



OREGON LIQUOR CONTROL COMMISSION

The Commission proposes to:

Adopt Division 25 of Oregon Administrative Rules Chapter 845

NOTICE OF PUBLIC HEARING

Date and Time: 10:00 a.m. on Wednesday, May 25, 2016

Location: Oregon Liquor Control Commission
9079 SE McLoughlin Blvd.
Portland, OR 97222

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Auxiliary aids for persons with disabilities are available upon advance request.

CAPTION:

The rules permanently adopt Division 25 rules for Recreational Marijuana.

RULE SUMMARY:

On November 4, 2014, Oregon voters passed the "Control, Regulation and Taxation of Marijuana and Industrial Hemp Act of 2014" ("Measure 91"). This measure effectively decriminalizes certain aspects of the production, sale and personal use of recreational marijuana within the state. The legislature then amended Measure 91 with the passing of HB 3400 during the 2015 legislative session. Subsequently, staff has worked with industry, local government and public safety interests to tailor the rule language. This rules package reflects that work and the changes made in HB 3400.

HOW TO OBTAIN THE PROPOSED RULE LANGUAGE:

A copy of the proposed rule language, dated April 15, 2016, is attached to this Notice. Alternatively, you may obtain a copy of the proposed rule language by calling the Oregon Liquor Control Commission at either of the phone numbers listed above. For your convenience, the proposed rule language is also available on our website at

<http://www.oregon.gov/OLCC/pages/index.aspx>. Go to the “Laws and Rules” tab on the left side of the screen, and then follow the link to the “Proposed Rulemaking” section of our website. You will find all of the relevant rulemaking documents, including the proposed rule language, under the “Recreational Marijuana” section of this webpage.

HOW TO SUBMIT COMMENTS:

During the hearing, you may present oral or written testimony that includes opinions, information, concerns or proposals related to this rulemaking matter. The Commission also requests comments on whether other options exist and/or should be considered for achieving the rule’s substantive goals while reducing the negative economic impact of the proposed rule on business.

After the hearing, you may submit written comments in person, by mail, by fax or by e-mail (see above for relevant contact information). **However, all written comments must be received by 5:00 p.m. on Wednesday, June 8, 2016.**

The Commission reserves the right to request and receive additional comments at any time on or before the date the Commission takes final action on this rulemaking matter.

STATEMENT OF NEED AND FISCAL IMPACT:

In the Matter of: The proposed adoption of Division 25 of OAR Chapter 845.

Statutory Authority: ORS 475B

Other Authority:

Statutes Implemented: ORS 475B

Need for the Rule:

On November 4, 2014, Oregon voters passed the “Control, Regulation and Taxation of Marijuana and Industrial Hemp Act of 2014” (“Measure 91”). This measure effectively decriminalizes certain aspects of the production, sale and personal use of recreational marijuana within the state. From approximately January through June 2015, the Oregon legislature considered numerous pieces of legislation to revise Measure 91.

On June 30, 2015, Oregon’s Governor Kate Brown signed House Bill 3400 (“HB 3400”) into law, which amended a majority of Measure 91’s provisions. Further, HB 3400 effectively set the scope of the Commission’s authority and responsibilities to implement a recreational marijuana regulatory system.

HB 3400 directed the Commission to, no later than January 1, 2016, adopt administrative rules that govern the legal market for recreational marijuana products in Oregon, and protect the health and safety of the public.

The Commission adopted temporary rules on October 23, 2015, to be effective January 1, 2016, as directed in HB 3400. These temporary rules were later amended on

November 20, 2015, and December 18, 2015. Staff subsequently initiated permanent rulemaking and held an advisory committee on April 1, 2016. The committee worked together to develop a fiscal impact statement based upon the rules. Further, staff will hold a public hearing on May 25, 2016, to receive final input.

Documents Relied Upon and Where They Are Available:

- 2015 Oregon Legislature House Bill 3400 (available from the Oregon State Legislature, Office of Legislative Counsel).
- 2015 Oregon Legislature House Bill 3400 Fiscal and Revenue Impact (available from Oregon State Legislature, Legislative Revenue Office).
- Measure 91 (available from the Oregon State Legislature, Office of Legislative Counsel).
- Rules advisory committee and subcommittee meeting summaries and audio recordings of meeting testimony (available at the Oregon Liquor Control Commission)
- Public Hearing testimony (available at the Oregon Liquor Control Commission)
- Written public comments (available at the Oregon Liquor Control Commission)

Fiscal and Economic Impact Statement:

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 rules place into effect provisions from ORS 475B, formerly Measure 91 and HB 3400. While the Commission is required by law to implement certain pieces of regulation, some areas of the law leave the Commission with the ability to set standards via rulemaking. Further, HB3400 directed the Oregon Liquor Control Commission to set fees that cover the costs of administering the recreational marijuana program.

The license fee varies by type of license listed under OAR 845-025-1060 but the average annual license fee is \$5,000 (application/renewal fee plus annual fee). Employees of retailers will also be required to have a marijuana handler's permit which costs \$100 and be valid for five years. This fee is expected to generate about \$100,000 in revenue during the 2015-17 biennium to cover the costs of registering and performing background checks on marijuana permit holders.

Fees are established by rule to cover the preapproval for a package and label for a marijuana product. The fee is \$100 for package preapproval and \$100 for label preapproval and is only paid one time. In the current biennium, the expected revenue generate from these fees is about \$100,000.

Further, in order to gain the potential licensees' perspectives, the Commission held an Advisory Committee on April 1, 2016. Attendees voiced the following concerns upon areas where the rules will have a potential impact on licensees:

- OAR 845-025-1410 - Security Requirements (Nightly securing of marijuana)
 - All marijuana items on a licensed retailer's premises are kept in a safe or vault when the business is closed. Licensees assert that this may be a laborious task which incurs the costs of having employees re-stock display cases each day before opening to only put it all away again at the close of the business day.
- OAR 845-025-1060 Fees – Micro Tiers
 - Industry representatives found that the Micro Tier licensing fees were a bit too high and may not bring illicit growers into the recreational market. They recommended the fees be reduced as follows: Tier I – \$1,000 and Tier II - \$750.
- Alarms and Waivers
 - Industry representatives believe that the ingress and egress alarms will be cost prohibitive. They stated that the subsequent waiver process would impose costs to both the licensee and the OLCC.
- OAR 845-025-7750 Waste Management
 - Committee members did not like the idea of holding on to marijuana waste for 3 days. They cited the burden of maintaining the waste so that it did not cause mold to form which could subsequently impact their crops.
- OAR 845-025-7700 Transportation and Delivery of Marijuana Items
 - Committee members expressed concern regarding the 12-hour time window for marijuana delivery from one licensee to another. Committee members cited the driving distance and time it would take between southern Oregon grows and the Portland market. Industry representatives cited that this rule would cause them to make multiple trips or force them to get a wholesale license.
- OAR 845-025-1410 Security Requirements
 - A member reminded the committee about staff's intention to alter the language requiring a vault door to a commercial grade door. Committee members voiced a concern that a vault door would be overly expensive and not provide any increase in security.
- Regulation and Costs
 - The committee discussed how the entire program operates, and that whether a licensee pays the costs up front or through compliance technologies the costs will be realized somewhere. Further, the member explained that counties and cities may never fully recover costs on the new marijuana industry even with the revenue sharing and three percent local tax. Specifically, the new rules were cited to have a fiscal impact by enabling grow operations which will entail regulation and response to complaints. The member cited that the OLCC will not have the personnel to respond to all complaints and that some response will fall to local authorities.

- OAR 845-025-8060 - Advertising Media, Coupons, and Promotions
 - Industry representatives requested the ability to adjust prices and below-cost discounts within the Cannabis Tracking System (CTS). Concerns were voiced that gaining approval for below-cost discounts was an unnecessary burden. Attendees asked for this process to be integrated into the CTS.
- Point of Sale System (POS)
 - Industry Representatives requested that the OLCC work with the Cannabis Tracking System (CTS) to enable licensees to utilize a sensible and cost effective Point of Sale System for sales, the concern being that current POS systems for marijuana are charging exorbitant fees to the marijuana market versus other industries.
- Daily Reporting
 - An industry representative advocated for the removal of the daily reporting requirement in the Cannabis Tracking System. The representative thought making daily reports was an unnecessary expenditure of time. Further, they advocated for a system in which only a change in plant condition was required, as most days there would be not much to report.

(b) Local Government.

HB 3400 allows counties and cities to establish local licensing requirements and levy an additional 3% tax upon marijuana sold at retail locations to consumers. Further, cities and counties partaking in recreational sales will be able to obtain funds from tax revenue made from recreational sales. However, cities can “opt out” (i.e. ban) the production, processing and sale of marijuana. Cities and counties “opting out” will not receive any funding from recreational sales. As of March 24, 2016, 101 cities and counties have opted out of Recreational Sales.

During the Advisory Committee, representatives of local government cited that these rules will have real costs and that the 3% tax, along with revenue sharing, may not cover those costs. Specifically, members said that with an increase in grows there will be an increase in complaints (i.e. neighbor disputes, plant theft, etc.). Further, it was stated that OLCC inspectors will not be available to handle these complaints and that local government will have to respond in some fashion.

(c) State Agencies.

The legislatively-approved budget for OLCC to implement HB 3400 is \$8.3 million for the 2015-17 biennium and provides for 30 positions. Further, HB3400 directed the Oregon Liquor Control Commission to set fees that cover the costs of administering the recreational marijuana program. Fees from licenses are expected to generate \$5.2 million in the 2015-17 biennium and \$8.1 million in the 2017-19 biennium.

The measure requires the Oregon Health Authority (OHA) and OLCC, with the assistance of the Oregon Department of Agriculture (ODA), to establish testing requirements and standards for the packaging and labelling of marijuana items. OHA, OLCC and ODA are also authorized to enter into agreements to implement and enforce

the law, and are granted the authority to possess, seize or dispose of marijuana as necessary.

OHA indicates that they expect to incur costs of just under \$12 million in 2015 -17 and \$6.7 million in 2017-19 to implement the bill. In earlier bills considered this Session regarding the medical marijuana program that had similarities to this measure, OHA estimated that there would be total costs of approximately \$10.5 million in 2015 -17, which would drop to approximately \$6.5 million in 2017-19, as a result of a reduction in one-time costs that would be incurred in 2015-17. Of the \$10.5 million, \$6.3 million was for staffing costs, with the majority of the new positions (25) to be located in the Public Health Division to regulate, track, and inspect marijuana growers and processors. Of the total amount of new FTE that was estimated, 2.77 FTE (3 positions) would be located in DHS and the remaining positions (15) would be technology-related to develop a tracking system and administrative positions to provide program support. Just as with OLCC cost estimates, costs related to a number of the new requirements are indeterminate and it is likely that adjustments will need to be made in the future to reconcile resources with the detailed implementation plan.

Work is ongoing to refine the cost estimates provided above in order to make the necessary adjustments to the agencies' 2015-17 budgets. Some costs will remain indeterminate until rules are adopted to implement this measure and Ballot Measure 91. Potentially, costs could be lower or higher than estimated depending on how both the medical and recreational marijuana programs operate under the new provisions, as well as how the market responds to the programs. Analysis is ongoing to identify opportunities to reduce overall costs, including having OLCC and OHA work together on a single tracking system.

ODA anticipates costs of \$212,641 in 2015-17 to cover the costs to the agency for the implementation of Ballot Measure 91. This includes the cost of one vehicle and one additional position. The 2017-19 cost would be reduced to \$187,641, reflecting the elimination of the one-time cost for a vehicle in 2015-17. It is anticipated that some of the work that would be required of ODA under HB 3400-A is consistent with work that was anticipated in the agency's budget request related to the implementation of Ballot Measure 91. However, ODA's budget has been approved by the Joint Committee on Ways and Means without any funding related to implementation of Ballot Measure 91. ODA notes that it is unknown how much additional time and assistance will be required of the agency, and, as a result, the costs for additional work that may be generated by HB 3400-A is indeterminate at this time.

The measure modifies the law regarding marijuana offenses, which is likely to increase the number of motions filed to set aside a felony marijuana conviction, although the number of motions is indeterminate. The Oregon State Police (OSP) note that there are currently 78,319 marijuana offense convictions included in the Oregon Computerized Criminal History file that have the potential to become eligible for the set aside process. Depending on the number of set aside cases and the timing of those requests, OSP may need to return to the Legislature for additional staff and an increase in Other Funds expenditure limitation. The Judicial Department believes that the changes in the law under HB 3400-A will result in costs of slightly over \$145,000 due to increased judge and staff time.

(d) The Public.

The Commission expects the proposed rules package to have a positive fiscal impact on the public to the extent that it enables licensees to provide marijuana and marijuana products legally to the public.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Commission expects that local governments that choose to engage in allowing and licensing recreational marijuana businesses to have a fiscal impact both positive and negative. Specifically, local governments that do not opt out will be able to enact licensing fees and a tax of up to 3% on all marijuana and marijuana items sold. Further, revenue from the state's 17% sales tax on marijuana will be distributed to counties and cities partaking in the recreational marijuana. At this time the Commission cannot estimate whether those licensing fees and taxes will offset the costs of regulation.

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:

OLCC staff estimates that there will be between 800 and 1,200 businesses in the recreational marijuana industry. As of April 15, 2016, the OLCC has received 854 applications.

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

In order to comply with ORS 475B (formerly measure 91 & House Bill 3400), persons whom wish to become recreational marijuana licensees will incur costs relating to reporting, record keeping and other administrative activities required for compliance. It is not known how significant these costs will be, as this is a new industry being regulated by these rules. The Commission has worked with various interests to create rules that meet the legal requirements while sensibly establishing compliance standards.

A discussion on this issue can be found in sections (a), (b), (c) and (d) in the above Fiscal Economic Impact Statement.

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

In order to comply with ORS 475B (formerly measure 91 & House Bill 3400), persons who wish to become recreational marijuana licensees will incur costs relating equipment, supplies, labor and administration. It is not known how significant these costs

will be, as this is a new industry being regulated by these rules. The Commission has worked with various interests to create rules that meet the legal requirements while sensibly establishing compliance standards.

A discussion on this issue is above in sections (a), (b), (c) and (d) of the Fiscal Economic Impact Statement.

How were small businesses involved in the development of this rule?

Small businesses as well as interested licensees, industry representatives, law enforcement agencies, public safety organizations, members of the public, and other interested parties were invited to attend an advisory committee meeting that was held on April 1 2016. Stakeholders will also have an additional opportunity to comment on the proposed amendments at the public hearing that will be held on May 25, 2016.

Was an administrative rule advisory committee consulted?

Yes, on April 1, 2016.

(This Notice was sent on April 15, 2016)