

Growers Technical Subcommittee

July 22, 2015 Meeting Summary and Recommendations

Committee Attendees: Bob Blake, Jenny Dresler, Gina Erdmann, Chris Malott, Jesse Peters, John Sajo, Wendy Reordan, Tyson Haworth, Jeff Stone

Absences: Jenny Burkhead

Other Attendees: Chris Lyons (RAC Chairperson)

OLCC Staff Representatives: Danica Hibpshman, Amanda Borup

The growers technical subcommittee met on July 22, 2015 to discuss security, transportation, waste disposal, licensing and compliance issues. The following is a summary of that meeting and the subcommittee's rule recommendations on those topics. For purposes of this and future summaries and recommendations, these phrases are defined as follows:

- ***“Believes”*** or ***“agrees”***: no member of the committee voiced a conflicting opinion or approach.
- ***“Generally agrees”***: some members of the committee voiced a differing sentiment than this prevailing opinion or approach.

1. Security

A. Security of the Licensed Premises

The growers subcommittee agrees that theft of finished product (i.e. flower and leaf material after it has been harvested, dried and trimmed) is a significant security risk and concern among producers. The subcommittee generally agrees that theft during the growing cycle is less of a concern, as most growers have plants in the ground or in large containers, which are often trellised with netting; making it very difficult to remove even a portion of a live flowering plant. As such the subcommittee generally agrees that until the plant is harvested, dried and ready for sale or use, the risk of diversion is low.

The subcommittee believes that what constitutes adequate security measures for a licensed premises will vary from producer to producer, and be dependent in large part on the location and size of the operation. The subcommittee is concerned about the potentially high costs of requiring extensive security measures such as video monitoring and alarm systems, which may not be an appropriate deterrent for all types of grow operations. The subcommittee believes that to some extent, the particular security provisions a producer employs should be a business decision, and therefore the subcommittee recommends that the rules not require any specific security measures for all recreational marijuana producers. Instead, the subcommittee recommends requiring that producers submit a security plan which provides some method of 24-hour surveillance for the entire licensed premises, at a sufficient level of monitoring to deter theft and prevent diversion. The subcommittee believes that a rule in this form would allow for different security measures in different settings, and would provide producers some flexibility in how they choose to protect their own investments. The subcommittee believes that in some cases, such as an urban warehouse grow operation, “24-hour surveillance” may ultimately translate into the need for security cameras and/or

employment of security personnel. In other settings, such as a rural family farm operation, “24-hour surveillance” may be satisfied by requiring the presence of at least one adult person on the licensed premises at all times. The subcommittee believes that so long as producers are providing some form of constant surveillance of their licensed premises, the state’s need to protect against product diversion should be satisfied. A couple subcommittee members also believe that security requirements should take into account the fact that outdoor producers typically only have one harvest a year, and should not be required to have 24-hour surveillance at those times of the year when no plants are present.

The subcommittee believes that allowing producers the option of storing harvested products off-site, without the need for a different license, would be a significant aid in reducing the overall risk of theft that producers face. The subcommittee therefore recommends allowing producers the ability to extend their license privileges to include a secure facility outside of the licensed production premises, and to perhaps allow multiple producers the ability to store harvested product in one secure location. The subcommittee agrees that placing specific security requirements on any off-site facilities would not be unreasonable, but emphasized that maintaining an appropriate chain of custody for the products was the more critical security necessity.

The subcommittee believes that requiring grow operations to be shielded from public view, as OHA requires, is a form of theft deterrence and that a similar requirement of recreational growers is reasonable as well.

B. Employee Theft Prevention

The subcommittee believes that preventing employee theft or vetting potential employees should not be a regulatory concern, and that such practices should be left entirely to individual businesses. The subcommittee recognizes that employee theft could be a source of marijuana diversion to the unregulated market, but the subcommittee does not believe it is a significant avenue for leakage, or that formal regulations would have much overall success in preventing employees from stealing marijuana items from their licensed employers.

2. Transportation

A. Documentation/Tracking

The subcommittee believes that requiring producers to provide notice of their transport plans would be unduly burdensome to both producers and regulators without much, if any, compliance benefit. The subcommittee also believes that overly stringent transportation requirements will unnecessarily restrict a producer’s ability to shop his or her products around to various sales outlets. The subcommittee recommends requiring that an appropriately documented chain of custody be maintained at all times, and that some form of accurate documentation accompany any product being transported, such as a manifest, invoice, bill of lading or similar. The subcommittee recommends that the rules not require producers to notify regulators or other entities regarding their anticipated routes, or engage in real-time reporting of product movements while in transit. The subcommittee believes that such requirements could be very expensive due to the manpower needed to ensure routes are properly reported and updates inputted, and could easily create avenues where small human errors lead to hefty sanctions even when no attempts at thwarting the purpose of the regulated system were actually made.

The subcommittee agrees that until a regulated recreational market is established and market demand is better understood, the rules need to allow producers the ability to be essentially traveling salesmen, so that they can take their product around to various sales points as needed. Several subcommittee members suggest that transportation rules be developed around the purpose of the transportation, and require specific documenting and tracking for different purposes. For example, product that is intended to be directly shipped to another licensee could require a manifest that accompanies the product from start to final destination. On the other hand, producers who wish to carry their products around to various licensees could be required to essentially “check out” an amount of product from their inventory, have appropriate documentation that identifies the amounts in transit, prepare invoices whenever a sale is made to document reductions from the amounts being carried, and then document the restocking of any remaining amounts after finishing sales visits. The subcommittee believes that allowing producers different methods for tracking and documenting their transportation activities will give producers the flexibility to meet the needs of various retail or processor outlets, while still ensuring accuracy and accountability for moving marijuana products.

The subcommittee recommends allowing producers to engage third parties to transport their products, understanding that those parties would need to hold a license. The subcommittee believes that it may be more cost effective, particularly for smaller producers outside of large metro areas, to hire transportation services who may move product from multiple producers. The subcommittee believes there is no increased risk of diversion by allowing third-party transportation so long as all rules regarding transport manifests, invoicing or other tracking documentation are applicable so that an appropriate chain of custody is always in place.

Several members of the subcommittee also recommend that OLCC not require the tracking of movement of immature plants (including seeds and clones) between properties owned by the same producer. In a typical agricultural farm setting, a farmer may have different plots of land for cultivation, and for various reasons may have those areas spread out from across the street to across the state. These members of the subcommittee believe that the rules should allow producers as much flexibility as possible in transferring immature plants around to their various plots and properties, and that any rules regulating the business transfer of immature plants, with no psychoactive material, will add unnecessary expense and make the regulated market less competitive.

B. Security in Transport

The subcommittee believes that most businesses will take reasonable precautions to ensure the safety and security of themselves, their employees and their products, and that regulations requiring security during transportation of marijuana are not necessary. Specifically, the subcommittee recommends that no rules be adopted that require two or more individuals be present in transporting, or the use of armored vehicles, or similar security measures; the subcommittee believes that the cost of such requirements would be extremely burdensome on the industry. The subcommittee believes that the highest risk point for any producer is not in the transportation of marijuana products, but rather after a sale or delivery is made and a producer is carrying large amounts of cash. For this reason, the subcommittee believes that more focus needs to be had on providing better access to banking services for marijuana businesses.

Several subcommittee members suggest requiring GPS equipment on any vehicle transporting marijuana; not to track vehicles in transit but as a tracking mechanism in the event of a theft, particularly if there is a regulatory concern about stolen product being transported across state lines. The subcommittee agrees that simply having such a requirement may have a general deterrent effect, if it generally well known that all vehicles transporting marijuana products are required to have GPS. As such the subcommittee

generally agrees that this would not be an unreasonable or overly burdensome requirement. Some members of the subcommittee believe it would be too burdensome and should not be required, because potential thieves would learn to look for it and disable or remove it.

C. Limits on Transportation

The growers subcommittee recommends that no limits be placed on the amount of product a producer can transport at any given time.

3. Sampling and Packaging

The growers subcommittee believes that there is no need to limit the amount of samples, or size of samples, that a producer can give to another licensee (including their employees). The subcommittee believes that because producers may have a variety of strains they would like to offer for sale to other licensees, producers shouldn't have any constraints on how much free product they can offer for promotional purposes.

The subcommittee believes that producers should be permitted to package their own products.

4. Waste Disposal

The growers subcommittee believes that most waste disposal procedures should be left to business practices and not regulated. The subcommittee believes that, in general, producers will not have as many or the same risks of theft from their waste material as other licensees may have, and that most of a producer's waste will have no psychoactive component. The subcommittee agrees that if rules are needed governing waste disposal practices of producers, there should be a distinction drawn between plant waste that could have psychoactive properties (such as flower or leaf material) and non-psychoactive waste (such as stems or root balls); which is consistent with HB 3400's definitions of what constitutes "usable marijuana."

The subcommittee agrees that it would not be unreasonable to require destruction of psychoactive or potentially psychoactive material, so long as composting would be a method that qualifies as destruction. The subcommittee also generally agrees that it is not unreasonable to require that any psychoactive or potentially psychoactive material be under a producer's 24-hour surveillance plan until it is fully destroyed. In other words, if a producer chooses to compost plant material with potential psychoactive properties, then the producer's composting area would need to be monitored continuously in whatever manner provided for in the producer's security plan (discussed above in Section 1. A.). A couple subcommittee members believe that outdoor producers should not be required to monitor a compost pile at times when no material or plants are being produced. The subcommittee agrees that the key is having proper disposal procedures in place, and that perhaps requiring producers to provide a disposal plan as part of the application process would be reasonable.

The majority of the subcommittee agrees that the rules should not encourage or allow destruction by any chemical means, such as mixing psychoactive or potentially psychoactive material with toxic chemicals to make it "unusable." The subcommittee believes not only is this a potential environmental hazard, it could be a public safety hazard as well if the contaminated material were to get in the hands of anyone uneducated about it. Some members of the committee believe it is a mistake to forbid any chemical treatment as a waste disposal tool and recommend that rules regarding disposal practices line up with Department of Agriculture requirements, which typically account for potential environmental and safety considerations.

Finally, the subcommittee desires to ensure that the rules do not prohibit producers from taking in and composting plant material from other licensees, if they choose.

5. Acceptable Variances (Unexplained Losses of Product)

The subcommittee generally agrees that the current standard set by OHA for unexplained variances (5%), is reasonable and should carry over into the recreational market. Several members of the subcommittee believe that acceptable variance rates should be higher, and that regulatory oversight should start only when unexplained product losses are at 10% or above.

6. Licensing and Compliance Issues

A. Minors on Licensed Premises

HB 3400's provision that OLCC will need to regulate and restrict access by minors to licensed premises was discussed, but the subcommittee generally believes that an exception should be made for minor children of a licensee, particularly where the licensed premises is associated with their primary residence. The subcommittee generally agrees that there is no risk to minors in these situations, and that placing restrictions on access could be very burdensome for families who also live on grow sites.

B. Compliance Checks

The idea of scheduled inspections was discussed and the committee is in favor of this type of general compliance program, understanding that surprise or unannounced visits may be necessary if concerns or problems arise. Some members of the subcommittee believe that 24-48 hours' notice of an inspection is reasonable, so long as there is some ability to have the visit rescheduled in situations where the licensee is out of town or otherwise unavailable. Other members believe that 72 hours' notice is more reasonable, as it coincides with the timeframe HB 3400 allows for production of records to OLCC upon request. Others on the committee believe that a week or two is appropriate, as advanced scheduling is part of our present culture and these types of inspections should be no exception. Other subcommittee members recommended that OLCC look at how the Oregon Department of Agriculture performs scheduled inspections, which the nursery industry adheres to, as ODA is very familiar with the cyclical nature of the agricultural industry and best practices in conducting crop inspections. The subcommittee believes that the agency will benefit greatly, and have increased credibility, if it models the recreational marijuana inspection program after other, established agricultural inspection practices.

The subcommittee agrees that if one of OLCC's primary goals in performing scheduled checks is to assist licensees in being compliant, then OLCC should make sure to schedule visits early enough in the production cycle to allow licensees the opportunity to make any adjustments needed to their business practices. For example, during a harvest a producer will have so much going on and will be on a very compressed time schedule, a compliance check during that time would leave little to no ability for the producer to make any changes if an inspector noted issues. On the other hand, if an inspector were to schedule a check prior to plants going into flower, a producer would have time to correct any problems that were discovered. Ultimately, the subcommittee recommends that OLCC inspectors work with the producers, and make the process as collaborative as possible, to ensure that the needs of both are met in scheduling and conducting compliance visits.

C. Application and Licensing Processes

The growers subcommittee recommends that OLCC not set any limits on the number of producer licenses it issues. If a cap on the number of licenses is deemed necessary, the subcommittee recommends allowing preference to established medical growers who can demonstrate a solid history of producing cannabis.

The subcommittee also recommends that OLCC look at establishing merit-based licensing for growers in counties or cities that initially ban production licenses. The subcommittee believes that if a tiered licensing system is established, and increased size limits are primarily based on length of time as a licensee, then producers from counties and cities that did not opt out of certain license types will have a head start in the market, creating an unfair advantage based solely on the geographic location of the applicant/licensee. To counteract this effect, the subcommittee recommends that if licensing bans are later lifted, OLCC should allow experienced medical growers from previously-banned areas to start producing in the recreational market at a higher tier in order to level the field somewhat.