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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845  
OREGON LIQUOR CONTROL COMMISSION

**FILED**

07/27/2020 9:32 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Enables marijuana retail licensees on-site delivery and the Commission to assert discretion conducting inspections.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2020 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: 08/17/2020

TIME: 10:00 AM - 11:00 AM

OFFICER: Bryant Haley

ADDRESS:

Virtual Hearing via Online &  
Telephone

Milwaukie, OR 97222

SPECIAL INSTRUCTIONS:

To listen to, or participate in, this  
Public Hearing please call: 1 (646) 749-  
3122 and enter access code: 193-678-  
909#

In order to offer oral comment, please  
email: [OLCC.rulemaking@oregon.gov](mailto:OLCC.rulemaking@oregon.gov),  
no later than 9:30 am on Monday  
August 17, 2020. The hearing will end  
at 10:15 am, if no interested parties  
have emailed to offer comment by 9:30  
am; or 5 minutes after the last oral  
comment has been recorded into the  
record.

NEED FOR THE RULE(S):

Due to the continued community spread of COVID-19, the Commission's temporary actions to respond to COVID-19 are expected to expire before Oregon counties enter Phase 3 of re-opening. The Commission is proposing to adopt the rules as permanent for such time as they are needed to maintain business continuity and mitigate the spread of COVID-19.

In order to ensure compliance of marijuana laws and rules, OAR 845-025-1090(5) requires that prior to issuing a license the Commission must inspect the proposed premises. The Commission foresees the amendments as necessary to reduce the risk of spreading COVID-19 by limiting contact between Commission staff and applicants/licensees. By not requiring an inspection to occur prior to issuing a license, the Commission will be able to continue licensing activity and reduce the need for non-essential contacts which could further increase exposure. That said, the amendments provide flexibility of the Commission to inspect, as necessary, when conditions change and as the Commission deems appropriate.

Furthermore, in order to reduce the risk of spreading the COVID-19 virus that could result from congregation of individuals in an establishment while waiting in line to purchase items or otherwise being in close proximity to other individuals, there is a need to create flexibility about where delivery of marijuana may legally occur. The proposed adoption of OAR 845-025-2885 would enable licensees, whom so choose, to deliver marijuana items "on-site" (within 150 ft of the license premise) to a consumer.

This filing corrects the previous filing which contained an error in the special instructions portion. The hearing will be held in the morning, thus the "pm" timeline references were made in error.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Executive Order 20-30 (available from the Governor's Office.)  
OLCC rulemaking files (available upon request from the OLCC.)

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#### 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

Licensees may be impacted by these changes depending upon their position and actions within the regulated market in the following ways:

- (1) Licensees who choose to sell curbside marijuana products will be able to provide more social distancing options.
- (2) Licensees may also see an increase in the pace in which Commission Staff process marijuana licenses due to the amendments to OAR 845-025-1090. The Commission sees this as a positive impact to employee and licensee health and safety during the COVID outbreak.

##### (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. The Oregon Liquor Control Commission forecasts a positive impact, as the agency will be able to use discretion when assessing the need to conduct an on-site inspection. This flexibility is vital to Commission licensing operations. The Commission sees this as a positive impact to employee and licensee health and safety during the COVID outbreak.

(d) The Public.

The Commission forecasts a positive impact to the public health and safety by providing more options for social distancing.

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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) 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 July 15, 2020, the Commission has 2,257 active marijuana licenses(Producer, Wholesaler, Processor, Retailer).

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

The Commission expects a reduction in recording keeping for both licensees and itself due to the potential reduction in conducting on-site inspections.

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

The Commission expects a reduction in recording keeping for both licensees and itself due to the potential reduction in conducting on-site inspections.

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

Commission staff has met with industry groups during the COVID outbreak to discuss these and other rules. Over the course of the summer, the Commission will be holding industry advisory groups to gain further insight on these issues, as well as other perspectives on the ever maturing legal marijuana industry.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The proposed rule changes provide the industry and the Commission more flexibility. Staff are holding industry meetings this summer to get feedback upon all of the marijuana rules and how the industry wishes to proceed forth. The Commission looks forward to addressing any and all comments from concerned parties.

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RULES PROPOSED:

845-025-1090, 845-025-2885

AMEND: 845-025-1090

RULE SUMMARY: This rule describes the application review process. The Commission is proposing to amend the rule to allow for the Commission to use its discretion on whether to perform an onsite physical inspection of a proposed marijuana license location.

CHANGES TO RULE:

845-025-1090

Application Review ¶¶

(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with ORS Chapter 475B and these rules.¶¶

(2) The Commission:¶¶

(a) Must, prior to acting on an application for a new license, a change to a larger producer canopy designation, a change to producer cultivation method designation or change in processor endorsement type, receive a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located.¶¶

(b) May, in its discretion, prior to acting on an application:¶¶

(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and¶¶

(B) Verify any information submitted by the applicant.¶¶

(3) The requirements of section (2)(a) of this rule do not apply to applicants for a producer license if the applicant demonstrates in a form and manner specified by the Commission that:¶¶

(a) The applicant is applying for a license at an address where a marijuana grow site registered under ORS 475B.810 is located;¶¶

(b) The address is outside of city limits;¶¶

(c) At least one person responsible for a marijuana grow site located at the address first registered with the Authority under ORS 475B.810 before January 1, 2015, and was registered with the Authority under ORS 475B.810 on the date on which the applicant submitted the application for a producer license;¶¶

(d) Each person responsible for a marijuana grow site located at the address first registered with the Authority under ORS 475B.810 before February 1, 2016 and was registered with the Authority under ORS 475B.810 on the date on which the applicant submitted the application for a producer license; and¶¶

(e) The applicant is applying for a mature marijuana plant grow canopy of:¶¶

(A) 5,000 square feet or less, if the marijuana is produced outdoors; or¶¶

(B) 1,250 square feet or less, if the marijuana is produced indoors.¶¶

(4) For purposes of section (3) of this rule an applicant for a license under ORS 475B.070 is not required to demonstrate that:¶¶

- (a) At least one person responsible for a marijuana grow site located at the address for which the applicant is applying for a license was continuously registered with the Authority under ORS 475B.810 between January 1, 2015, and the date on which the applicant applies for a producer license; or¶
- (b) Each person responsible for a marijuana grow site located at the address for which the applicant is applying for a license has been continuously registered with the Authority under ORS 475B.810 between February 1, 2016, and the date on which the applicant applies for a producer license.¶
- (5) The Commission must require an inspection of the proposed premises prior to issuing a license.¶
- (6) If during an inspection as described in (5) of this rule, the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.¶
- (a) An applicant that fails an inspection will have 30 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.¶
- (b) An applicant may request in writing one extension of the 30-day time limit in subsection (a) of this section, not to exceed 45 days.¶
- (7) If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.¶
- (8) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.¶
- (9) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Statutory/Other Authority: ORS 475B.025, ORS 475B.040

Statutes/Other Implemented: ORS 475B.045, ORS 475B.060, ORS 475B.063, ORS 475B.074, 2019 OL Ch. 391

ADOPT: 845-025-2885

RULE SUMMARY: This rule enables marijuana retail licensees to provide on-site delivery of marijuana to customers. This is an optional business practice to foster social distancing due to the COVID-19 outbreak.

CHANGES TO RULE:

845-025-2885

On-Site Delivery of Marijuana by Retailer

(1) Notwithstanding OAR 845-025-2880, a retailer may deliver marijuana or hemp items pursuant to a bona fide order to an individual who is on-site but outside of the store, such as to the retailer's parking lot or the front entrance.

(2) "On-site" means an area within 150 feet of the boundary of the retail licensee's licensed premises.

(3) Bona Fide Orders for On-Site Delivery.

(a) A bona fide order must be received by a retailer from the individual requesting delivery.

(b) The bona fide order must contain:

(A) The individual requestor's name, date of birth, and the date delivery is requested; and

(B) A document that describes the marijuana or hemp items proposed for delivery and the amounts.

(4) On-Site Delivery Requirements.

(a) A retailer may only make an on-site delivery during regular business hours and between the hours of 7:00 AM and 10:00 PM local time.

(b) Delivery may only occur within 150 feet of the boundary of the licensee's premises.

(c) At the time of on-site delivery, the licensee or licensee representative delivering marijuana or hemp items to the customer must check the identification of the individual to whom delivery is being made in compliance with OAR 845-025-2820 in order to determine that the identification matches the individual who submitted the bona fide order. This includes, but is not limited to, ensuring that the individual:

(A) Is 21 years of age or older; or

(B) If the individual is age 18-20, is a current registry identification cardholder.

(d) A retailer may not allow marijuana or hemp items to be purchased by an individual who is visibly intoxicated at the time of pick-up.

(e) Marijuana or hemp items being delivered to an individual must comply with the packaging and labeling rules in OAR 845-025-7000 to 845-025-7190.

(f) A retailer licensee or licensee representative must accurately record all on-site delivery sales in CTS in the same manner as a non-delivery sales transaction pursuant to OAR 845-025-7580(5).

(5) A licensee or licensee representative may not allow on-site delivery to occur on any federal public land within 150 feet of the licensed premises. Retailers should comply with any time, place and manner ordinances imposed by a local government.

(6) A violation of any section of this rule that is not otherwise specified in OAR 845-025-8590 is a Category III violation.

Statutory/Other Authority: ORS 475B.025, ORS 475B.105, ORS 475B.206

Statutes/Other Implemented: ORS 475B.206, E.O. 20-30