



Recreational Marijuana Program

Compliance Education Bulletin

Rule Changes Take Effect January 1 – Legislative Changes and Technical Rule Amendments

CE2022-05
December 21, 2022

The Oregon Liquor and Cannabis Commission (OLCC) is providing the following information to all marijuana licensees and hemp certificate holders.

This education bulletin is part of OLCC's compliance education. It is important that you read it and understand it. If you do not understand it, please contact the OLCC for help.

Marijuana licensees are responsible for reading, understanding, and complying with all applicable rules. This bulletin does not supersede any OLCC rule nor does it cover every change made to the rules. Failure to understand and follow the rules referenced in this bulletin *could result in an OLCC administrative violation and/or civil penalty.*

This education bulletin CE2022-05 covers new and amended rules addressing the following issues:

- Worker permits for laboratory employees
- Changes of business structure
- On-site delivery for retailers
- Violation classifications
- Audit testing and relabeling
- Product recalls
- Penalty caps for packaging and labeling violations
- Retailer discounting restrictions
- Tracking processing jobs in METRC
- Hemp testing requirements
- Letter of good standing for other jurisdictions
- Other changes
- Reminder about recent rule changes

Background

On November 17, 2022, OLCC [adopted new and amended cannabis rules in OAR Chapter 845, Divisions 25 and 26](#). Many of the changes were minor updates to grammar and formatting, or clarifications to make the current rule requirements easier to understand. However, there were also several more substantial changes, including changes required by legislation that passed in 2022.

Important note about links in this document: Links to specific rules will always take you to the language that is currently in effect at the time you follow the link. ***Because these rules are not effective until January 1, 2023, following the links before then will not show the updated language adopted by OLCC in November 2022.*** In the meantime, you can see the [final language that was filed with the Oregon Secretary of State](#).

Worker Permits for Laboratory Employees

Earlier this year, the legislature passed [House Bill 4074](#), which requires individuals who perform certain kinds of work on behalf of a laboratory licensee to hold an OLCC-issued worker permit.

Starting January 1, 2023, an [OLCC recreational marijuana program worker permit](#) is required for anyone working for or on behalf of a laboratory who participates in:

- Handling or securing marijuana, including during sampling or testing.
- Recording the delivery, possession, sampling, or testing of marijuana.
- Supervising others who engage in any of these activities.

See OAR [845-025-5500](#)(1) for a complete list of activities requiring a worker permit.

To apply for a worker permit, you must first take and pass the worker permit test, then submit an application through the Marijuana Worker Permit Online Portal. See the links below for additional information:

- Information about how to apply and renew; [frequently asked questions](#)
- Worker Permit education materials: [English](#) or [Spanish](#)
- [Register and take the Worker Permit Test](#)
- [Marijuana Worker Permit Online Portal](#)

On or before January 1, 2023, laboratory licensees must verify that individuals have worker permits before allowing them to continue to perform work at the licensed premises. For any employee hired on or after January 1, 2023, laboratory licensees must verify that the employee has a worker permit before allowing them to perform work at the licensed premises. Like all other license types, laboratory licensees must record all employees that work on the premises in Metrc, and starting January 1, 2023, any employee with roles that necessitate a worker permit must be recorded in Metrc with that permit number. See the [Oregon Metrc Wiki](#) for more information about adding or managing employees in Metrc.

Changes of Business Structure

The requirements for filing notice and receiving approval for changes in business structure of a licensed business were **moved** from [845-025-1160](#) to [845-025-1165](#).

Until March 31, 2023:

The requirements and process for notifying the Commission of an addition or removal of a person who would be an “applicant” will remain the same. Licensees must submit a notification form to the Commission prior to making any business structure change.

When this change would be due to a shareholder of a publicly-traded corporation acquiring 20% or more of voting stock, or a change to principal officers of a publicly-traded corporation, the notice is not required prior to the change, but must be provided within 60 days of the change. *Provided these requirements are met, persons added to a license may act as licensees pending a*

determination by Commission staff on whether the addition of that person would be a basis for denial.

Starting April 1, 2023:

Licensees must submit notification for the addition or removal of a person meeting the qualifications of an applicant prior to making such a change and will also be required to **receive approval** prior to making those changes. *Conditional approval* is granted after five days if a determination is still pending at that time.

If the change is due to a shareholder of a publicly-traded corporation acquiring 20% or more of voting stock, or a change to principal officers of a publicly-traded corporation, the licensee is not required to notify the Commission prior, but must notify the Commission within 60 days of the effective date of the change. Provided that this notification requirement is met, the change is considered to be conditionally approved, pending a determination.

On-Site Delivery for Retailers

On March 22, 2020, OLCC modified rules allowing for “On-Site Delivery of Marijuana by a Retailer” (OAR [845-025-2885](#)) to allow retailers to deliver marijuana to consumers within 150 feet of the licensed premises; this was to give retailers more flexibility during the COVID-19 pandemic. Since that time, the Commission has chosen not to enforce the prohibition on delivering marijuana through a walk-up or drive-up window if the delivery is made in accordance with the on-site delivery rule.

These rules completely remove the prohibition on walk-up windows but maintain the prohibition on drive-up windows. However, the Commission will continue the existing practice of not enforcing the drive-up window prohibition until future rulemaking can be done to focus specifically on the issue of drive-up windows.

These rules do establish restrictions around minors under 21 years of age being in the vehicle when an on-site delivery is made to consumer in a vehicle. A retailer may not deliver marijuana items to a vehicle if a minor is present in the vehicle unless the minor is either:

- An Oregon Medical Marijuana Program (OMMP) cardholder 18 years of age or older; or
- Accompanied by a parent or guardian who is 21 years of age or older, or a parent or guardian who is an OMMP cardholder 18 years of age or older.

See [OLCC Compliance Bulletin CE2022-04](#) on “Walk-Up and Drive-Up Retail Sales” for additional information.

Violation Classifications

For most violations of OLCC rules, the potential penalty is determined by the “category” of the violation. Category I violations are the most serious: these are violations that make licensee ineligible for a license or pose a significant risk to public health and safety. Category V violations are the least serious: these are violations inconsistent with the orderly regulation of the sale or manufacture of marijuana items.

The penalty can also be increased or reduced depending on whether there are aggravating or mitigating factors (e.g. – direct involvement by the licensee would be an aggravating factor; self-reporting an issue or extraordinary cooperation during an investigation would be mitigating factors.)

Many of the [Division 25](#) cannabis rules had not specified a category for a rule violation. To increase transparency to the industry, these new rules assign a violation category to each violation type that did not previously have one.

Additionally, the sanction schedule in OAR [845-025-8590](#) has been amended to reduce the penalty for a licensee receiving a second Category III violation in a two year period; in addition a licensee is now allowed to pay a civil penalty in lieu of a license suspension in certain circumstances that did not previously allow that.

OAR [845-025-8590](#) has also been amended to specify how aggravating and mitigating factors affect a penalty. Each factor now increases or reduces the base penalty by a specific percentage that is listed in the rule.

Audit Testing, Relabeling, & Laboratory Compliance

In an effort to better address the ongoing concerns regarding the accuracy of potency results within the cannabis market, the OLCC is expanding its audit testing rules as well as other rules that apply to cannabis testing laboratories. Some of those changes include updating laboratory and testing rules to require laboratories to retain samples for 30 days after test results are entered into Metrc, specify that relevant agencies (e.g. ORELAP and ODA) may request material from laboratory samples, and prescribe a corrective mechanism when audit testing shows significantly different potency than the original compliance test. The OLCC has also clarified several different rules sections (such as Dishonest Conduct rules) to clearly indicate that they apply to laboratory licensees.

Changes to OAR [845-025-5760](#) allow the OLCC to require the relabeling of a product's potency if audit testing determines that there is a statistically significant difference between the original test and audit test average at the 99% confidence interval using a Student's t-test. In applying this rule, OLCC will be using a one-sample two-sided t-test to determine statistical difference. To help licensees better understand how the Student's t-test will be applied, OLCC has posted an [Excel worksheet](#) as a resource to licensees.

During the rulemaking process OLCC has received questions about how this rule will be applied and who will bear responsibility for audit testing results that are significantly different from the original result.

Who will be responsible for relabeling the product? Like with all labeling issues that necessitate corrections of information, the licensee that labels the product is responsible for the information being accurate. In the case of pre-approved labels, the licensee that applied for the label pre-approval would be responsible for correcting potency information under this program. For generic labels, the licensee that applied the label on the product would be responsible for the information being accurate.

What if licensees receive unexpectedly high compliance potency test results from a lab? Under the testing rules established by the Oregon Health Authority (OHA), licensees may not "electively retest" products for potency. However, if licensees believe they have received unrealistically high potency results on their product, they may self-report the issue to the OLCC by emailing olcc.labs@oregon.gov.

The OLCC may use its discretionary authority under this new rule to determine whether to conduct audit testing on accuracy of that original result. However, it is important for licensees to understand that this new rule **does not affect** the OHA's existing rules regarding when licensees may – or may not – retest their own product.

If a potency discrepancy is identified through audit testing, will the OLCC hold the responsible license accountable? As with all compliance issues, the OLCC will investigate to try and determine the root cause of the issue and if any rule violations occurred. Any significant difference that is identified – particularly a pattern of differences – may trigger an investigation by OLCC or Oregon Environmental Laboratory Accreditation Program (ORELAP) into the cause. If violations, by either the original licensee or the laboratory, are identified, OLCC and its partner agencies would take appropriate action to hold licensees and/or laboratories accountable.

Product Recalls

Modifications were made to the OLCC's product recall rule (OAR [845-025-5790](#)) to clarify for licensees how to report, execute, and manage a recall of cannabis products within the OLCC licensed system. A licensee may conduct a recall for cannabis products that may present a threat to public health and safety, that are in violation of administrative rules, or for quality assurance purposes. Licensees should report a recall to the OLCC within 24 hours of initiating a recall. During a recall, the licensee undertaking the recall is required to notify the licensees that have effected product(s) in their inventory about the concern; the recalling licensee should also provide to impacted licensees information on next steps for isolating the product from further distribution or retail sale, whether that is returning it to the manufacturer, destroying it, or something else. The new rules clarifies several things including, but not limited to:

- What information should be included in recall notices to help impacted licensees collect data and details when reporting a recall;
- What information should be reported on the licensee's distribution list to businesses in possession of the recalled product;
- No later than 48 hours after a recall notice has been issued, impacted retail licensees should notify consumers of the recall; and
- A licensee recalling products should be continuously checking with licensees in possession of the recalled product to ensure receipt of the recall notification and that the appropriate recall response is being followed.

As part of clarifying the recall process the OLCC has developed a web page to link to all current and past recalls <https://www.oregon.gov/olcc/Pages/product-recalls.aspx>. If licensees have questions about the recall process or would like to notify the OLCC of a product recall please contact olcc.recalls@oregon.gov.

Penalty Caps for Packaging and Labeling Violations

These rules establish different levels of civil penalties for different types of packaging and labeling violations. These changes provide greater clarity to the industry about what penalties may be imposed depending on the severity and frequency of the violations.

By law, penalties for packaging and labeling violations can be assessed a penalty of up to \$500 per violation per day. Under these rule changes, OAR [845-025-7170](#) now establishes different levels of per-violation penalties and overall penalty caps as follows:

- Violations that create a present threat, or a substantial likelihood of a threat to public health or safety, are assessed up to \$500 per violation, up to a maximum overall penalty of \$500,000.
- Knowing violations in which a label contains untruthful or misleading content are assessed up to \$500 per violation, up to a maximum overall penalty of \$100,000.
- Violations for including untruthful or misleading content on a label or being attractive to minors are assessed up to \$250 per violation, up to a maximum overall penalty of \$50,000.
- All other packaging and labeling violations are assessed up to \$50 per violation, up to a maximum overall penalty of \$10,000.
- If the licensee has previously been assessed a penalty for any packaging and labeling violation within a two-year period, subsequent violations are assessed at up to \$500 per violation, up to a maximum overall penalty of double the amount described above for that type of violation.

Note on hemp products: OAR [845-026-7070](#) establishes equivalent penalties for violations of labeling requirements for industrial hemp-derived vapor items (hemp vape products) outside of the OLCC-regulated adult use marijuana program.

Retailer Discounting Restrictions

OAR [845-025-2800](#) has been amended to change some of the prohibitions around discounts at marijuana retailers:

- Removed the prohibition for selling items at a nominal price.
- The rule allows for discounting marijuana items, but you are still not allowed to discount a marijuana item if the retail sale of the marijuana is made in conjunction with the retail sale of any other items, including other marijuana items or hemp items.
 - **An example of what is not allowed** would be having a sale where a customer buys an ounce and gets a second ounce half off.
 - **What would be allowed** is having a certain strain half-off for an entire period of time. In this scenario, the sale price is not dependent on any other purchases and would therefore be compliant.
- The rule still does not allow for discounting a marijuana item contingent on the purchase of a non-marijuana item.
 - **An example** of this would be requiring a person to buy something like an empty jar, to receive discounted marijuana (that goes in the jar.)

See OLCC [Compliance Bulletin CE2022-03](#) on “Discounting Marijuana Items” for additional information.

Tracking Processing Jobs in Metrc

OLCC adopted OAR [845-025-7575](#) as part of the implementation of new methods to record processing in Metrc that will begin April 2023. OLCC and Metrc will distribute bulletins to licensees in the coming months with more information, including details about training opportunities on the new functionality prior to go-live. The new functionality will change when and how some information is tracked by licensees, but should not materially affect licensees' current operational practices. The new functionality will greatly improve the accounting of processing activity in Metrc; for example, it will enable licensees to accurately account for multiple outputs from the same input material and transparently designate products as "in process." OLCC and Metrc will provide more details and opportunities to address licensee questions about these changes as the April 2023 implementation approaches.

Hemp Testing Requirements

Since 2017, hemp items like usable hemp (smokable flower), hemp concentrates and extracts, and hemp cannabinoid products (e.g. topicals and edibles) have been required to comply with the same testing requirements as marijuana items.

OLCC has adopted new rules, OAR [845-025-5800 to 845-025-5850](#) that spell out the existing requirements more clearly for OLCC licensees and [hemp certificate holders](#). These are **not** new requirements; they just give licensees and hemp certificate holders more specific information about how to comply with longstanding testing requirements for hemp and hemp items.

The only new provision in these rules is the allowance for hemp certificate holders to request compliance testing on hemp products that they did not manufacture.

Letter of Good Standing for Other Jurisdictions

OAR [845-025-8760](#) has been added to the rule package to allow the OLCC to send a letter of good standing on a licensee's behalf to another licensing authority, when the licensee is applying for a cannabis license in another state. A licensee that has had a violation in the past may still be eligible to request the letter of good standing if they meet the criteria listed in rule. This addition was made to assist Oregon businesses wishing to enter other marijuana markets, and not have historic violations affect their out-of-state licensing status.

Other Changes

The rules also include some smaller changes:

License denial criteria: OAR [845-025-1115](#)

- Some denial criteria have been reclassified from a mandatory denial basis where OLCC must deny the application to a discretionary denial basis where OLCC **may** deny the license.
- The rules clarify that OLCC **must** deny any application for a proposed licensed premises that is located outside of Oregon.

- OLCC **may** deny an application if the applicant has been involved in illicit diversion or inversion of marijuana, or if the applicant was found to be growing marijuana under a hemp license issued by the Oregon Department of Agriculture.
- OLCC **may** deny an application if the proposed licensed premises is co-located with a psilocybin manufacturer license or psilocybin service center license.

License renewal update: OAR [845-025-1190](#)

- The license renewal rule, OAR [845-025-1190](#), has been updated to clarify that the renewed license is valid for one year from the expiration date of the previous license year. This is not a change from current practice.
- If the OLCC is unable to process a license renewal, for example due to a pending violation that has been charged but not yet resolved, licensees are still required to submit an annual renewal application and pay the annual renewal fee in order to continue operating.

Processor violation for unscored edibles: OAR [845-025-3220\(2\)\(e\)](#)

- It is now a violation for a processor to make an adult use cannabinoid edible that **does not meet** the scoring or serving size identification requirements if the edible is in its final form ready for packaging. This includes meeting the expanded scoring requirements in OAR [845-026-0210\(3\)](#) that took effect January 1, 2022.
- The penalty for a violation of this rule is described in OAR [845-025-8590\(3\)\(b\)](#):
 - Violations are initially assessed at \$25 per unit of sale, up to a maximum overall penalty of \$5,000.
 - If the licensee has previously been assessed a penalty for this type of violation within a two year period, subsequent violations are assessed at \$50 per unit of sale, up to a maximum overall penalty of \$10,000.

Producers producing marijuana for OMMP patients and PRMGs: OAR [845-025-2500](#) & [845-025-2550](#)

- These rule changes eliminate the fee for a producer to register to grow marijuana for OMMP cardholders.
- The prohibition on being compensated for producing or providing marijuana to an OMMP cardholder now applies only to usable marijuana, not to immature plants.
- The limits on how many immature plants can be transferred to an OMMP cardholder or a person responsible for a marijuana grow site (PRMG) have been amended to match the limits on the number of immature plants an OMMP cardholder or PRMG can possess.

Producer tour requirements: OAR [845-025-1230\(11\)](#)

- The control plan requirement for producer tours has been removed. When offering tours to the general public, all members of a tour group must sign in on the daily log.

Laboratory premises: OAR [845-025-1230\(5\)](#)

- Laboratory premises are now eligible for exemption from the requirement that a premises be enclosed on all sides by permanent walls and doors if the laboratory can show in its security plan that it will maintain security within the unenclosed area and OLCC determines that it does not present a risk to public health and safety.

- This exemption is already available to processor and wholesaler licensees. Typically the security plan must show that the only portion of the premises not enclosed by permanent walls and doors is an unenclosed pathway between portions of the premises that are enclosed by permanent walls and doors; marijuana items will only enter the unenclosed pathway while being actively moved between the portions of the premises that are enclosed by permanent walls and doors; and marijuana items in the unenclosed pathway will at all times be in the possession of a licensee representative.

New Allergen Declaration - Sesame: OAR [845-025-7000](#)

- In order to align with Federal law, on and after July 1, 2023, all marijuana and hemp edibles that contain sesame must list the allergen either in the “contains” statement or by using the word “sesame” in the ingredient description. This change requires resubmission and pre-approval; see OAR [845-025-7160](#)(8). Email marijuana.packaging@oregon.gov to make updates to your labels prior to the sell down date.

Reminder about Recent Rule Changes

Other rulemaking has occurred this year prompted by legislation or emerging issues:

License moratorium: OAR [845-025-1131](#) & [845-025-1132](#)

- In April 2022, the legislature passed [House Bill 4016](#) which directs OLCC to inactivate any application received after January 1, 2022. It also prohibits applications submitted on or before January 1, 2022 from changing the location for which the application was submitted, or changing 51% or more of the ownership.

Reporting of sex trafficking and human trafficking: OAR [845-025-5585](#)

- In April 2022, the legislature passed [House Bill 4074](#) which requires employees or workers at marijuana licensed businesses to report to a law enforcement agency or to OLCC if they have a reasonable belief that sex trafficking or other human trafficking is occurring at the licensed premises.
- The bill also requires employees or workers to [report to OLCC](#) if they have a reasonable belief that a minor is employed or contracted at the licensee's premises in a manner that violates OLCC rules.

Transfers to and from tribal licensees: OAR [845-025-7725](#)

- Oregon law allows the state to enter into agreements with federally recognized Indian tribes for cross-jurisdictional coordination and enforcement of marijuana-related businesses licensed to conduct business on tribal trust land by the governing body of the federally recognized Indian tribe. OAR [845-025-7725](#) was adopted through temporary rulemaking in September, 2022, to allow the transfer of marijuana between OLCC marijuana licensees and tribal licensees. This package permanently adopts the rule.

Resources

- [2022 Marijuana Bill and Technical rule language](#)
- [2022 Marijuana Bill and Technical rule language, with changes](#)
- [OAR Chapter 845, Division 25](#)
- [OAR Chapter 845, Division 26](#)

Questions related to general compliance issued can be sent to olcc.marijuana@oregon.gov.

Questions related to testing can be sent to olcc.labs@oregon.gov.

Questions related to hemp can be sent to olcc.hemp@oregon.gov.

Questions related to labeling can be sent to marijuana.packaging@oregon.gov.