

Scoping Kickoff Meeting

Agency: OLCC – Cannabis Licensing and Compliance

Date: 12/13/21

Time: 10:00am

Attendees

Executive Office

Shemia Fagan, Secretary of State - present

Cheryl Myers, Deputy Secretary of State - present

Emily McLain, Chief of Staff – not present

Molly Woon, Senior Advisor - present

Audit Management Team

Kip Memmott, Director - present

Mary Wenger, Deputy Director – not present

Audit Team

Andrew Love, Audit Manager - present

Kyle Rossi, Principal Auditor - present

Kathy Scott, Staff Auditor - present

Bill Newell, Staff Auditor - present

Peer Team

Steve Winn, Performance Auditor - present

Tyler Folska-Fung, Financial Auditor - present

Laura Kerns, Communications Specialist - present

Agenda

1. **Discuss what is known about the audit topic**
2. **Decide the following:**
 - a. Areas to be included, excluded from scope
 - b. Any topics of interest that should be explored during scoping
 - c. Discuss potential stakeholder groups that should be contacted during scoping, including Tribal Nations. If Tribal Nations are included, the Audit Manager should discuss with the Secretary of State Tribal Liaison.
 - d. Overall scoping length and timing for Scoping Status Meeting

From the 2021-22 Audit Plan

Topic: Effectiveness and Equity of Cannabis Licensing and Compliance

Agency: Oregon Liquor and Cannabis Commission

Potential Scope and Objectives:

This audit will examine OLCC regulatory oversight of the Oregon cannabis industry. Audit objectives may include examining the effectiveness and equity of OLCC licensing, compliance, and enforcement actions. The audit will likely make recommendations for the structure and resources needed to ensure an effective licensing and compliance system that supports equitable business growth. This audit may also use available disaggregated data regarding disproportional impacts. This audit may also consider BIPOC- and tribal-owned businesses vs. venture capital ownership.

Scope of cannabis regulations

Cannabis regulations cover several topics under the areas of recreational and medical cannabis and industrial hemp. Many of these could serve as the focus for an audit on effectiveness or equity.

Examples include:

- The application and licensing process for the various licenses: producer, processor, wholesale, retail, laboratory, and those related to medical cannabis
- Regulating the production, processing, transportation, delivery, sale and purchase of cannabis items
- Taxation of cannabis and distribution of tax money
- Seed-to-sale tracking of cannabis items
- Lab requirements and testing for potency, pesticides
- Packaging, labeling, and dosage of cannabis products
- Prohibitions regarding minors
- Tribal agreements for cross-jurisdictional coordination and enforcement, and rebate payments to tribes
- Criminal enforcement

OLCC's Risk Assessment and Internal Audit Plan prepared by Moss Adams

- Three topics on the risk assessment related to:
 - Compliance of marijuana testing labs and procedures with state regulations
 - Licensing application and approval processes for all marijuana licensing
 - Unlawful and dangerous marijuana and cannabis operations
- One internal audit topic regarding marijuana licensing approval process and untracked marijuana and diversion. This includes risks pertaining to medical marijuana.
- One topic relating to records management and the potential inability to maintain or produce complete and accurate records – relates to hotline calls below and observations in risk assessment where agency does not have a comprehensive system for records management.

Previous OLCC performance audit from 2019

- 23 audit recommendations that Steve had sent status form on. Engagement was stopped the with the intent to fold it into the next OLCC audit (assumedly this one). Recommendations significant to our audit objectives will likely require follow-up procedures.

Findings from financial team

- OLCC currently uses two accounting systems (SBT and SFMA). Entries into each system are manual (not interfaced), and there is no reconciliation between the systems. When we asked where an SBT account was recorded in SFMA, agency was unable to crosswalk all accounts.
- OLCC uses multiple systems for operations (accounting, inventory, payments, etc.). OLCC has recently begun reviewing users that are accessing the system, but are not reviewing all users with system access (if someone doesn't log in, they don't pop up in their review)
- Did not perform an agent inventory audit for several liquor stores during FY20. Were still catching up during FY21 for these audits of liquor store inventory (not sure if they do a pot shop inventory also. But if there is, might not be doing store inventory). Also, performed a minimal inventory of liquor in their warehouse.

Topics from review of related hotline calls

- Two calls
 - First Call
 - The caller claims its packaging was approved by OLCC, but OLCC's system for tracking packaging approvals does not maintain records of what packaging it approves.
 - OLCC denied it approved the packaging and when the caller appealed the decision instead of settling, OLCC fined them \$100k.
 - The caller feels this was retaliatory.
 - Second Call
 - The caller claims that in an administrative contested case hearing OLCC testified their marijuana packaging approval system does not capture what was approved.
 - This makes it difficult for OLCC to determine whether packaging was approved or not.
 - OLCC also testified they do not maintain any other records to augment this shortcoming in its system.
 - This would force OLCC to rely on the memories of its staff instead of documentation.
 - OLCC claimed the packaging was not approved, though they had records that the caller had packaging of some sort approved.
 - The fine for unapproved packaging is \$100k.

Topics from recent media coverage

- Similar to hotline calls, a recent media story highlighted potential inequities in how OLCC fines licensees for violations.
- OLCC apparently has one fine, for any violation - \$100k.
- In the story a large business failed to disclose additives that Oregon regulators feared had killed 2 Oregonians and was fined the same as someone who had a slight wording error on their packing around not operating a vehicle under the influence of cannabis products.

- The story highlighted that OLCC was allegedly willing to work with a larger business to settle a fine, while the smaller business pushed back on OLCC's decision and is accumulating legal fees that will likely put them out of business.

Topics related to potential inequities

Potential barriers for people of color and other groups might be found in the application process for cannabis licenses and worker permits given what we know of inequities in the criminal justice, health care, and financial systems. Specifically, the audit could look at differing rates of license application acceptance based on OLCC's existing criteria for:

- *Criminal background checks and fitness determination findings* – OLCC conducts background checks and fitness determinations on people applying for licenses and worker permits. Applications can be denied based on the applicant's criminal history. The audit could look at whether applications for people of color are suspended, revoked, or refused at higher rates than Whites.
- *Physical and mental health-related information* – As part of the fitness determination, OLCC can refuse a license for such issues as being incompetent or physically unable to carry on the management of an establishment, or concerns about an applicant's substance use. OLCC does consider factors that can overcome application denials, such as the successful completion of a treatment program. However, the availability of, and access to, medical and mental health care is limited for some groups. The audit could look at how frequently these criteria are used as a basis for denial and whether they affect some groups more than others. The audit could compare these criteria to that of other businesses. Could denial based on these reasons be an instance of government overreach?
- *Financial information* – OLCC must provide financial institutions, upon their request, with a copy of a license or permit application and any supporting documentation submitted with the application. This suggests that financial institutions may be able to influence the application or licensing process. OLCC can also refuse a license if a person does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed business. Fees may also be a barrier for some applicants. The audit could look at financial barriers to obtaining a license.
- *Local land use compatibility statement* – These statements are required when applying for production, processor, wholesale, and retail licenses. OLCC will not issue a license if this statement, issued by local authorities, shows the proposed land use is prohibited. The audit could look at whether variations in the denial of licensing applications based on land use prohibitions suggests any regional bias against cannabis businesses or applicants.

Potential sources of data for equity considerations include:

- Criminal background check and fitness determination findings
- License and worker permit application data
- Secretary of State business registration data, a cannabis licensee's business must be registered with the state
- The Office of Minority, Women, and Emerging Small Business (OMWESB) for MBE, WBE, ESBE, or DBE-certified businesses

- Governmental agreements with Oregon tribes
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Notes:

Andrew gave a brief introduction and then turned the meeting over to Kyle

Kyle reviewed the information in the agenda and talked about the many different aspects of the topic, for example:

- OLCC oversight and regulation
- Equity
- Diversion
- Illegal grow operations
- Issues with records management and how OLCC is tracking what it is/is not being approved
- Fairness of fines (e.g., does the punishment meet the crime)

Kyle opened the conversation to the group to discuss the audit's focus:

- Andrew – The topic is more about the business side as opposed to the regulatory side, but the focus of the news has been more about the regulatory side.
- Kip - Definitely look at equity and social justice. He has been following cannabis policy for 20 years.
 - There's a lot of information out of the Brookings Institute. John Hudak's social justice stuff looks good. New York and New Jersey are moving to proactive plans.
 - OLCC Director Marks is a great collaborator, but he did not see a "big bang for the buck" with this audit. He said Oregon has an open licensing system. The bigger thing is getting capital to start a business. It's harder in other states for minorities. The main reason the audit is on the plan is to look at the social justice piece.
- Shemia asked if the team had interviewed Rosa Cazares with La Mota. Kyle clarified that we haven't yet begun interviews. Shemia said the initial impetus for the audit is a belief that folks who are running cannabis businesses are treated differently.
 - They are thought of as criminals running businesses
 - They face many challenges (e.g., banking).
 - They are small business owners in Oregon. For La Mota, most retail shops are owned by two people.
 - They don't believe they are given the same type of deference as liquor businesses.
 - OLCC comes down hard on them. Shemia shared a story about a shop being robbed and then fined because the employee didn't have both hands on the register during the robbery.
 - OLCC has a heavy-handed interpretation of regulations
 - Criminal background check process – Shemia talked of previous marijuana offenses as a barrier to business; wealthy white capitalists are making the money.
- Cheryl said the Brookings Institute's perspective is strong and said a strong equity focus feels like the right direction. She also talked about:
 - Whether there was any information on bias training for those issuing licenses
 - Whether any consultation had occurred between OLCC and tribes
 - Additional barriers for communities of color

- Wholesale fine as an overreach given these are small businesses, which makes the risk of going into business even more dangerous
- Andrew talked about how Oregon is one of the few states that doesn't analyze money coming in.
 - A concern is we don't know who is funding these operations (i.e., legitimate businesses or something more nefarious).
 - One risk is that OLCC closed down licensing. We may want to look into why the backlog exists.
 - Kyle clarified that they did reopen licensing. The backlog had to do with supply vs demand. They had so many more licenses than six years' worth of product available. It didn't make sense to approve licenses. Their charge under the law is to equal out supply in advance. But the reason they gave for the moratorium was a backlog in applications. He doesn't know how that played back to supply. A concern may have been around diversion.
 - Andrew said we should consider diversion around fines - may be the reason why fines are so high is to ensure the oversupply is not making it out when supply is high. Maybe the fine is warranted given that risk.
- Kip said they ran focus groups with businesses in Denver. They heard about expensive (cabaret?) licenses for small businesses. Kip also talked about:
 - looking at an equity lens to enforcement
 - Treasury was thinking of running legislation around banking
 - the economic impact and additional opportunities given the future possibility of the nationalization of marijuana
 - Steve mentioned that bills have been drafted on decriminalizing marijuana for the national market.
 - Kip said a lot of states have no interest in a national market but Oregon does. This is an opportunity given the quality of product in Oregon.
 - Other topics we'll probably have to leave out are:
 - illegal grows – won't do much about this. It would be a big thing
 - Testing labs, even though that has not gotten better and is a hot issue
 - Water policy- Will discuss this topic with the water team
 - Getting state and local regulations in line. In Denver, businesses were complying with two sets of regulations
- Kyle clarified, based on Kip's comments, that we probably won't look at illegal grows, etc.
 - Kip said that state and local could be a legitimate issue. That is, how Oregon is equipping these businesses to succeed. The next question is how we can expand that pie. If doing the social justice topics, it would be hard to look at illegal grows. We need to make a conscious effort about the topic. These (illegal grows and testing) are both deep dig issues. We need to be crystal clear on this at final scope.
- Kyle mentioned the concept of equity licenses. He thinks Portland has an equity license for businesses, where they account for certain factors (i.e., prior conviction related to cannabis when it was illegal). Seattle may too. There may be information out there on how businesses get started.
- Cheryl said she is looking forward to see how this moves forward. Good prework.
- Kyle talked about next steps:
 - Sending engagement correspondence
 - More specific document reviews

- Hit the ground running quickly
- Andrew mentioned that the team will need help from Kip and Cheryl if we need to engage tribes.
 - Cheryl said that a good first question for the agency is whether they've engaged tribes. That can then escalate to consultation. If consultation has been done, that would make the next step easier.
 - Kip noted that we should be putting that question into the checklist for every audit from here on out.
 - Andrew and Steve don't believe that question was asked for the last marijuana audit.
 - Cheryl mentioned a 20-minute panel at the **Government to Tribal Summit** on the value of consultation. It would be good to review just to understand the complexity. It also showed which agencies are doing a good job.

Andrew ended by thanking everyone.