

# Oregon Liquor Control Commission

## Administrative Rules Annual Report

### HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2020 and December 31, 2020

#### Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	4
Amended	75
Repealed	0

#### Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	2
Amended	25
Suspended	1

**OLCC 1-2020**

**Filed: 01/16/2020 9:55 AM**

845-025-2805

Suspend

#### Statement of Need

On October 4, 2019 the Governor issued Executive Order 19-09 which directed the Oregon Liquor Control Commission to immediately adopt temporary rules banning the sale and manufacturer of all flavored vaping products for 180 days. The Oregon Court of Appeals has stayed enforcement temporary rule OAR 845-025-2805 pending a decision on the merits of a judicial review proceeding regarding the rule's validity. Temporary rule 845-025-2805 will expire before the Court of Appeals would reach a decision on the merits in that proceeding.

#### Justification

The Oregon Court of Appeals has stayed enforcement of temporary rule OAR 845-025-2805 pending a decision on the merits of a judicial review proceeding regarding the rule's validity.

The Commission finds that failure to act promptly will result in serious prejudice to the public interest and the Commission. Temporary rule OAR 845-025-2805 needs to be suspended immediately to avoid unnecessary litigation costs. The Court of Appeals has issued an order staying enforcement of OAR 845-025-2805 pending the outcome of an ongoing judicial review proceeding in which the validity of the rule is currently being litigated. However, OAR 845-025-2805 will expire before that proceeding can be completed. The effect of the Court of Appeals' order staying enforcement of the rule, therefore, is that OAR 845-025-2805 will never go into effect before it expires. In that circumstance, continuing to litigate the validity of the rule is a waste of resources and could create confusion about the status of the rule. The temporary rule language is incongruous with that court decision leading to confusion by stakeholders. Suspending the temporary rule OAR 845-025-2805 will allow the Commission to immediately end the litigation, eliminating any public confusion about the status of the law and avoiding unnecessary expenses.

**OLCC 4-2020**

**Filed: 03/19/2020 3:39 PM**

845-006-0392

Amend

845-006-0396

Amend

## Statement of Need

In order to prevent the use of alcohol by minors and those visibly intoxicated, 845-006-0392 and 845-006-0396 lay out the requirements for the delivery of wine, cider and malt beverages. It also explains the requirements of when a person may accept deliveries of wine, cider and malt beverages and the information that needs to be collected in such cases. One such requirement is a signature upon delivery. Because the COVID-19 virus is spread person-to-person, waiving this requirement mitigates the need for people to be in close contact to sign a document or handle documents that others have handled. Another requirement is that all orders must be received by 4PM and delivered by 9PM. In order to provide much needed flexibility to liquor licensed businesses in the state most significantly impacted by E.O. 20-07, there is a need to amend the same-day delivery hours to extend the hours during which businesses may receive orders for and conduct deliveries of malt beverages, wine, and cider. 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 malt beverages, wine, and cider may legally occur.

## Justification

Due to the COVID-19 pandemic, the Governor has issued Executive Order (E.O.) 20-07 which bans bars, restaurants, brew pubs, wine bars and similar establishments from offering on-premises food and drink effective March 17th, 2020 at 5:00pm. Due to E.O. 20-07, failure to act promptly will cause many of the Commission's alcohol licensees to suffer severe economic impact to their livelihoods because they will no longer be able to service clientele within their establishments. The licensees use their Commission issued license types to provide alcoholic beverages to clientele on-premises in bars, restaurants, brew pubs, wine bars and similar establishments. E.O. 20-07 immediately prohibits them from doing so. To alleviate the burden of no longer being able to serve clientele on-premises, the Commission is amending rules to allow licensees who can sell alcohol to-go, the ability to do "curbside deliveries," as well as waiving the need to obtain a signature from the person receiving the alcohol and expanding same-day delivery hours to provide flexibility for businesses to conduct deliveries of malt beverages, wine, and cider during the legal hours for sales of alcohol in Oregon. These temporary rules will provide economic relief to Commission licensees by creating additional business options to sell alcohol off-premises to consumers who wish to purchase alcohol beverages from their homes.

OLCC 5-2020

Filed: 03/22/2020 3:53 PM

845-006-0345

Amend

## Statement of Need

The Governor of Oregon has declared an emergency under ORS 401.165 due to the public health threat posed by the novel infectious coronavirus (COVID-19). The Governor has ordered that immediate implementation of social distancing and community mitigation measures are necessary to slow the spread of COVID-19.

On March 17, 2020, the Governor issued Executive Order (E.O.) 20-07, which prohibits restaurants, bars, taverns, brew pubs, wine bars, cafes, food courts, coffee shops, clubs or other similar establishments that offer food or drink from offering or allowing on-premises consumption of food or drink. Executive Order 20-07 further prohibits social, spiritual, and recreational gatherings of 25 people or more. These prohibitions apply statewide. Establishments with on-premises liquor licenses who continue to allow on-premises consumption of food and alcohol, or gatherings of 25 people or more create a serious danger to public health and safety. Persons licensed by OLCC to sell alcoholic beverages by the glass who violate the E.O. 20-07 pose a serious danger to the public health and safety. In order to prevent a serious danger to and to protect public health and safety, OLCC must have authority to suspend or cancel the license. Currently, OLCC's regulatory authority does not identify violation of an executive order as a basis for suspension or cancellation. To ensure that OLCC has the necessary authority to take action against licensees who act in direct contravention of Executive

Order 20-07, OLCC needs to create a specific prohibition to operate in violation of an order issued by the Governor.

#### **Justification**

Due to the COVID-19 pandemic, the Governor has issued Executive Order (E.O.) 20-07 which bans bars, restaurants, brew pubs, wine bars and similar establishments from offering on-premises food and drink effective March 17th, 2020 at 5:00pm. OLCC wants to ensure that it has specific authority to enforce the Executive Order if a liquor licensee operates in direct contravention of E.O. 20-07. Having a specific rule in place will allow the OLCC to issue an immediate suspension if necessary in the event a licensee continues to allow on-premises consumption or allow gatherings of 25 or more people.

**OLCC 6-2020**

**Filed: 03/22/2020 3:55 PM**

845-015-0141

Amend

#### **Statement of Need**

Oregon is a control state and regulates the shipping and movement of distilled spirits. The rule is necessary to outline procedures on how to ship or deliver distilled spirits in a regulated industry.

#### **Justification**

Currently, all sales of distilled spirits to individual consumers must be made in-person in a store. The COVID-19 coronavirus pandemic has required Oregonians to keep a safe distance from others. Continuing to require customers to come into a store; and thus, facilitate close contact between individuals, is an unsafe practice. Failure to immediately amend this rule will require business owners, staff, and the public to continue an unsafe practice. Failure to immediately amend this rule will require business owners, staff, and the public to maintain close contact; thus, facilitate an unsafe practice. The temporary action will avoid or mitigate these consequences by allowing the OLCC to revise the Retail Operations Manual and the Distillery Retail Outlet Manual to allow for curbside service immediately outside a store. This will facilitate allowing Oregonians to keep a safe distance from others.

**OLCC 7-2020**

**Filed: 03/22/2020 4:25 PM**

845-025-2800

Amend

845-025-2885

Adopt

#### **Statement of Need**

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, and the amount that an Oregon Medical Marijuana Program (OMMP) cardholder may purchase in one day.

#### **Justification**

As a way to promote social distancing in the wake of the COVID-19 virus, the Governor's Executive Order dated March 17, 2020 prohibits public gatherings of 25 people or more, and encourages people to distance themselves by at least 3 feet while in public. Retail marijuana stores remain open, but these changes will let them operate in a way that is consistent with the guidance from the Executive Order. During the period of March 1-18, 2020, OLCC marijuana retailers have seen a 25-30% increase in sales compared to the same period last year. The temporary changes allow all retailers to better serve the public and decrease in-store activity by: allowing all retailers to deliver product directly to customers' homes, allowing for on-site delivery, removing requirements for signatures, and increasing the daily sales limit for OMMP cardholders and caregivers, who may have health conditions which make them part of a vulnerable population. Consequences would be felt by OLCC marijuana licensees, particularly retail licensees and their employees,

and customers; including OMMP cardholders and caregivers. By not immediately taking action, OLCC retail marijuana licensees and their employees and customers will continue to be in close contact in confined spaces, which according to CDC guidance, may further the spread of COVID-19. The temporary action will allow customers to be served outside of the store in the open air with appropriate distance from others, reduce customer and employee interaction by increasing access to home delivery, and allow OMMP cardholder and caregivers the option to purchase more, limiting needed trips to retail establishments.

**OLCC 8-2020**

**Filed: 04/17/2020 11:29 AM**

845-005-0424

Amend

845-006-0425

Amend

### **Statement of Need**

845-006-0425:

Alcoholic beverages may only be sold in Oregon from 7:00 am to 2:30 am daily. In order to protect vulnerable populations, grocery stores are opening as early as 6:00 am to accommodate vulnerable populations. There is a need to temporarily change the start of alcohol sales from 7:00 am to 6:00 am to allow vulnerable populations to complete all of their shopping at a time when there are fewer shoppers in the store.

845-005-0424:

Oregon law allows for direct shipper permit holders and off-premises sales licensees to use third-party carriers to effectuate delivery of malt beverages, wine, and cider to consumers on behalf of those qualified businesses. The rule creates the framework for approving the carriers who may conduct those deliveries and establishes requirements designed to protect public safety when those deliveries are carried out. Temporary rulemaking is needed to align permissible delivery hours for carriers with the hours provided to direct shipper permit holders and off-premises sales licensees during the COVID-19 pandemic.

### **Justification**

845-006-0425:

The COVID-19 coronavirus pandemic has required Oregonians, especially those at highest risk, to keep a safe distance from others. According to the Centers for Disease Control and Prevention (CDC), older adults 65 years and older and persons with underlying medical conditions are at a higher risk for severe illness.

Some grocery stores in Oregon have responded to the need for these vulnerable populations to keep a safe distance from others by opening at 6:00 am in order to offer these higher-risk shoppers the opportunity to be in the store at a time when there are fewer customers in the store.

Currently, the start time for the sale of alcohol is 7:00 am daily. As such, vulnerable populations who are in the store prior to 7:00 am are not able to purchase beer, wine, or cider with their order. These populations either need to make multiple trips to the store, or shop for items at a later time when there may be more shoppers present.

Failure to immediately amend this rule will continue to encourage Oregonians who are at a higher risk for severe illness who want to purchase beer, wine, or cider to be in the store during times when more customers are in the store; and thus, increase exposure risks.

845-005-0424:

For-Hire Carriers are non-licensee, third-parties who deliver alcohol on behalf of licensees to consumers. Failure to immediately amend the rule will lead to economic hardship for the licensees and will likely lead to violation of this rule or will lead the for-hire carriers to forego offering their services to the licensees who are unable to provide delivery services themselves. Fewer options for delivering outside of the licensed premises also increases the risk for more individuals coming into close proximity with one another when walking into the business for takeout orders, creating more opportunity for transmission of the COVID-19 virus. Failure to take immediate action to amend this rule so that the legal hours for delivery are consistent for all parties eligible to deliver malt beverages, wine, or cider to consumers causes confusion for our licensees about when malt beverages, wine, and cider may be delivered to consumers. It also causes confusion for the courier/carriers who are ready to step in to help licensees complete deliveries when those licensees are unable to provide delivery services themselves (largely because they are running their businesses with skeleton crews for economic and social distancing reasons). This confusion will lead to violation of the rule, limited for-hire carrier service, and unsafe social distancing practices. The temporary action will avoid or mitigate these consequences by creating consistency for deliveries completed by licensees and for-hire carriers, reducing the risk of violation of the rule with respect to legal hours for delivery, making it more reasonable for the for-hire carriers to provide delivery services, and promoting safe distancing practices.

**OLCC 9-2020**

**Filed: 04/17/2020 11:32 AM**

845-005-0417

Amend

### **Statement of Need**

The OLCC currently requires licensees that have the privilege to deliver malt beverages, wine and cider to Oregon residents to obtain prior approval for same-day delivery. Executive Order 20-07 prohibits on-premises consumption of alcoholic beverages. As a result, there has been a marked increase in the number of licensees seeking to sell alcohol for off-premises consumption for same-day delivery.

### **Justification**

The COVID-19 coronavirus pandemic has required Oregonians to keep a safe distance from others. This temporary action will eliminate the requirement for licensees who are able to deliver malt beverages, wine and cider to Oregon residents under the privileges of their license to obtain prior approval for same-day delivery. This will facilitate allowing Oregonians to keep a safe distance from others by allowing those who may already deliver under their license to deliver same-day without the need for prior approval. This will cut down on contact between OLCC staff and members of the public and will allow for more options for Oregonians to shelter in place rather than make extra trips to the store.

**OLCC 10-2020**

**Filed: 04/17/2020 11:36 AM**

845-025-1090

Amend

### **Statement of Need**

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. In order to prevent the spread of COVID-19, this temporary rule is necessary in order 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, we will be able to continue licensing activity and reduce the need for non-essential contacts which could further increase exposure. Furthermore, this change provides the flexibility of the Commission to inspect, as necessary, when condition changes and as the Commission deems appropriate.

#### **Justification**

COVID-19 has created serious concern for safety of the staff and public causing OLCC staff to limit interactions with others. Failure to immediately adopt this change will cause all new licenses, applications for changes of location to a license, and applications for changes of ownership of a license to stop without further processing unless OLCC staff continue to work in the field and in close proximity with applicants and licensees.

The industry at large, both licensees and public, as well as the OLCC will be negatively affected should this change not occur by putting continued strain on the processing of licenses by extending the already long back-log of applications. Additionally, licensees needing to move out of the industry due to unforeseen circumstances will be delayed in being able to do so. To keep requiring and conducting inspections of premises prior to completing licensing actions would also impose undue risks of exposure to COVID-19 to both the public and OLCC staff.

This temporary action will avoid these consequences by allowing the continued processing and issuing of licenses and current license changes. This change also continues to allow for the ability of the OLCC to conduct these inspections, however, it changes the language to allow for it to happen at any time rather than before approving and issuing the license or change to the license. Establishing this change both now and for the long term supports continued process improvement which is underway within the licensing division.

**OLCC 13-2020**

**Filed: 06/22/2020 2:51 PM**

845-006-0345

Amend

#### **Statement of Need**

The Governor of Oregon has declared an emergency under ORS 401.165 due to the public health threat posed by the novel infectious coronavirus (COVID-19). The Governor has ordered that immediate implementation of social distancing and community mitigation measures are necessary to slow the spread of COVID-19.

On March 17, 2020, the Governor issued Executive Order (EO) 20-07, which prohibited restaurants, bars, taverns, brew pubs, wine bars, cafes, food courts, coffee shops, clubs or other similar establishments that offer food or drink from offering or allowing on-premises consumption of food or drink. EO 20-07 further prohibited social, spiritual, and recreational gatherings of 25 people or more.

On May 14, 2020, the Governor issued EO 20-25, which replaced prior Executive Orders and set forth certain baseline requirements that Oregonians and Oregon businesses must adhere to for community safety and to allow the phased reopening process to move forward. EO 20-25 established a phase-in process, consisting of three phases, that will gradually reopen Oregon's social and economic life. EO 20-25 referred the public to guidance issued by the Oregon Health Authority (OHA) for various economic sectors that describes each sector's operational and safety requirements.

On June 5, 2020, the Governor issued EO 20-27, which replaces EO 20-25. EO 20-27 requires certain specified sectors, such as bars and restaurants, to follow OHA guidance. The guidance may be amended from time to time.

In order to prevent a serious danger to the public and to protect public health and safety, OLCC must have authority to suspend or cancel the license. EO 20-27 does not specifically describe operational requirements for licensed premises in the various phases of reopening. Rather, this information is set forth in sector guidance published by OHA. To ensure that OLCC has the necessary authority to take action against licensees who act in direct contravention of the guidance set forth by OHA to minimize the spread of COVID-19, OLCC needs to create a specific prohibition for operating in violation of the OHA guidance, specifically as it relates to hours of alcohol service.

#### **Justification**

Due to the COVID-19 pandemic, the Governor has issued EO 20-27 which establishes a phase-in process, consisting of three phases, that will gradually reopen Oregon's social and economic life. EO 20-27 refers the public to guidance issued by OHA for various economic sectors that describes each sector's operational and safety requirements. OLCC wants to ensure that it has specific authority to enforce the requirements in guidance – specifically related to hours of alcohol sale and service – if a liquor licensee operates in direct contravention of the guidance. Having a specific rule in place will allow the OLCC to take administrative action against the licensee. The rule allows OLCC to take administrative action against conduct that occurred on or after May 15, 2020, which is the date that the first Oregon counties entered Phase I.

**OLCC 15-2020**                      **Filed: 07/16/2020 4:24 PM**

845-005-0329                      Amend

845-005-0331                      Amend

845-006-0309                      Amend

#### **Statement of Need**

These rules describe the requirements for an alcohol licensee to utilize an outdoor area that either does or does not abut the licensed premises. Without these rules, the Commission would not have the ability to provide licensees with the option to expand their licensed premises on something less than a full time (permanent) basis to an outdoor area in order to maintain appropriate social distancing during the COVID-19 pandemic.

#### **Justification**

1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s);

The COVID-19 coronavirus pandemic has caused significant negative impacts to some licensees, and as such, is making it essential that the licensees get immediate relief in the form of expanded allowances to sell and serve alcoholic beverages at retail as allowed under the privileges of the license in outdoor areas other than licensees' currently approved licensed premises.

This rulemaking is intended to further assist licensees by updating and clarifying rules regarding the expansion of premises to outdoor areas. The proposed amendments do two main things. First, they temporarily modify the requirements for operating in outdoor areas not abutting a licensed building in ways that maintain the integrity of the original requirements while also affording some practical flexibility for licensees to operate in these new areas. Second, a new concept is introduced to accommodate and license outdoor areas where the licensee received only limited duration or intermittent approval from the landowner to use the area as a part of the licensed business.

Failure to immediately amend these rules will continue to prevent licensees from obtaining the immediate relief needed as a result of the negative impacts brought on by the COVID-19 coronavirus pandemic.

The temporary rules allow licensees to expand their premises to outdoor areas without prior approval from the Commission, provided that certain requirements are met. As of July 15, 2020, the Commission has received approximately 610 requests from licensees to expand their premises, most of which have been for expansions into outdoor areas. As OLCC inspectors have conducted follow-up on the requests to expand the premises, inspectors are discovering that the approval for use of the outdoor area provided by the landowner (most often publicly owned outdoor areas) is for something less than full-time. Often, the approval for use of the outdoor area is for weekends or for a period of three months (sometimes less). The Commission does not presently have a mechanism to license an outdoor area as an extension of the annual premises on a short-term basis or for something less than all days of the week. This leaves the Commission without an option for approving use of the proposed expansion area as a part of the licensed business and causes confusion for licensees during a time when they need clear and consistent guidance on where and how they may lawfully operate their businesses.

Moreover, using staff to review each of these short-term use applications and requiring them to gather all the associated documentation for use of the area when it is only for a short period of time is not a good use of state resources. We have 8,437 licensees in the state of Oregon with the privilege to sell and serve alcohol for on-premises consumption. The Commission anticipates that licensees will continue to seek to expand their premises outdoors as the COVID pandemic continues. Reviewing applications at this rate is unsustainable and will negatively impact licensees who seek to service customers in a safer environment.

(2) Who would suffer these consequences;

Licensees needing immediate relief as a result of the negative impacts brought on by the COVID-19 coronavirus pandemic

(3) Why or how failure to immediately take rulemaking action would cause these consequences;

Failure to immediately amend these rules will continue to prevent licensees from obtaining immediate relief as a result of the COVID-19 coronavirus pandemic.

(4) How the temporary action will avoid or mitigate those consequences.

The temporary action will allow licensees who meet the requirements set forth in the temporary rules to immediately sell and serve alcoholic beverages at retail as allowed under the privileges of the license in outdoor areas that are not part of the licensees' currently approved licensed premises.



**Statement of Need**

The Governor of Oregon has declared an emergency under ORS 401.165 due to the public health threat posed by the novel infectious coronavirus (COVID-19). The Governor has ordered that immediate implementation of physical distancing and community mitigation measures are necessary to slow the spread of COVID-19.

On May 14, 2020, the Governor issued EO 20-25, which replaced prior Executive Orders and set forth certain baseline requirements that Oregonians and Oregon businesses must adhere to for community safety and to allow the phased reopening process to move forward. EO 20-25 established a phase-in process, consisting of three phases that will gradually reopen Oregon's social and economic life. EO 20-25 referred the public to guidance issued by the Oregon Health Authority (OHA) for various economic sectors that describes each sector's operational and safety requirements.

On June 5, 2020, the Governor issued EO 20-27, which replaces EO 20-25. EO 20-27 requires certain specified sectors, such as bars and restaurants, to follow OHA guidance, including guidance that patrons and employees remain physically distanced. On July 24, 2020, OHA issued Phase I and Phase II guidance for restaurants and bars which included requirements for physical distancing by patrons and employees.

Effective July 24, 2020, the Governor declared that face masks, face coverings, and face shields are required statewide for indoor public spaces, including bars and restaurants. OHA issued guidance on July 24, 2020, requiring businesses to require all employees and customers to wear a face mask, face covering, or face shield. In addition, face coverings are required in outdoor public spaces when physical distancing is not possible.

Through liquor license inspections, OLCC staff have observed some licensees willfully ignore and fail to enforce OHA guidance. As a result, patrons and employees have been allowed to occupy indoor spaces without wearing face coverings or maintaining appropriate physical distancing. This creates a serious and immediate danger to public health and safety, especially as numbers of COVID-19 infections continue to increase in Oregon. In order to prevent a serious danger to the public and to protect public health and safety, OLCC must have authority to suspend or cancel the license if licensees fail to enforce these safety measures, and to take immediate action to suspend the license in an effort to further prevent the spread of COVID-19. To ensure that OLCC has the necessary authority to take action against licensees who act in direct contravention of the guidance set forth by OHA, OLCC needs to create a specific prohibition for failing to enforce OHA safety guidelines relating to face coverings and physical distancing.

**Justification**

Due to the COVID-19 pandemic, the Governor has issued EO 20-27 which establishes a phase-in process, consisting of three phases that will gradually reopen Oregon's social and economic life. EO 20-27 refers the public to guidance issued by OHA for various economic sectors that describes each sector's operational and safety requirements. At the Governor's direction, OHA has issued guidance mandating the use of face mask, face coverings, and face shields in indoor public spaces, as well as outdoor public spaces when physical distancing is not possible. OHA has also issued Phase I and Phase II guidance requiring physical distance between patrons and employees in restaurants and bars. OLCC wants to ensure that it has specific authority to enforce the requirements set forth in OHA guidance if a liquor licensee operates in direct contravention of the guidance. Having a specific rule in place will allow the OLCC to take administrative action against the licensee, including immediate suspension of the license.

Based on the above, the Commission finds that its failure to act promptly will result in serious prejudice to the public interest because of the serious and immediate threat to public health posed by the continued operation of licensees in direct contravention of the Governor's orders and OHA guidance due to the threat posed by COVID-19. Further, the Commission finds that its failure to act promptly will result in a serious and immediate threat to the health and safety of the employees and patrons of licensees operating in contravention of the Governor's orders and OHA guidance.

**OLCC 22-2020**                      **Filed: 10/15/2020 4:16 PM**

845-025-1015	Amend
845-025-1030	Amend
845-025-1045	Amend
845-025-1080	Amend
845-025-1090	Amend
845-025-1100	Amend
845-025-1132	Amend
845-025-1160	Amend
845-025-2040	Amend
845-025-2045	Amend
845-025-2500	Amend

**Statement of Need**

These rules describe both the process and requirements for obtaining a marijuana license in the State Oregon.

**Justification**

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s);

OLCC has been inundated with applications for marijuana licenses. The growth of the industry and applicants willing to enter the market has overtaxed the agency's resources for processing new applications and renewals of current licenses. This has created a queue that has impacted both new applicants and current licensees. For applicants, this has resulted in lengthier timeframes to be assigned which results in an increased financial burden to maintain property while waiting to operate a business. For current licensees, this impact delays their ability to adapt their business needs to industry change which results in a financial burden and in keeping pace with the burgeoning industry. Currently, there are approximately 1,000 applications waiting to be assigned.

(2) Who would suffer these consequences;

The most severely impacted are applicants who are attempting to enter the legal market. The amount of time applications remain in the licensing process causes some licensees to maintain a lease for a property they cannot conduct business upon. Further, current marijuana licensees face difficulty in receiving OLCC staff assistance with their licenses, as staff are attempting to work through the queue of new applications.

(3) Why or how failure to immediately take rulemaking action would cause these consequences;

Failure to immediately amend these rules will continue to overtax OLCC's licensing resources and marijuana license applicants will remain in the queue for licensing review. This not only impedes a business' potential but also has real cost impacts, as licensees maintain leases and other services (Water, Power, etc.) without being able to operate. Some applicants have informed the OLCC that the time they have been waiting may impact their ability to ever operate due to these sunk costs. Failure to immediately take rulemaking action also continues to limit OLCC's ability to respond to and regulate current licensees.

(4) How the temporary action will avoid or mitigate those consequences.

The temporary changes will enable the Commission to process applications in a more streamlined fashion. Although applicants and licensees will generally still be required to satisfy the same substantive requirements, the temporary rules reduce the applicant's burden for demonstrating compliance with some requirements at the application stage. This will enable applicants who meet the requirements to obtain a license and begin operating their businesses. In turn, this streamlining will enable the Commission to better use its resources while regulating the marijuana industry.

**OLCC 25-2020**

**Filed: 12/23/2020 4:52 PM**

845-006-0399

Adopt

### **Statement of Need**

During a special session held on December 21, 2020, the Oregon legislature passed Senate Bill 1801 allowing full on-premises sales licensees to sell and deliver mixed drinks and single servings of wine for consumption off the premises. The bill requires the Oregon Liquor Control Commission to adopt rules to implement this legislation within 30 days. This temporary rule describes the requirements for a full on-premises licensee to sell and deliver mixed drinks and single servings of wine for consumption off the premises.

### **Justification**

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s);

Full on-premises licensee have been negatively impacted by the COVID-19 coronavirus pandemic. To provide relief, the Oregon legislature approved Senate Bill 1801 on December 21, 2020 which allows for the sale of mixed drinks and single servings of wine for off-premises consumption. This bill requires the Oregon Liquor Control Commission to adopt rules within 30 days of the effective date of the bill, and sets forth specific requirements that the Commission must adopt in rule.

(2) Who would suffer these consequences;

Licensees needing immediate relief as a result of the negative impacts brought on by the COVID-19 coronavirus

pandemic.

(3) Why or how failure to immediately take rulemaking action would cause these consequences;

Failure to immediately adopt this rule, as mandated in Senate Bill 1801, will limit alcohol licensees' ability to fully exercise the privileges granted in the legislation, and will continue to prevent licensees from obtaining immediate relief as a result of the COVID-19 coronavirus pandemic.

(4) How the temporary action will avoid or mitigate those consequences.

The temporary action will allow licensees who meet the requirements set forth in the temporary rule and in Senate Bill 1801 to immediately sell and deliver mixed drinks and single servings of wine for consumption off the premises.