hemp items sold through an OLCC licensed retailer to be placed in child resistant packaging at the point of sale. The rules adopted thereunder can be found in OAR 845-025-7120. Consumers can purchase cannabis if they are in child resistant and continuously resealable package. If the cannabis items are not in a resealable container they must be placed in a child resistant receptacle, often called an "exit bag" by the retailer. To be considered child resistant, the package must be certified according to federal child resistance standards (16 CFR 1700). Most other states operating recreational or medical marijuana programs have nearly identical packaging requirements.

While neither statute nor rule mandates the use of plastic for child resistant packaging, the reality is that most child resistant packaging used by the marijuana industry contains at least some plastic components. A great deal of the child resistant packaging used by the marijuana industry is used in other industries with similar requirements (e.g. pharmaceutical). The OLCC has anecdotally noticed some innovation in non-plastic based child resistant packaging designed specifically for the marijuana industry, but these innovations have not resulted in a wholesale shift away from plastic.

The child resistant packaging requirements serve an important role in protecting the public health and safety of Oregonians. In the area of pharmaceuticals and over the counter drugs, is well documented that child resistant packaging keeps potentially harmful or intoxicating products out of the hands of minors. Eliminating child resistant packaging requirements in order to reduce plastics may have negative public health consequences and would make Oregon an outlier amongst other recreational and medical marijuana states.

Starting in 2018, in an effort to reduce the amount of plastic by the industry, the OLCC used the rulemaking process to begin to reduce some of the requirements in two key areas: 1.) the ability for consumers and retailers to reuse child resistant packaging; and 2.) the elimination of child resistant packaging requirements for usable marijuana. However, much of the marijuana industry does not seem to be aware of the reuse allowance in rule. The OLCC has discussed the possibility of an awareness campaign to let licensees know different ways they could reduce the use of plastic but lacks the needed funding to implement a campaign. Another option for a public awareness

campaign may be for the cannabis trade associations to take the lead and offer ideas and suggestions for plastic reduction at a peer-to-peer level.

For usable marijuana and hemp (this includes raw marijuana “bud” and “plain pre-rolls”), SB 408 directed the OLCC to adopt rules that would eliminate the child resistant packaging requirements for usable marijuana and hemp. The OLCC held a Rules Advisory Committee on this during 2021. The marijuana industry was supportive of this change; however, some public health experts expressed concern or skepticism regarding the outcomes this may pose. As of January 1, 2022, usable marijuana and hemp are no longer required to be in child resistant packaging at the point of sale. As of December 2022, the OLCC has not seen a dramatic shift in licensees using non-plastic packaging for usable marijuana and hemp. This may be a result of supply chain issues or licensees still drawing down existing inventory. Ultimately, this rule change should result in a reduction in plastic use by the marijuana industry, but results may take time to be seen

Alternative packaging materials do exist that are capable of being child resistant. However, the OLCC believes mandating certain types of materials to be used instead of plastic may pose other issues, both known and unknown. For example, certain materials may be more expensive or harder to source due to supply chain issues. These are costs that licensees will bear and may pass on to consumers. Additionally, it is unclear if meaningful standards exist for “sustainable” or “compostable” packaging exist.

A solution to reduce plastic created by child resistant packaging may be to implement a redemption program similar to Oregon’s Bottle Bill program. The OLCC is aware of some efforts to develop such a similar system. A refund and redemption system would require a statutory change to 475C and an in-depth review of how to develop a system that effectively recycles these plastics (Polypropylene).

---

## **OTHER LAWS AND STATE AGENCIES**

The Oregon Department of Environmental Quality (DEQ) is the primary regulatory agency in this state that adopts and enforces rules related to Oregon’s air, land, and water. The DEQ regulates recycling in Oregon. In 2021, SB 582 or the Plastic Pollution and Recycling Modernization Act was signed into law and became effective January 1, 2022. In part, this law aims to modernize Oregon’s recycling and producers and manufacturers of certain plastic items will help fund this effort. It does not appear that the majority of OLCC licensed marijuana businesses will be subject to these requirements. However, it is important to note that recycling does not reduce plastic use or consumption, but reduces the amount of energy required to make new products. It does not appear that mandating or incentivizing recycling of plastic based marijuana packaging would reduce the plastic used by the marijuana industry. The cannabis industry’s challenges should be a part of the DEQ’s process to ensure that regulations are crafted to meet address these environmental challenges.

---

## **CONCLUSION**

The mission of the OLCC is to support businesses, public safety and community livability through public education and the enforcement of marijuana laws. The OLCC realizes the environmental

impacts of plastics touch on all aspects of our mission. This report illustrates the steps the agency is taking to reduce plastic, while keeping public health and safety at the forefront. The OLCC also understands that the need to revisit rules and regulations is an iterative process. With strong partnership and collective dedication, the commission will continue to work with industry members, the public and public health and safety partners to update and clarify administrative rules and policies, that will benefit Oregon businesses and Oregonians.