

Meeting Notes

RULES ADVISORY COMMITTEE

Relating to Passage of HB 2546 Regulation of Tobacco Sales: ORS § 431.840 to 431.853

Revisions to OAR 415-060-0010 to -0050: Standards for Reducing Tobacco and Inhalant Delivery System Sales to Minors

August 6, 2015 1:00 pm – 2:30 pm
Portland State Office Building (PSOB), Room 1B

Attendees: Jen Baker (Oregon Nurses Association), Karen Girard (Oregon Health Authority), Sandy Giffin (Oregon Poison Control Center), Heather Gramp (facilitator, Oregon Health Authority), Bruce Gutelius (Oregon Health Authority), Sara Hartstein (Benton County Public Health), Kim La Croix (Oregon Health Authority), Lindsey Hopper (PacificSource Government Programs), Shawn Miller (NW Grocery Association/Miller & Associates), Matt Minahan (NW Vapor Association), Carrie Nyssen (American Lung Association of the Mt. Pacific), Susan Miles (Oregon Health Authority), Tanya Phillips (Jackson County Public Health), Penny Pritchard (Deschutes County Public Health), Luis Rodriguez (American Cancer Society Action Network), Sandra Rood (Oregon Pediatric Society), Jeff Ruscoe (for Leticia Mack, Oregon Health Authority), Jesse Sweet (Oregon Liquor Control Commission – Retail Marijuana Program), Michael Tynan (Oregon Health Authority), Becky Wright (Multnomah County Public Health),

Welcome and Overview of Rulemaking Process

- The meeting was convened by Heather Gramp at 1:00 p.m. with a welcome, information about call-in, meeting recording and logistics.
- The purpose of the Rules Advisory Committee (RAC) meeting was shared, specifically, to address rulemaking for the passage of HB 2546.
 - HB 2546 defined Inhalant Delivery Systems (IDS) and inhalants, and requires Oregon Health Authority (OHA) to promulgate rules governing the Indoor Clean Air Act (ICAA). It has also banned sales of IDS to minors under the age of 18.
 - This is one of two RACs, and will address the provisions of HB 2546 related to child-resistant packaging, packaging not attractive to minors, and labeling requirement. A second RAC will address inhalant delivery systems in the Indoor Clean Air Act (ICAA).
- The role of the RAC was described.
 - Committee members were selected to provide expertise and advice in rule making. OHA staff in attendance have content expertise.
 - Observers are welcome to attend, but may not participate in the discussion. The RAC is not tasked with reaching consensus; individual advice is taken, and OHA will write rules that best reflect the statute.

- Two more meetings of this committee are scheduled for August 26 and September 11. The schedule can be changed to add or cancel more meetings as necessary. All will be notified if there are any changes.

Review Agenda and Meeting Plan

- Heather Gramp reviewed the agenda for the current meeting, indicating that today's RAC meeting will cover child-resistant packaging and packaging not attractive to minors.
- After the last of these RAC meetings, there will be official proposed rules, which are then open to public comment. There will also be public hearings in Pendleton, Portland, Bend and Medford.
- Final rules will most appropriately serve the intent and purpose of the statute, as determined by OHA, while taking in to account feedback and advisement. Rules are in effect July 1, 2016.

Given the information needed to be covered today, the majority of the discussion will focus on child resistant packaging and packaging not attractive to minors. The discussion on labeling will be held at a future meeting.

Overview of related statutes

- Karen Girard provided information about HB 2546. HB 2546 defined and included inhalant delivery systems in the ICAA. The ICAA RAC met this morning.
- The legislation also gave OHA rule writing authority for child resistant packaging, packaging not attractive to minors, and labeling.
- The Federal Food and Drug Administration issued proposed rules for electronic-cigarettes and other tobacco products, but they do not address child resistant packaging or packaging that is not attractive to minors. It is not clear when those rules may be in place. Many states are addressing this issue.
- HB 2546 defines "inhalant delivery systems" as the device and its components. This includes the liquid and the device the liquid is used in. This includes refillable devices and devices that are pre-filled and sealed. This will be an important part of the discussion around defining labeling and packaging (child resistant and unattractive to minors).
- During legislative hearings, legislators noted their intent was to not require child resistant packaging for pre-filled and sealed disposable inhalant delivery systems.

Discuss Areas for Rule Development

- Kim La Croix restated the focus of today's discussion: defining child resistant packaging and packaging not attractive to minors.
- Definition of child resistant packaging

OHA does not have a proposed definition for child resistant packaging at this time. The committee will provide input on the development of the definition.

- Federal Poison Prevention Packaging Act of 1970 ((FPPPA) established in federal statute) defines “packaging” separate from “special packaging.”
- The FPPPA established a protocol for sampling child-resistant products among differing ages of children.
- If a retailer or wholesaler (or regulator) wishes to confirm that a product has child resistant packaging, they can ask the manufacturer for a laboratory protocol testing report that should meet the FPPPA federal protocol outlined.

Committee Questions / Comments

- The impetus for the FPPPA was from concern about children being poisoned by exposure to aspirin and acetaminophen.
- OHA is currently reviewing child-resistant standards, including federal code and definitions from other states (MN, VT, NY) and program (e.g. medical marijuana).
- It was recommended that definitions be fairly consistent with other states.
- The Consumer Product Safety Commission has testing information for businesses and manufacturers on their web site.
- OLCC will use rules adopted in these rules for retail marijuana IDS and liquids. The rules will capture pre-filled ‘vape pens’ and paraphernalia such as a bong to vaporize solids.
- These rules will apply to all IDS. It was discussed whether the intent was for the refillable device, e-liquid or outer box.
- Some members thought that if the liquid is in the refillable device then the device should be child-resistant, given the toxicity of nicotine.
- Some members thought child-resistant packaging should only apply to the e-liquid.
- Some members were interested in Oregon data on what components poisonings were from. Sandy Giffin from the Poison Control Center will report back.
- Some members were curious about typical concentration of nicotine found in e-liquid, and what amount is toxic. Lack of standard concentration in liquid nicotine is a problem.

- Definition of packaging not attractive to minors

OHA does not have a proposed definition for child resistant packaging at this time. The committee will provide input on the development of the definition.

- Kim La Croix provided and overview the FDA Deeming Regulations (See attached handout entitled *FDA Deeming Regulations*).
- FDA did not include child-resistant packaging and packaging that does not appeal to minors in their deeming regulations.
- Oregon law can be stricter than, but must be in compliance with, federal law.
- Introduced for more conversation at a later meeting: packaging includes logos, the shape of bottles, company name, characters, cartoons, manner of delivery.

- Heather Gramp welcomed committee members to share data or studies that members have available regarding what is considered attractive to minors.

Committee Questions / Comments

- The product display in a retail store was discussed. A colorful display may be attractive.
- Although electronic cigarettes are now illegal to sell to minors, a minor could come in with a parent.
- HB 3400 was the cannabis omnibus legislation and gave OLCC packaging authority over marijuana products, including preapproval for packaging prior to retail sale.
- During the draft rules stage, there will be precise rules for the committee to review and speak to specific discussion points.

Next Meeting Agenda:

The next meeting is August 26, and Heather Gramp requested that RAC members contemplate the questions raised today for further discussion regarding child resistant packaging.

Packaging not attractive to minors will also be covered at the next RAC.

Process review and Final Questions

Members appreciated handouts and would like electronic versions of these and the RAC packets emailed.

Members that called in requested that those meeting in person introduce themselves as they speak so they know who is talking

Members that called in requested of products that were passed around the table as examples during discussion. Kim La Croix will take pictures and send.

Matt Minahan informed members that there are vape shops all over the state and those on the committee are encouraged visit and set up a tour of a shop.