



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

PH 10-2021

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Quality Control and Research and Development Testing on Marijuana Items

EFFECTIVE DATE: 03/03/2021 THROUGH 08/29/2021

AGENCY APPROVED DATE: 03/03/2021

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NEED FOR THE RULE(S):

The Oregon Health Authority, Public Health Division, Oregon Medical Marijuana Program (OMMP) is temporarily amending OAR 333-007-0500. The agency modified this rule in its December 30, 2020 rule filing, effective January 1, 2021 (PH 89-2020). Due to an unforeseen fiscal impact that was recently brought to the agency's attention, the rule language is being amended to revert to the original rule language.

The current rule language states that a pesticide test on any kind of marijuana item is considered a compliance test. This requires that any pesticide testing be performed following sampling and testing protocols outlined in rule. The rule as currently written would require that a processor have multiple samples tested for pesticides, as required under a compliance test to ensure representative sampling, instead of only more limited sampling allowed under the prior rule. This resulted in an unintentional consequence of requiring additional samples be tested and was not discussed during the rulemaking. The fiscal impact of this change was not discussed or captured in the Statement of Need and Fiscal Impact filed in October 2020 for the permanent rules effective on January 1, 2021.

Licensed processors have indicated that the rule change will increase costs for testing, costs for processing, and potentially increase waste.

Due to this significant increase in cost because of the unintended consequence of additional samples needing to be tested, the temporary rule change will revert the rule to its original language to continue to allow licensed processors the ability to perform quality control tests if they chose. This rule will be further evaluated at a future rulemaking to obtain feedback from licensed processors.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and Oregon Liquor Control Commission's (OLCC) licensed processors and members of the public. These rules need to be adopted promptly to avoid unintended significant increases in sampling and increase costs for processors. This rule will

be further evaluated during a subsequent rulemaking.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS chapter 475B - https://www.oregonlegislature.gov/bills_laws/ors/ors475B.html

AMEND: 333-007-0500

RULE TITLE: Quality Control and Research and Development Testing

RULE SUMMARY: Amend OAR 333-007-0500: The amendment to OAR 333-007-0500 will not allow quality control or research and development testing for pesticides on marijuana or usable marijuana only.

RULE TEXT:

- (1) A registrant or a licensee may request that a laboratory conduct testing for the purpose of assuring quality control or for research and development, except as provided in section (2) of this rule.
- (2) A registrant or a licensee may not request that a laboratory conduct pesticide testing on marijuana or usable marijuana for the purpose of quality control or for research and development. A pesticide test on marijuana or usable marijuana is considered by the Authority and the Commission to be a compliance test.
- (3) A registrant or licensee that submits a marijuana item for quality control or research and development testing is not subject to OAR 333-007-0320 to 333-007-0470.
- (4) A laboratory result from a quality control or research and development test cannot be used as a compliance test result and a marijuana item that has only undergone a quality control or research and development test may not be transferred or sold, unless the marijuana item is not required to have a compliance test before being transferred or sold.
- (5) Registrants and licensees must maintain and retain all quality control and research and development test results for at least two years and provide copies of such results upon request to the Authority or the Commission.

STATUTORY/OTHER AUTHORITY: ORS 475B.555

STATUTES/OTHER IMPLEMENTED: ORS 475B.555