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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845
OREGON LIQUOR CONTROL COMMISSION

FILED
02/23/2021 2:58 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: The proposed changes recategorize and decrease penalties for certain violations.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/22/2021 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:
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HEARING(S)

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

DATE: 03/16/2021

TIME: 2:30 PM - 3:30 PM

OFFICER: Madeline Kane

ADDRESS: Oregon Liquor Control
Commission (Virtual)

Virtual Hearing via Online &
Telephone

Milwaukie, OR 97222

SPECIAL INSTRUCTIONS:

To listen to, or participate in, this
Public Hearing please call: 1 (786) 535-
3211 and enter access code: 162-462-
581#

NEED FOR THE RULE(S):

As the Recreational Marijuana program has grown and evolved, the Commission has endeavored to balance the needs and interests of licensees with public health and safety. The OLCC is committed to working with and educating licensees on compliance matters. The amendments in this package are a revision to the way compliance actions are administered. These permanent rules reclassify violations to better reflect the public health and safety risks, streamline processes for licensees and OLCC staff, and clarify consequences for failure to comply with particular rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OLCC rulemaking files (available upon request from the OLCC.)

FISCAL AND ECONOMIC IMPACT:

This statement takes into account the fiscal impact on: (a) Marijuana Licensees; (b) Local Government; (c) State Agencies; and (d) the Public.

(a) Marijuana Licensees

The Commission expects a positive impact to small businesses. These rules reduce violation categories, and extend notification periods, which would result in fines and compliance matters decreasing.

(b) Local Government.

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

(c) State Agencies.

The Commission expects the proposed amendments to have no impact upon other state agencies, as the rules do not apply to them.

(d) The Public.

The Commission expects the proposed amendments to have no impact upon public health and safety.

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.

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:

As of February 22, 2021, the Commission has 2,498 active marijuana licenses (Producer, Wholesaler, Processor, Retailer, Laboratory and Research).

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

The Commission expects no impact on recordkeeping and other administrative activities required for compliance for licensees. Rule changes in this package will extend the timeline for reporting, the Commission expects a decrease in reporting as a result of these changes.

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

The Commission expects no impact to licensees' and applicants' costs related to equipment, supplies, labor and administration.

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

Over the course of this rulemaking the Commission held an advisory committee meeting to collect suggestions and feedback for proposed rule amendments.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

845-025-1440, 845-025-1450, 845-025-2090, 845-025-3305, 845-025-8520

AMEND: 845-025-1440

RULE SUMMARY: This rule details camera requirements and has been updated to reclassify the violation category.

CHANGES TO RULE:

845-025-1440

Required Camera Coverage and Camera Placement ¶¶

(1) A licensed premises must have camera coverage, as applicable, for:¶¶

(a) All points of ingress and egress to and from the licensed premises;¶¶

(b) All limited access areas as that term is defined in OAR 845-025-1015;¶¶

(c) All consumer sales areas;¶¶

(d) All points of ingress and egress to or from limited access areas;¶¶

(e) The surveillance room or surveillance area as defined in OAR 845-025-1460(1)(a) and (b);¶¶

(f) Any other area that the Commission believes presents a public safety risk based on the overall operation and characteristics of the licensed premises; and¶¶

(g) All areas where marijuana waste is required to be stored, destroyed or rendered unusable as required by OAR 845-025-7750.¶¶

(2) A licensee must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:¶¶

(a) Within 15 feet both inside and outside of all points of ingress and egress to and from the licensed premises; and¶¶

(b) In all locations within limited access areas, and consumer sales areas on the licensed premises.¶¶

(3) Failure to comply with subsection (1)(a) through (e) of this rule is a Category I violation and may result in license revocation.¶¶

(4) Failure to comply with subsection (1)(f), (1)(g), (2)(a) or (2)(b) of this rule is a Category III violation.

Statutory/Other Authority: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.105

Statutes/Other Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.105

AMEND: 845-025-1450

RULE SUMMARY: This rule details video requirements for the license premises, and has been updated to reclassify the violation categories.

CHANGES TO RULE:

845-025-1450

Video Recording Requirements for Licensed Facilities~~¶~~

(1) A licensee must have cameras that continuously record, 24 hours a day;¶

(a) In all areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts, products or waste may be present on the licensed premises; and¶

(b) All points of ingress and egress to and from areas where mature marijuana plants, immature marijuana plants, usable marijuana, cannabinoid concentrates, extracts, products or waste ~~are~~may be present.¶

(2) A licensee must:¶

(a) In all areas where camera coverage is required, use cameras that record at a minimum resolution of 1280 x 720 px and record at 10 fps (frames per second);¶

(b) Use cameras that are capable of recording in all lighting conditions;¶

(c) Have and keep surveillance recordings for a minimum of 90 calendar days;¶

(d) Have and keep off-site backup recordings described in (2)(k) of this rule for a minimum of 30 days;¶

(e) Maintain surveillance recordings in a format approved by the Commission that can be easily accessed for viewing and easily reproduced;¶

(f) Upon request of the Commission, keep surveillance recordings for periods exceeding the retention period specified in section (2)(c) of this rule;¶

(g) Have the date and time embedded on all surveillance recordings without significantly obscuring the picture;¶

(h) Archive video recordings in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place;¶

(i) Make video surveillance records and recordings available immediately upon request to the Commission in a format specified by the Commission for the purpose of ensuring compliance with ORS Chapter 475B and these rules;¶

(j) ~~Immediately~~Within 24 hours notify the Commission of any equipment failure or system outage lasting 30 minutes or more; and¶

(k) Back up the video surveillance recordings off-site and in real time for the surveillance room or surveillance area.¶

(3) Notwithstanding the requirements in section (1) of this rule a licensee or laboratory licensee may stop recording in areas where marijuana items are not present due to seasonal closures or prolonged periods of inactivity.¶

(a) At least 24 hours before stopping recording, a licensee or laboratory licensee must submit written notice to the Commission by email using a designated form as published by the Commission on its website and the notice must include:¶

(A) A copy of the licensee's plot plan or diagram as described in OAR 845-025-1030 showing which cameras will be deactivated, the total number of cameras that will be deactivated, and a description or list of areas or applicable labels of the deactivated cameras.¶

(B) The date and time recording will stop.¶

(C) An explanation for why recording will be stopped.¶

(D) The date and time recording will resume.¶

(b) A licensee or laboratory licensee:¶

(A) May not stop the recording or continuous real time back up of the recording for a surveillance area unless all other cameras on the licensed premises are shut down under this rule.¶

(B) Must resume all required recording no later than the date and time specified in the notice submitted under

subsection (a) of this section.¶

(C) May not engage in any licensed privileges in any areas where recording was stopped under this section.¶

(4) Failure to comply with subsections ~~(1)(a), (b) or~~ (2)(e), (g) or (h) of this rule is a Category I violation and may result in license revocation.¶

(5) Failure to comply with subsections ~~(21)(a), (b), (d), (f), (i), (j) or~~ (2)(f), or (k) of this rule is a Category II violation.¶

(6) Failure to comply with subsection (2)(a), (b), (d), (j), or (k) is a Category III violation.¶

(7) Failure to comply with subsection (2)(c) of this rule is:¶

(a) For the first violation in a two-year period:¶

(A) A Category I violation if the licensee maintained surveillance recordings for 7 days or less; ¶

(B) A Category II violation if the licensee maintained surveillance recordings for more than 7 days but less than 30 days; or¶

(C) A Category III violation if the licensee maintained surveillance recordings for more than 30 days but less than 90 days.¶

(b) A Category I violation for any subsequent violation in a two-year period.¶

~~(78)~~ A licensee may not engage in any privileges of the license in an area that does not have camera coverage as described in OAR 845-025-1440 and 845-025-1450 or in an area where camera coverage has been stopped pursuant to section (3) of this rule, including but not limited to possessing, storing, cultivating, transporting, transferring, or receiving marijuana items.

Statutory/Other Authority: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.105

Statutes/Other Implemented: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.105

AMEND: 845-025-2090

RULE SUMMARY: This rule details requirements for notifying the Commission of a harvest. The rule has been updated to clarify the consequence for failure to properly file or amend a harvest notice.

CHANGES TO RULE:

845-025-2090

Harvest Notification

(1) Notice Requirement. A producer licensee must file a harvest notice before harvesting usable marijuana from any mature plant located in an outdoor canopy area.¶

(2) Notices required under this rule must:¶

(a) Be filed no later than 9:00 a.m. on the day of the harvest activity;¶

(b) Identify the dates of the proposed harvest; and¶

(c) Be filed in a form and manner prescribed by the Commission.¶

(3) Alteration of Dates. If the harvest does not take place as described in the notice, a harvest notice may be rescinded or amended within 24 hours of the harvest date(s) identified in the harvest notice.¶

(4) Tracking. Filing a harvest notice does not relieve the producer from recording harvest data and other information in CTS as required by these rules.¶

(5) Violations.¶

(a) Failure to file a harvest notice is a Category III violation ~~for each day the violation occurs.~~¶

(b) Failure to properly amend a notice is a Category IV violation ~~for each day the violation occurs.~~

Statutory/Other Authority: ORS 475B.154, ORS 475B.635

Statutes/Other Implemented: ORS 475B.154, ORS 475B.635

AMEND: 845-025-3305

RULE SUMMARY: This rule describes the requirements for processing marijuana for medical cardholders. The violation category for this rule has been updated.

CHANGES TO RULE:

845-025-3305

Processing for Cardholders

(1) Eligibility. Notwithstanding OAR 845-025-3215(3), a processor licensed under ORS 475B.090 who has registered in the form and manner prescribed by the commission may receive usable marijuana from a patient or the patient's designated primary caregiver and, for a fee, process that usable marijuana into cannabinoid products, concentrates and extracts for transfer to the patient or the patient's designated primary caregiver subject to the following conditions:¶¶

(a) The processor cannot receive more than 24 ounces of usable marijuana from a patient or the patient's designated primary caregiver in a single transaction;¶¶

(b) The processor cannot receive more than three pounds from a patient or the patient's designated primary caregiver in any 12-month period; and¶¶

(c) The processor may not transfer more than the following amounts of marijuana items to a patient or the patient's designated primary caregiver in a single transaction:¶¶

(A) One ounce of cannabinoid extracts;¶¶

(B) 16 ounces of cannabinoid concentrates;¶¶

(C) 16 ounces of cannabinoid products in solid form;¶¶

(D) 72 ounces of cannabinoid products in liquid form; or¶¶

(E) Five grams of cannabinoid products intended for inhalation.¶¶

(d) In total the processor may not transfer more than the following amounts of marijuana items to a patient or the patient's designated primary caregiver in any 12 month period:¶¶

(A) Two ounces of cannabinoid extracts;¶¶

(B) 32 ounces of cannabinoid concentrates;¶¶

(C) 32 ounces of cannabinoid products in solid form; or¶¶

(D) 144 ounces of cannabinoid products in liquid form.¶¶

(e) The processor must:¶¶

(A) Record all activity under this rule in CTS; and¶¶

(B) Have the proper endorsements listed within 845-025-3210.¶¶

(2) Transfer requirements. Prior to transferring any cannabinoid products, concentrates or extracts processed under this rule to a patient or the patient's designated primary caregiver the processor must:¶¶

(a) Securely affix a label that contains the following information in a legible font to all containers holding a marijuana item:¶¶

(A) A statement that reads: "NOT FOR SALE" in bold, capital letters attached to the marijuana item;¶¶

(B) The universal symbol;¶¶

(C) The UID number;¶¶

(D) The business name and license number of the processor; and¶¶

(E) The net weight or volume of the marijuana or marijuana item.¶¶

(b) Comply with the:¶¶

(A) Testing requirements applicable to licensed processors in ORS 475B.550 to ORS 475B.590 and OAR 333-007-0300 to 333-007-0500;¶¶

(B) The concentration limit requirements in ORS 475B.625 and any rules adopted thereunder; and¶¶

(C) Generate a manifest in CTS and carry a physical copy of the manifest during transportation, if delivering to a patient or designated primary caregiver. If the cardholder or designated primary caregiver is picking up the cannabinoid products, extracts or concentrates from the processor, a physical manifest is not required to be printed but must be generated in CTS.¶¶

(3) Record Keeping. In addition to the requirements of (1)(e) the processor must record all patient or designated primary caregiver's OMMP number from whom they receive usable marijuana and the OMMP number of the patient or designated primary caregiver to whom they transfer cannabinoid products, concentrates and extracts.¶

(4) Processing Requirements. The processor may only combine usable marijuana received from patients or designated primary caregivers when processing cannabinoid products, concentrates and extracts for a patients or the patients' designated primary caregiver. A processor may not add or contribute any other usable marijuana, industrial hemp, or hemp items to the processing.¶

(a) When distributing a cannabinoid product derived from usable marijuana received from multiple patients in (4) of this rule, the processor must distribute in proportional shares.¶

(b) The processor must segregate all usable marijuana received under this rule and all cannabinoid products, concentrates and extracts processed under this rule from its other inventory.¶

(5) Violations. ~~The Commission may cancel or suspend a licensed processor's registration under this rule or the processor's license if the processor violates these rules~~Failure to comply with this rule is a Category III violation.

Statutory/Other Authority: ORS 475B.025, ORS 475B.090, ORS 475B.139

Statutes/Other Implemented: ORS 475B.090, ORS 475B.139

AMEND: 845-025-8520

RULE SUMMARY: This rule details prohibited conduct. The violation category in the section related to industrial hemp on a licensed premises has been updated.

CHANGES TO RULE:

845-025-8520

Prohibited Conduct ¶¶

(1) Sale to a Minor. A licensee or permittee may not sell, deliver, transfer or make available any marijuana item or hemp item to a person under 21 years of age unless the individual holds a valid OMMP patient or designated primary caregiver card.¶¶

(a) Violation of this section for an intentional sale to a minor by licensee or permittee or licensee representative is a Category II violation.¶¶

(b) Violation of this section for other than intentional sales is a Category II(b) violation.¶¶

(2) Identification. A licensee or licensee representative must require a person to produce identification as required by ORS 475B.216 before selling or providing a marijuana item or hemp item to that person. Violation of this section is a Category IV violation.¶¶

(3) Access to Premises.¶¶

(a) A licensee, laboratory licensee, or permittee may not:¶¶

(A) During regular business hours for the licensed premises, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and who enters or wants to enter a licensed premises to conduct an inspection to ensure compliance with ORS 475B affecting the licensed privileges; or these rules;¶¶

(B) Outside of regular business hours or when the premises appear closed, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and requests entry on the basis that there is a reason to believe a violation of ORS 475B affecting the licensed privileges; or these rules is occurring; or¶¶

(C) Once a regulatory specialist is on the licensed premises, ask the regulatory specialist to leave until the specialist has had an opportunity to conduct an inspection to ensure compliance with ORS 475B affecting the licensed privileges; or these rules.¶¶

(b) Violation of this section is a Category II violation.¶¶

(c) A licensee or laboratory licensee must at all times retain control of, or the right of access to, all or any part of the licensed premises. Except as provided in OAR 845-025-1160(5), failure to retain such control or right of access is a Category I violation and may be grounds for immediate suspension or cancellation of the license.¶¶

(4) Use or Consumption of Intoxicants on Duty and Under the Influence on Duty.¶¶

(a) No licensee, licensee representative, laboratory licensee, laboratory licensee representative, or permittee may consume any intoxicating substances while on duty, except for employees as permitted under OAR 845-025-1230(6)(b). Violation of this subsection is a Category III violation.¶¶

(b) No licensee, licensee representative, laboratory licensee, laboratory licensee representative, or permittee may be under the influence of intoxicating substances while on duty. Violation of this subsection is a Category II violation.¶¶

(c) Whether a person is paid or scheduled for a work shift is not determinative of whether the person is considered "on duty."¶¶

(d) As used in this section:¶¶

(A) "On duty" means:¶¶

(i) From the beginning to the end of a work shift for the licensed business, including any and all coffee, rest or meal breaks; or¶¶

(ii) Performing any acts on behalf of the licensee or the licensed business outside of a work shift if the individual has the authority to put himself or herself on duty.¶¶

(B) "Intoxicants" means any substance that is known to have or does have intoxicating effects, and includes

alcohol, marijuana, or any other controlled substances.¶

(5) Permitting Use of Marijuana at Licensed Premises. A licensee, laboratory licensee, or permittee may not permit the use or consumption of marijuana, hemp items, or any other intoxicating substance, anywhere in or on the licensed premises, or in surrounding areas under the control of the licensee, except for employees as permitted under OAR 845-025-1230(6)(b). Violation of this section is a Category III violation.¶

(6) Import and Export. A licensee, laboratory licensee, or permittee may not import marijuana items into this state or export marijuana items out of this state. Violation of this section is a Category I violation and could result in license or permit revocation.¶

(7) Permitting, Disorderly or Unlawful Conduct. A licensee, laboratory licensee, or permittee may not permit disorderly activity or activity that is unlawful under Oregon state law on the licensed premises or in areas adjacent to or outside the licensed premises under the control of the licensee.¶

(a) If the prohibited activity under this section results in death or serious physical injury, or involves unlawful use or attempted use of a deadly weapon against another person, or results in a sexual offense which is a Class A felony such as first degree rape, sodomy, or unlawful sexual penetration, the violation is a Category I violation and could result in license or permit revocation.¶

(b) If the prohibited activity under this section involves use of a dangerous weapon against another person with intent to cause death or serious physical injury, it is a Category II violation.¶

(c) As used in this section:¶

(A) "Disorderly activities" means activities that harass, threaten or physically harm oneself or another person.¶

(B) "Unlawful activity" means activities that violate the laws of this state, including but not limited to any activity that violates a state criminal statute.¶

(d) The Commission does not require a conviction to establish a violation of this section except as required in ORS 475B.045.¶

(8) Marijuana as a Prize, Premium or Consideration. No licensee or permittee may give or permit the giving of any marijuana item as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises.¶

(9) Visibly Intoxicated Persons. No licensee or permittee may sell, give, or otherwise make available any marijuana item to any person who is visibly intoxicated. Violation of this section is a Category III violation.¶

(10) Prohibited inhalable cannabinoid products.¶

(a) For purposes of this rule, a "prohibited inhalable cannabinoid product" is an inhalable cannabinoid product that does not meet the requirements of OAR 845-025-3265.¶

(b) No licensee or permittee may:¶

(A) Process or manufacture a prohibited inhalable cannabinoid product on or after April 1, 2021; ¶

(B) Possess, sell, deliver, transfer, transport, purchase, or receive the prohibited inhalable cannabinoid product on or after July 1, 2021, if the prohibited inhalable cannabinoid product was processed or manufactured prior to April 1, 2021; or ¶

(C) Possess, sell, deliver, transfer, transport, purchase, or receive a prohibited inhalable cannabinoid product that was processed or manufactured on or after April 1, 2021.¶

(c) An intentional violation of this section is a Category II violation.¶

(d) An unintentional violation of this section is a Category III violation.¶

(11) Additional Prohibitions. A licensee or permittee may not:¶

(a) Sell or deliver any marijuana item or hemp item through a drive-up or walk-up window.¶

(b) Use any device or machine that both verifies the age of the consumer and delivers marijuana or hemp items to the consumer.¶

(c) Deliver marijuana or hemp items to a consumer off the licensed premises, except that retail licensees may provide delivery as set forth in OAR 845-025-2880.¶

(d) Violation of this subsection is a Category III violation.¶

(e) Permit industrial hemp or a hemp item to be present on the licensed premises, except as allowed by these rules. Violation of this subsection is a Category III violation. An intentional violation is a Category I violation.

Statutory/Other Authority: ORS 475B.025, ORS 475B.070, 475B.090, 475B.100, 475B.232, 475B.236

Statutes/Other Implemented: ORS 475B.070, 475B.090, 475B.100, 475B.105, 475B.227, 475B.329, 475B.333, 475B.119