



Hearing Officer's Report to Agency on Rulemaking Hearing

Date: May 30, 2023

To: Wendy Landers, CJIS Director

From: Jolene Kelley, Hearing Officer

RE: Hearing Officer Report on Rulemaking Public Hearing – Permit to Purchase program

Public Hearing and Public Comment Period

Hearing Date/Time:

May 18, 2023 – 1 p.m.

Location:

Virtual – Microsoft Teams

Public Comment Period:

May 1, 2023 – May 22, 2023, at 5:00 p.m.

Notice Filings (OAR 257-010-0065)

The Oregon Permit to Purchase Program Notice of Proposed Rulemaking was filed April 17, 2023, with the Oregon Secretary of State Archives Division. The filing notice was submitted for publication in the May 2023 Oregon Bulletin, emailed to the agency mailing list outlined in OAR 257-001-0000, emailed to legislators pursuant to the Administrative Procedures Act, and posted on the OSP website.

Background

Ballot Measure 114 was approved by Oregon voters on November 8, 2022, and amends ORS 166.210 to 166.490. This rulemaking process creates permanent rules for the implementation of responsibilities assigned to OSP under this act. The temporary rules in place will expire on June 5, 2023, and cannot be renewed or extended beyond 180 days. Permanent rules must be adopted by June 6, 2023. The permanent rules may be amended depending on court rulings and/or legislative action in the future.

The Permit to Purchase program includes responsibilities for both OSP and local permit agents (police departments and sheriff's offices). This rulemaking process defines how permit

applications will be processed by OSP including development of a standard permit application form and assignment of unique permit numbers. OSP will conduct the required fingerprint-based criminal background check that screens for state and federal firearm purchase prohibitors. Local permit agents will make the final determination on whether to issue a permit to purchase a firearm.

HEARING REPORT

To solicit feedback on the proposed permanent rules, OSP held a Rulemaking Advisory Committee meeting on April 20, 2023, and held a Public Hearing on May 18, 2023. Both meetings were held virtually via Microsoft Teams. The Rulemaking Advisory Committee was comprised of individuals and organizations representing varying viewpoints and business interests.

Summary of comments received

Eighty-one (81) written comments were received and two people provided verbal testimony at the Public Hearing. Nine people participated on the Rulemaking Advisory Committee.

Rulemaking Advisory Board Meeting

Each advisory committee member was given five minutes to provide their recommendations and feedback on the proposed rules then participated in general discussion about the proposed rules.

Discussion topics and OSP response to issues related to rulemaking:

Comment Summary	Response	Rule Change
Addressing mental health concerns as part of the permit process	Ballot Measure 114 requires Permit Agents to determine whether an applicant is reasonably likely to be danger to themselves or others due to psychological state or past patten of behavior. This requirement is part of the Permit Agent response rather than the OSP criminal background check. Permit Agents will determine the manner in which they fulfill this requirement.	No
Concerns about manual (paper) permit process	As a new program, an electronic permit processing program does not exist. OSP CJIS will need to secure funding and contract for software development for a permit to purchase program.	No
Concerns about required training, including live fire component of training; and certification of class instructors	Permit Agents will be responsible for confirming training certificates meet guidelines described in Ballot Measure 114. This part of the program is outside the scope of OSP’s responsibilities under Ballot Measure 114.	No

Fiscal impact to state agencies and local jurisdictions	OSP does not have discretion whether to implement a Permit to Purchase program. OSP has submitted a budget request for the 2023-2025 biennium for the implementation of Ballot Measure 114.	No
How firearm dealers will know if a permit is valid	OSP is working to implement a notification through the Law Enforcement Data System (LEDS) system that will allow Permit Agents to enter and update an individual's permit status. Permit status will be reviewed as part of the OSP Firearms Instant Check System (FICS) criminal background check.	No
Length of time to process permit applications	Ballot Measure 114 requires a final determination within 30 days. OSP is developing procedures to ensure a qualified/disqualified determination is delivered to Permit Agents within the required time limits.	No
Why are Permit to Purchase status determinations different than firearm purchase determinations	Ballot Measure 114 requires OSP to make a determination whether the applicant is qualified or disqualified from obtaining a permit to purchase a firearm following a criminal background check. Permit Agents will make the final determination on whether to issue a permit to purchase a firearm.	No
Expedited firearm purchase process for permit holders	There is no provision under Ballot Measure 114 that allows for an expedited firearm purchase process if an individual holds a valid permit to purchase a firearm. An issued permit to purchase does not create any right of the permit holder to receive a firearm.	No
Consideration of how individuals will obtain a permit if their local jurisdiction does not implement a program	Ballot Measure 114 defines Permit Agents as police departments and sheriff's offices. Whether a local jurisdiction chooses to serve as a Permit Agent is outside of OSP's jurisdiction and outside the scope of the rulemaking process.	No

Minutes of the Rulemaking Advisory Committee are available for review.

Public Hearing

Summary of written comments and OSP response to issues related to rulemaking:

Comment Summary	Response	Rule Change
Certification of instructors for the required class	Permit Agents will be responsible for confirming that training certificates meet guidelines described in Ballot Measure 114. This part of the program is outside the scope of OSP's responsibilities under Ballot Measure 114.	No

Waive permit requirement for active-duty military and veterans	There is no provision under Ballot Measure 114 that allows for waiver of a permit to purchase a firearm. An issued permit to purchase does not create any right of the permit holder to receive a firearm.	No
Waive firearm criminal background check for permit holders	There is no provision under Ballot Measure 114 that allows for waiver of a criminal background check at the time of purchase. An issued permit to purchase does not create any right of the permit holder to receive a firearm.	No
Waive permit to purchase requirement for Concealed Handgun License (CHL) holders	There is no provision under Ballot Measure 114 that allows for waiver of a permit to purchase for a CHL holder. An issued permit to purchase does not create any right of the permit holder to receive a firearm.	No
Waive permit to purchase requirement for Oregon Dept. of Fish and Wildlife hunting license holders	There is no provision under Ballot Measure 114 that allows for waiver of a permit to purchase for ODFW hunting license holders. An issued permit to purchase does not create any right of the permit holder to receive a firearm.	No
Suggested edits for permit application process on the OSP website	The discussed application process is not included as part of the rulemaking process. As a Permit to Purchase program is implemented, a formal process and procedures will be developed to ensure OSP's requirements under Ballot Measure 114 are met.	No
Suggested edits related to mental health and psychological state	Ballot Measure 114 requires Permit Agents to determine whether an applicant is reasonably likely to be danger to themselves or others due to psychological state or past patten of behavior. The permit form requires applicants to acknowledge that provisions of Ballot Measure 114 Section 4 (1)(b)(C) are grounds for denial or revocation of a permit to purchase a firearm. This section can be modified for inclusion on the declarations section of the permit application.	Yes
Suggested questions related to mental health and psychological state	Permit Agents will determine the manner in which they fulfill their portion of the background investigation.	No

Summary of general comments:

Numerous comments were received that did not specifically pertain to rulemaking. The comments fell into the following general categories:

- General opposition to Ballot Measure 114 based on constitutionality
 - Opposition to both permit to purchase and magazine capacity requirements
- Concerns about cost of implementation for both state agencies and local jurisdictions
- Lack of staffing and resources for local jurisdictions to implement permit agent responsibilities
- Concerns about costs for individuals to obtain a permit
 - Specific concerns about impact to low income and minority individuals
- Concerns that permit to purchase process is redundant to current firearms background check
- Burdensome for people who already follow the law
- Suggested review of permit to purchase rules in place in other states

Summary of verbal comments:

- General opposition to Ballot Measure 114 based on constitutionality
- Concerns about cost to state government; believes funding should be directed to other issues including mental health, homelessness, and education

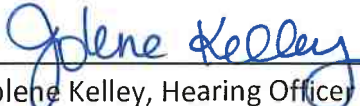
Hearing Documentation

- Notice of Proposed Rulemaking
- Rulemaking Advisory Committee Meeting Minutes
- Public Hearing Minutes

Recommendation

Adopt permanent rules with minor edits to the permit application form suggested by Rulemaking Advisory Committee members and staff.

Signed



Jolene Kelley, Hearing Officer

Signed this 30 day of May 2023

Criminal Justice Information Services Division of Oregon State Police



Wendy Landers, CJIS Director

Signed this 30 day of May 2023