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DEPARTMENT OF AGRICULTURE

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AMEND: 603-048-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates to definitions to include but not limited to new definitions of adult use cannabis item and license and update to key participant definition.

RULE TEXT:
The following definitions apply to OAR 603-048-0010 through 603-048-2500 unless the context requires otherwise.
(1) “Adult use cannabis item” has the meaning given that term in ORS 475B.015.
(2) “Agricultural hemp seed” means Cannabis seed:
(a) That is sold to or intended to be sold to licensed growers for planting; or
(b) That remains in an unprocessed or partially processed condition that is capable of germination.
(3) “Agricultural hemp seed producer” means a person who produces agricultural hemp seed or processes industrial hemp into agricultural hemp seed.
(4) “Cannabis” means the plant species Cannabis sativa and in these rules refers to all forms of the plant regardless of THC content.
(5) “Cannabis Tracking System” or “CTS” means the OLCC’s system for tracking the transfer of marijuana items.
(6) “CBD” means cannabidiol, Chemical Abstracts Service Number 13956-29-1.
(7) “Consumption” means ingestion, inhalation or topical application to the skin or hair.
(8) “Conviction” or “convicted” means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. A conviction is expunged when the conviction is removed from the individual’s criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes

for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction.
(9) “Crop” means industrial hemp grown under a single license.
(10) “Days” means calendar days unless otherwise specified in rule.
(11) “Department” means the Oregon Department of Agriculture.
(12) “Food” means:
(a) Articles used for food or drink, including ice, for human consumption or food for dogs and cats;
(b) Chewing gum;
(c) Dietary supplements; and
(d) Articles used for components of any such article.
(13) “Grower” means a person, joint venture or cooperative that produces industrial hemp and includes a person growing for research purposes.
(14) “Grow site” means one contiguous lot, parcel, or tract of land used to produce or intended to produce industrial hemp.
(15) “Handler” means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed and any other activities identified by the Department by rule.
(16) “Handling site” means one contiguous lot, parcel, or tract of land used to handle or intended to handle industrial hemp.
(17) “Harvest Lot”:
(a) Means a quantity of Cannabis of the same variety or strain harvested in a distinct timeframe that is:
(A) Grown in one contiguous production area within a grow site; or
(B) Grown in a portion or portions of one contiguous production area within a grow site.
(b) Does not include a quantity of cannabis grown in noncontiguous production areas.
(18) “Harvest Lot Identifier” means a unique numerical identifier that begins with the name of the grow site, then the year of harvest, and then a unique number to identify the harvest lot. If a harvest lot is subsequently split into one or more lots for purposes of testing in OAR 603-048-2300 to 603-048-2480 or for purposes of retesting in accordance with OAR 603-048-0630(3), a unique letter shall be added to the end of the original harvest lot identifier to identify the split lots.
(19) “Hemp” means industrial hemp and these terms are used interchangeably.
(20) “Hemp Item” has the meaning provided in OAR 603-048-2310.
(21) "Immature hemp plant" means a cannabis plant that is not flowering.
(22) “Immature plant lot” means a quantity of immature hemp plants tested, transferred or sold as one unit.
(23) “Immature plant lot identifier” means a unique numerical identifier that begins with the name of the grow site, then the year of production, and then a unique number to identify the immature plant lot. If an immature plant lot is subsequently split into one or more lots for purposes of testing, a unique letter shall be added to the end of the original immature plant lot identifier to identify the split lots.
(24) “Industrial hemp”:
(a) Means the plant species Cannabis sativa, and any part of that plant whether growing or not including the seeds thereof, that contain an average total tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.
(b) Does not mean:
(A) Industrial hemp commodities or products; or
(B) Marijuana, as that is defined in ORS 475B.015.
(25) Industrial Hemp Commodity or Product:
(a) Means an item processed by a handler containing any industrial hemp or containing any chemical compounds derived from industrial hemp, including CBD derived from industrial hemp.

(b) Includes:
(A) Hemp concentrates or extracts as defined in OAR 603-048-2310;
(B) Hemp edible as defined in OAR 603-048-2310;
(C) Hemp tincture as defined in OAR 603-048-2310;
(D) Hemp topical as defined in OAR 603-048-2310;
(E) Hemp transdermal patch as defined in OAR 603-048-2310;
(F) Industrial hemp processed through retting or other processing such that it is suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber materials;
(G) Industrial hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption;
(H) Industrial hemp seed pressed or otherwise processed into oil;
(c) Does not include:
(A) Industrial hemp that has not been processed in any form;
(B) Industrial hemp that has been minimally processed, for purposes of transfer or storage including chopping, separating, or drying;
(C) Industrial hemp that has been minimally processed and meets all testing requirements for hemp items under OAR 603-048-2300 to 603-048-2500 where used or intended to be used for processing into a hemp concentrate or extract as defined in OAR 603-048-2310;
(D) Agricultural hemp seed.
(26) “Key participant” means any person listed on an application for a grower license and:
(a) If an applicant or key participant is a limited partnership, each general partner in the limited partnership;
(b) If an applicant or key participant is a general partnership, each general partner in the general partnership;
(c) If an applicant or key participant is a manager-managed limited liability company, each manager of the limited liability company as those terms are defined in ORS 63.001;
(d) If an applicant or key participant is a corporation, each person with executive managerial control in a corporation. A person with executive managerial control includes, but is not limited to, any officer of the corporation;
(e) Any individual or legal entity with an ownership interest in the applicant or a key participant;
(f) If an applicant or key participant is a member-managed limited liability company, any individual or legal entity who holds or controls a direct or indirect interest of 20 percent or more in the applicant.
(g) Any principal investigator of an applicant for a research grower license.
(27) “Laboratory” means a laboratory that is licensed by the OLCC under ORS 475B.560 and accredited by the Oregon Health Authority under ORS 475B.565.
(28) “License” means a license issued by the Department under ORS 571.281 and these rules.
(29) “Licensed research grower” means a person licensed to produce hemp for research purposes only pursuant to OAR 603-048-0126.
(30) “Licensee” means a grower, handler, agricultural hemp seed producer, licensed research grower or other person licensed under ORS 571.281 or these rules. Licensee has the same meaning and is subject to the same requirements, prohibitions, and any other rules as a registrant and is used interchangeably with registrant except where the context of the rule provides otherwise.
(31) "Mature hemp plant" means a cannabis plant that is not an immature hemp plant.
(32) “OLCC” means the Oregon Liquor and Cannabis Commission.
(33) “Ownership interest”:
(a) Includes any person or legal entity that exercises control over, or is entitled to exercise control over, the business. Control over the business includes but is not limited to the authority to enter a contract or similar obligations on behalf of the business.
(b) Includes any individual or legal entity owning the real or personal property of the proposed grow site unless the owner of the property has given control over the property to another party via a lease or rental agreement or similar

agreement.
(c) Does not include an employee acting under the direction of the owner or other non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of the business.
(34) “Planting” or the action “plants” means placing a seed, cutting, or plant in the ground or other media for the purpose of growing, or being in possession of any such seed, cutting, or plant.
(35) “Principal investigator” means an individual, employed by the applicant or licensee, who is primarily responsible for a hemp research project implemented or intended to be implemented under a research grower license.
(36) “Process” means the processing, compounding, or conversion of industrial hemp into industrial hemp commodities or products or agricultural hemp seed.
(37) “Production area” means a contiguous area at a grow site where industrial hemp is produced or is intended to be produced and may include a field, greenhouse, or other building.
(38) “Process lot identifier” means a unique numerical identifier that begins with the last seven numbers of the handler’s license number or the name of the handler, then the year of processing, and then a unique number to identify the process lot.
(39) “Produce” means the planting, cultivation, growing, or harvesting of industrial hemp.
(40) “Process lot” means:
(a) Any amount of hemp concentrate or extract of the same type and processed at the same time using the same extraction methods, standard operating procedures and batches from the same or different harvest lots; or
(b) Any amount of hemp cannabinoid products of the same type and processed at the same time using the same ingredients, standard operating procedures and batches from the same or different harvest lots or process lots of cannabinoid concentrate or extract.
(41) “Retest” or “Retesting” means the laboratory process of retesting a retained file sample for THC content after the sample failed initial testing for THC content under OAR 603-048-0600. A retest does not include or permit taking a new sample from the harvest lot.
(42) “Seed lot” means a quantity of cannabis seeds tested, transferred, or sold as one unit.
(43) “Seed lot identifier” means a unique numerical identifier that begins with the name of the grow site, then the year of production, and then a unique number to identify the seed lot identifier. If a seed lot is subsequently split into one or more lots for purposes of testing, a unique letter shall be added to the end of the original seed lot identifier to identify the split lots.
(44) “Registrant” means a grower or handler or agricultural hemp seed producer registered with the Department under these rules. Registrant has the same meaning and is subject to the same requirements, prohibitions, and any other rules as a licensee and is used interchangeably with licensee except where the context of the rule provides otherwise.
(45) “Registration” means a registration issued by the Department pursuant to ORS 571.281 on or before December 31, 2021.
(46) “Tetrahydrocannabinol” or "THC" means tetrahydrocannabinol and has the same meaning as delta-9 THC unless otherwise specified in the rule.
(47) “These rules” means OAR 603-048-0010 to 603-048-2500.
(48) “Total THC” means the molar sum of THC and THCA.

STATUTORY/OTHER AUTHORITY: ORS 561.90, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

AMEND: 603-048-0200

RULE TITLE: Grower Licensure Applications and Review

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee. Clarifying that Oregon Secretary of State registry number required on applications. Replacing “production area” with “grow site” where appropriate.

RULE TEXT:

(1) Licenses are valid for a one-year term beginning on January 1 of each calendar year. Licenses granted after January 1 are effective on the date issued. Beginning on January 1, 2022, an applicant must submit, and the Department must receive, a complete application and applicable fees by no later than May 31 of the calendar year.

(2) The Department shall review and act on applications in the order they are received. An individual is not licensed with the Department until the Department has approved the license and notified the applicant of licensure.

(3) To apply for a grower license, an applicant must submit to the Department:

(a) A complete grower license application on a form provided by the Department;

(b) A complete grow site license application on a form provided by the Department for each grow site;

(c) All applicable fees as described in OAR 603-048-0700; and

(d) For applications for the 2022 license year or later, consent to a criminal records check by fingerprint identification for the applicant or if the applicant is a business entity, submit a consent for every key participant in the applicant business in accordance with ORS 181A.195, ORS 181A.200 and OAR chapter 125, division 7. To complete the criminal records check, the Department may require additional information including, but not limited to, proof of identity, or additional criminal, judicial, or other background information.

(e) Any other documents requested by the Department.

(4) A person seeking to produce or process agricultural hemp seed must separately apply for and obtain an agricultural hemp seed producer license as described in OAR 603-048-0300.

(5) A grower license application must include the following information:

(a) The name, legal type of applicant (individual, corporation, etc.).

(b) Contact information for the applicant.

(c) For business entities, principal place of business for licensee, Oregon Secretary of State registry number, names of all key participants for applications for the 2022 license year or later, employer identification number, and contact information, including phone number and e-mail of all key participants;

(d) A primary contact person who the Department can contact to arrange for onsite inspections or for questions regarding the application or license and contact information (phone number, email) for the primary contact person.

(e) The address of each grow site;

(f) Other information specified by the Department in the application, including but not limited to:

(A) The intended use of the industrial hemp (flower, seed, and/or fiber); and

(B) The intended number of acres or square feet to be cultivated.

(g) Any other information or forms required by the Department.

(h) For each proposed grow site location, a completed form with the following information:

(A) The address of the grow site;

(B) Information for each non-contiguous production area, as described in subsection (C) and (D) of this rule.

(C) If in the production area is a field:

(i) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field;

(ii) The number of square feet or acres of each cultivated field; and

(iii) A map of the grow site showing clear boundaries of the production area;

(D) If in the production areas is a greenhouse or other building:

(i) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center

of the greenhouse or other building;
(ii) The approximate dimension or square feet of the greenhouse or other building; and
(iii) A map of the grow site showing clear boundaries of each production area.
(6) To add a grow site to an existing license during the licensed calendar year, the licensed grower must submit to the Department:
(a) A complete grow site form as described in section (5) of this rule.
(b) All applicable fees as described in OAR 603-048-0700(2)(a).
(7) Renewal Application.
(a) A person with a current valid license may apply for a renewal license by submitting a complete renewal application on a form provided by the Department. The renewal application must include:
(A) Updated contact information for the applicant and all key participants;
(B) A consent to a criminal records check by fingerprint identification as described in Section (3) for any licensee or key participant who has not passed a criminal records check with the Department in the previous two licensing years;
(C) Complete grow site forms described in section (5) of this rule for any new proposed grow sites; and
(D) Any other information required by the Department.
(b) The Department must receive the complete renewal application described in OAR 603-048-0700 by no later than December 1 of the current license year. For 2022 renewal applications, renewals must be received by December 30, 2021.
(c) All application requirements for an initial license apply to a renewal application except as specifically identified in this rule.
(d) The Department shall deny an applicant for a renewal if the applicant fails to report the information required in OAR 603-048-0400(7).
(8) In addition to the requirements in sections (3) to (7), all applicants must acknowledge and agree that:
(a) Any information provided to the Department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant or licensee;
(b) The Department, or its designee, may enter any field, facility or greenhouse used for the production or handling of industrial hemp or agricultural hemp seed and may take samples of industrial hemp or agricultural hemp seed as necessary for the administration of the Department's laws.
(c) All fees lawfully due to the Department will be timely paid.
(d) The information provided is true and correct and that applicant's signature is an attestation of that fact.
(9) The Department, in its discretion, may require an inspection of the grow site prior to licensure. The inspection may include sampling for THC testing as described in ORS 571.281 or OAR 603-048-8010 to 603-048-8040.
(10) Incomplete Applications.
(a) If an applicant does not provide all of the information required by rule or pay the applicable fee, the Department shall reject the application as incomplete.
(b) If an application is illegible or is substantially incomplete, the Department may summarily reject the application as incomplete. If an applicant fails to provide all of the information required, the Department may notify the applicant of the missing information and allow the applicant 15 days to submit the missing information. If the applicant fails to timely submit the missing information, the Department shall reject the application as incomplete.
(c) The Department may verify the information submitted, verify any accompanying documentation submitted with an application, or request additional information, documentation, or attestation from the applicant to ensure compliance with ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542). If the applicant or key participant is disqualified due to a felony conviction but was growing hemp lawfully under another state's pilot program authorized by Section 7606, the Department may require documentation of the lawful participation. If an applicant fails to timely submit information, documentation, or attestation requested by the Department, the Department shall reject the application as incomplete.
(d) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a

year, the application fee may be applied to a new application.
(11) Denial.
(a) The Department must deny an initial or renewal application if:
(A) The applicant fails to satisfy any of the requirements for initial licensure.
(B) For applications for the 2022 license year or later, the applicant or any key participant has been convicted of a felony relating to a controlled substance within the last ten years from the date of application unless the convicted individual was growing hemp lawfully under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 before October 31, 2019.
(C) The applicant or any key participant plants an industrial hemp crop or commits a violation of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542) prior to applying for a grower license unless:
(i) the applicant disposes the industrial hemp crop in accordance with OAR 603-048-0640 within 14 days of the Department's notification to the applicant, unless the Department grants an extension in writing; and
(ii) the Department determines the violation is resolved.
(D) Required to deny under OAR 603-048-0126.
(E) The applicant or any key participant materially falsifies any information submitted in or with an application.
(F) The proposed grow site is at the same location as a licensed researcher grower grow site.
(b) The Department may deny an initial or renewal application if:
(A) The applicant or any key participant violated or has a history of noncompliance with:
(i) A provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542)
(ii) A rule adopted under a provision of ORS 571.2600 to ORS 571.348 (as amended by OL 2021, Ch. 542);
(iii) An order issued by the Department pursuant to a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542) or a rule adopted thereunder, including a detainment order;
(iv) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations.
(B) The application contains false, misleading, or incorrect information; or
(C) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration.
(12) Ineligibility based on past noncompliance.
(a) A grower, and all key participants, is ineligible for a grower license for a period of five years if the grower commits three of the violations below over a five-year-period:
(A) the grower produces cannabis that exceeds 1.0 percent THC on a dry weight basis;
(B) the grower fails to provide a legal description of land on which the grower produces hemp; or
(C) the grower fails to obtain a license under these rules prior to producing hemp.
(b) Only for the purposes of determining ineligibility under subsection (a) of this rule:
(A) A grower shall accrue a maximum of one violation per year.
(B) The period of ineligibility begins on the date that the last violation is found in a final order by the Department.
(c) A grower, and all key participants, is ineligible for a grower license for a period of two year from the date a final order is entered revoking the grower's license, except for final orders issued pursuant to subsection (a) of this rule where the ineligibility period of five years.
(d) A grower or key participant whose application is denied under OAR 603-048-0126(1)(a), for failing to comply with ORS 571.260 to 571.348, or failing to comply with these rules, is ineligible for a period of two year from the date a final order is entered denying the grower's license, except for final orders issued pursuant to subsection (a) of this rule where the ineligibility period is five years.
(e) A grower or key participant ineligible under this rule may not apply or reapply for a grower license during the period of ineligibility.
(f) The Department must deny any grower application submitted by a person ineligible under this rule and shall revoke the license of a person who is ineligible under this rule.
(g) Nothing in this rule prevents the Department from assessing multiple violations or from taking other action to

revoke or deny a license or impose civil penalties.
(13) Persons hold a current valid 2021 grower registration may apply for a renewal license for the calendar year 2022 by submitting a renewal application no later than December 1, 2021. All renewal application requirements in this rule apply and the application shall be processed as described in this rule.
(14) The Department may place an application on hold if the applicant, licensee, or any key participant is currently under investigation for violation of ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542) or these rules or pending a disciplinary action with the Department.
(15) The Department may not issue a license to an applicant that is a business entity if it is not currently registered with the Oregon Secretary of State's business registry.

STATUTORY/OTHER AUTHORITY: ORS 561.120, ORS 561.200, ORS 561.275, ORS 561.190, ORS 569.445, ORS 571.260-571.348, ORS 633.511-633.996, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

AMEND: 603-048-0225

RULE TITLE: Handler Applications and Review

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifying that Oregon Secretary of State registry number required on applications. Adding language that ODA may enter a facility to take samples to include industrial hemp products or commodities.

RULE TEXT:

(1) Licenses are valid for a one-year term beginning on January 1 of each calendar year. Licenses granted after January 1 are effective on the date issued.

(2) Renewal Application. A person with a current valid license may apply for a renewal license by submitting a renewal application to the Department by no later than December 1 of the current license year. All application requirements for an initial license apply to an application for renewing a license.

(3) The Department shall review and act on applications in the order they are received. An individual is not licensed with the Department until the Department has approved the license and notified the licensee of licensure.

(4) To apply for a handler license, an applicant must submit to the Department:

(a) A complete application to the Department on forms provided by the Department; and

(b) All applicable fees as described in OAR 603-048-0700.

(5) A person seeking to produce or process agricultural hemp seed must separately apply for and obtain an agricultural hemp seed producer licensure as described in OAR 603-048-0300.

(6) An application for a handler licensure must:

(a) Include all of the following information:

(A) The name, legal type of applicant (individual, corporation, etc.), Oregon Secretary of State business registry number for if a business entity, and contact information of the applicant;

(B) The name and address of applicant's handling site;

(C) A primary contact person who the Department can contact to arrange for onsite inspections or for questions regarding the application or license and contact information (phone number, email) for the primary contact person.

(D) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application.

(b) Include a completed copy of the Department land use compatibility statement (LUCS) for each hemp operation location signed by the local county or government.

(c) Include any other information or forms required by the Department.

(7) In addition to the requirements in sections (4) to (6), all applicants for licensure must acknowledge and agree that:

(a) Any information provided to the Department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant or licensee;

(b) The Department, or its designee, may enter any facility used for the handling of industrial hemp or agricultural hemp seed and may take samples of industrial hemp, agricultural hemp seed, or industrial hemp products or commodities as necessary for the administration of the Department's laws.

(c) All fees lawfully due to the Department will be timely paid.

(d) Licensure and compliance with these industrial hemp rules may not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities, or from possible criminal prosecution under the laws of other states.

(8) The Department, in its discretion, may require an inspection of the handling site prior to issuing a license.

(9) Incomplete Applications.

(a) If an applicant does not provide all of the information or documentation required in rule or otherwise required by the Department of this rule or pay the applicable fee, the Department shall reject the application as incomplete.

(b) If an application is illegible or is substantially incomplete, the Department may summarily reject the application as incomplete. If an applicant fails to provide all of the information required, the Department may notify the applicant of

the missing information and allow the applicant 15 days to submit the missing information.
(c) The Department may verify the information submitted, verify any accompanying documentation submitted with an application, or request additional information, documentation, or attestation from the applicant to ensure compliance with ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542) and these rules. If an applicant fails to timely submit information, documentation, or attestation requested by the Department, the Department shall reject the application as incomplete.
(d) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a year, the application fee may be applied to a new application.
(10) Denial.
(a) The Department must deny an initial or renewal application if:
(A) The LUCS submitted states that the proposed land use is prohibited in the applicable zone; or
(B) The applicant fails to satisfy any of the requirements for initial licensure.
(b) The Department may deny an initial or renewal application if:
(A) The applicant violated or has a history of noncompliance with:
(i) A provision of ORS 571.260 to ORS 571.;
(ii) A rule adopted under a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542);
(iii) An order issued by the Department pursuant to a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542) or a rule adopted thereunder, including a detainment order;
(iv) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations.
(B) The application contains false, misleading, or incorrect information; or
(C) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration.
(11) Licensure by Reciprocity., A marijuana processor licensed under ORS 475B.090 with a hemp endorsement as described in OAR 845-025-3210 from the OLCC may apply for a handler license by submitting to the Department:
(a) A complete reciprocity handler licensure application on forms provided by the Department;
(b) A copy of the marijuana processor's current license and hemp endorsement;
(c) All applicable fees as described in OAR 603-048-0700; and
(d) Any other forms or documents required by the Department.
(12) Persons hold a current valid 2021 handler registration may apply for a renewal license for the calendar year 2022 by submitting a renewal application no later than December 1, 2021. All renewal application requirements in this rule apply and the application shall be processed as described in this rule.
(13) Ineligibility based on past noncompliance.
(a) A handler is ineligible for a handler license for a period of two year from the date a final order is entered revoking the handler's license.
(b) A handler whose application is denied for failure to comply with ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542) or these rules is ineligible for a period of two year from the date a final order is entered denying the handler's license.
(c) A handler ineligible under this rule may not apply or reapply for a handler license during the period of ineligibility.
(d) The Department must deny any handler application submitted by a person ineligible under this rule and shall revoke the license of a person who is ineligible under this rule.
(14) The Department may place an application on hold if the applicant or licensee is currently under investigation for violation of ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542) or these rules or pending a disciplinary action with the Department.
(15) If the Department receives written notification from the jurisdiction where a proposed handling site or licensed handling site is located that the LUCS is invalid or is no longer valid, the Department may require the applicant or licensee to obtain a new LUCS. If a new LUCS is not submitted, the Department may deny or revoke the license. If the LUCS submitted states that the proposed land use is prohibited in the applicable zone, the Department shall revoke or

deny the license.

(16) The Department may not issue a license to an applicant that is a business entity if it is not currently registered with the Oregon Secretary of State's business registry.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

AMEND: 603-048-0300

RULE TITLE: Agricultural Hemp Seed Producer License Application and Review

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee. Clarifying that Oregon Secretary of State registry number required on applications. Correcting production area with grow site where appropriate.

RULE TEXT:

(1) Only a grower licensed with the Department may produce agricultural hemp seed. Only a handler licensed with the Department may process agricultural hemp seed. An applicant may apply for a grower or handler license at the same time the applicant applies for a license as an agricultural hemp seed producer.

(2) A licensed grower or handler seeking to produce or process agricultural hemp seed must obtain an agricultural hemp seed producer license unless:

(a) A licensed grower retains agricultural hemp seed only for the purpose of personally propagating industrial hemp for the grower's own use in future years;

(b) A licensed grower renders all Cannabis seeds produced such that they are incapable of germination; or

(c) A licensed handler processes agricultural hemp seed in such a manner that the seeds are incapable of germination.

(3) An application to produce agricultural hemp seed must include all of the following information:

(a) The name, legal type of applicant (individual, corporation, etc.), Oregon Secretary of State business registry number if a business entity, and contact information of the applicant;

(b) The name and address of the applicant's agricultural hemp seed operation(s);

(c) If industrial hemp is grown in a field:

(A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field;

(B) The number of square feet or acres of each cultivated field; and

(C) A map of the grow site showing clear boundaries of the production area;

(d) If industrial hemp is grown in a greenhouse or other building:

(A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the greenhouse or other building;

(B) The approximate dimension or square feet of the greenhouse or other building; and

(C) A map of the grow site showing clear boundaries of the production area.

(e) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application.

(f) Any other information or forms required by the Department.

(4) An application to process agricultural hemp seed must include all of the following information:

(a) The name legal type of applicant (individual, corporation, etc.) and contact information of the applicant;

(b) The name and address of applicant's facility used for processing industrial hemp agricultural seed.

(c) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application.

(d) Any other information, documents or forms required by the Department.

(5) A licensed grower may retain agricultural hemp seed without an agricultural hemp seed producer license for the purpose of personally propagating industrial hemp in future years, except that a licensed grower may not:

(a) Retain seed from a harvest lot for future planting that failed pre-harvest THC testing as described in OAR 603-048-0600 and 603-048-0630.

(b) Sell or transfer agricultural hemp seed for the purpose of planting without first obtaining an agricultural hemp seed producer license.

(6) An applicant for licensure must acknowledge and agree that:

(a) Any information provided to the Department may be publicly disclosed and may be provided to law enforcement

agencies without notice to the applicant or licensee;
(b) The Department may enter any field, facility, greenhouse, or other building used for the production or processing of industrial hemp and may take samples of industrial hemp, industrial hemp commodities or products, or agricultural hemp seed as necessary for the administration of the Department's laws.
(c) All fees lawfully due to the Department will be timely paid.
(d) The information provided is true and correct and that applicant's signature is an attestation of that fact.
(e) Licensure and compliance with industrial hemp rules does not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities.
(7) Renewal Application.
(a) A person with a current valid license may apply for a renewal license by submitting a complete renewal application on a form provided by the Department. The renewal application must include:
(A) Updated contact information for the applicant and all key participants, as applicable if applicant is applying for a grower license;
(B) Any other information required by the Department.
(b) The Department must receive the complete renewal application described in OAR 603-048-0700 by no later than December 1 of the current license year.
(c) All application requirements for an initial license apply to a renewal application except as specifically identified in this rule.
(8) The Department, in its discretion, may require an inspection of the grow site prior to licensure. The inspection may include sampling for THC testing as described in ORS 571.281 or OAR 603-048-8010.
(9) Incomplete Applications.
(a) If an applicant does not provide all of the information required by rule or otherwise required by the Department or pay the applicable fee, the Department shall reject the application as incomplete.
(b) If an application is illegible or is substantially incomplete, the Department may summarily reject the application as incomplete. If an applicant fails to provide all of the information required, the Department may notify the applicant of the missing information and allow the applicant 15 days to submit the missing information.
(c) The Department may verify the information submitted, verify any accompanying documentation submitted with an application, or request additional information, documentation, or attestation from the applicant to ensure compliance with ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542) and these rules. If an applicant fails to submit information, documentation, or attestation requested by the Department, the Department shall reject the application as incomplete.
(d) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a year, the application fee may be applied to a new application.
(10) Denial.
(a) The Department must deny an initial or renewal application if the applicant is not licensed as a grower or handler.
(b) The Department may deny an initial or renewal application if:
(A) The applicant or key participant violated or has a history of noncompliance with:
(i) A provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542);
(ii) A rule adopted under a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542);
(iii) An order issued by the Department pursuant to a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542) or a rule adopted thereunder, including a detainment order; or
(iv) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations.
(B) The application contains false, misleading, or incorrect information; or
(C) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration.
(11) Licenses are valid for a one-year term beginning January 1 of each calendar year. Licenses granted after January 1 are effective on the date issued.

(12) Ineligibility based on past noncompliance.
(a) An industrial hemp seed producer, and all key participants, is ineligible for an industrial hemp seed producer license for a period of one year from the date a final order is entered revoking the license.
(b) An industrial hemp seed producer or key participant whose application is denied for failure to comply with ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542) or these rules is ineligible for a period of two year from the date a final order is entered denying the license.
(c) An industrial hemp seed producer or key participant ineligible under this rule may not apply or reapply for a industrial hemp seed producer license during the period of ineligibility.
(d) The Department must deny any industrial hemp seed producer application submitted by a person ineligible under this rule and shall revoke the license of a person who is ineligible under this rule.
(13) Persons hold a current valid 2021 industrial hemp seed producer registration may apply for a renewal license for the calendar year 2022 by submitting a renewal application no later than December 1, 2021. All renewal application requirements in this rule apply and the application shall be processed as described in this rule.
(14) The Department may not issue a license to an applicant that is a business entity if it is not currently registered with the Oregon Secretary of State's business registry.

STATUTORY/OTHER AUTHORITY: ORS 561.120, ORS 561.200, ORS 561.275, ORS 561.190, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

AMEND: 603-048-0400

RULE TITLE: Reporting Requirements

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee. Adds that a primary contact person must be on any change form.

RULE TEXT:

(1) A licensee must immediately report, within 48 hours, the theft or loss of industrial hemp or hemp items to the Department. A licensee must provide a copy of the police report of such a theft to the Department or the police report number of such a theft upon the Department's request.

(2) An applicant or licensee must report to the Department in writing within 10 days of the following:

(a) A disciplinary proceeding or enforcement action by another government entity that may affect the applicant or licensee's business;

(b) Temporary closures of more than 30 days or a permanent closure of a grow site, research facility or a handling site. The applicant or licensee is responsible for all activities at a grow site, research facility, or handling site until the date the Department is notified of a permanent site closure in accordance with OAR 603-048-0800(1).

(c) Beginning January 1, 2022, Any felony conviction of the grower applicant or grower licensee or if a business entity, any key participant, relating to a controlled substance.

(d) On a form provided by the Department and changes to the name, address, e-mail or telephone number of the licensee, primary contact person, or any key participant within 10 days of the change;

(e) On a form provided by the Department, changes in location of a production area at a grow site or the addition of a production area at a grow site prior to producing at a production area not licensed with the Department.

(f) Any and all licensed production areas that the licensee decides not to plant with industrial hemp or does not plant with industrial hemp during the licensing year.

(3) Changes in Business Structure or Ownership. A licensee that proposes to change its business structure or ownership structure must submit a complete Change in Business or Ownership on a form provided by the Department to the Department, prior to making such a change.

(a) The Department shall approve the change if the change would not result in an initial or renewal application denial or revocation under these rules.

(b) If the licensee proceeds with the change without an approved Change in Business or Ownership form, the licensee must surrender the license in writing or the Department shall revoke the license.

(c) The Department may refuse to accept a Change in Business or Ownership form for a change in business structure or financial interest if the licensee is expiring in less than 90 days, the licensee is under investigation by the Department, or has been issued a Notice by the Department following an alleged violation and the alleged violation has not been resolved.

(d) If a licensee has a change in ownership that is 51% or greater, a new application and application fees must be submitted. The Department shall process the application in accordance with these rules.

(e) A licensed grower must submit with the Change in Business or Ownership consent for a criminal background check for any new licensee or key participant in the licensed business in accordance with OAR 603-048-0200(4)(d).

(4) Licensees must pay the change fee described in OAR 603-048-0700 for each change form submitted under section (2)(b), (3)(b), or (4)(a) of this rule.

(5) Growers must ensure that all laboratory THC test results for all harvest lots are timely reported to the Department and that any failed test report is immediately reported to the Department as required by these rules.

(6) By December 1 of the current license year:

(a) Growers shall report to the Department on forms provided by the Department:

(A) Amount of industrial hemp planted (in acres or square feet);

(B) Amount of industrial hemp harvested;

(C) Any other information as specified on the forms by the Department.

(b) Handlers shall report to the Department on forms provided by the Department:

(A) Type of industrial hemp commodities and products produced;

(B) The amount of industrial hemp commodities and products produced per type; and

(C) Any other information as specified on the forms by the Department.

(7) Beginning on January 1, 2022, growers shall report hemp crop acreage to the United States Department of Agriculture Farm Service Agency in accordance with 7 CFR 990.7 the following information:

(a) Street address and geospatial location for each production area;

(b) Acreage dedicated to the production of hemp or greenhouse or indoor square footage dedicated to hemp; and

(c) Department grower license number.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260 - 571.348, OL 2021, Ch. 542

AMEND: 603-048-0500

RULE TITLE: Record Keeping Requirements

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee. Adds that a grower must provide at ODA request any records relating to the operation of a licensed business or key participant in the business including but not limited to the records required to be maintained by the business entity under ORS 60.771, 63.771, 65.771, 67.150, 70.050, or other applicable laws.

RULE TEXT:

(1) Licensees must maintain records required under these rules for no less than three (3) years after the total disposition of each harvest, seed, immature plant, or process lot, as identified by unique identifier assigned pursuant to this rule.

(2) For purposes of identifying industrial hemp and industrial hemp products and commodities for record keeping:

(a) Growers must assign each harvest lot of industrial hemp produced by the grower a harvest lot identifier as that term is defined in 603-048-0010.

(b) Growers must assign each seed lot produced by the grower a seed lot identifier as that term is identified in OAR 603-048-0010.

(c) Growers must assign immature plant lot transferred or sold by the grower an immature plant lot identifier as that term is identified in OAR 603-048-0010.

(d) Handlers must assign a process lot identifier as that term is defined in 603-048-0010 to any industrial hemp commodities or products made by the handler.

(e) Licensees must assign a unique identifier to all industrial hemp received from outside Oregon.

(f) Handlers must assign a unique identifier to all industrial hemp commodities or products received from outside Oregon.

(3) Grower Recordkeeping.

(a) A grower must create and maintain records for all industrial hemp planted or produced that includes the following information:

(A) The harvest lot, seed lot, and immature plant lot identifier as applicable;

(B) Grow site and production area identifiers;

(C) Date of harvest if applicable;

(D) Any and all sampling and testing documentation from preharvest testing;

(E) Documentation of any production area not planted during the licensing year and documentation of reporting to the Department in accordance with OAR 603-048-0400(2)(f).

(F) For cannabis waste and all other cannabis disposal:

(i) Documentation of disposal, including photos or videos, as required in OAR 603-048-0640; and

(ii) Documentation of required reports to the Department as required in OAR 603-048-0640.

(b) A grower must create and maintain records for any receipt or transfer of industrial hemp that includes the following information:

(A) For each harvest lot, seed lot, or immature plant lot of industrial hemp received from a person within Oregon or transferred to a person in Oregon, as permitted under ORS 571.260 to 571.348, as amended by OL 2021, Ch. 542, and these rules:

(B) The name and address of the person transferring the harvest lot to the grower or receiving the harvest lot from the grower, including the license number of the person;

(C) The harvest lot, seed lot, or immature plant lot identifier for each lot received or transferred;

(D) The date of receipt or transfer;

(E) The amount of industrial hemp (plants, material, seeds) received or transferred in pounds;

(F) All test reports for each lot received or transferred;

(G) If transferred to an OLCC licensee, the UID number(s), as that term is defined in OAR 845-025-1015, assigned to the

harvest lot(s).
(c) For each harvest lot, seed lot, or immature plant lot , received from outside of Oregon, or transferred outside of Oregon, to the extent such receipt or transfer is permitted under ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542), , and these rules:
(A) The name and address of the person transferring the industrial hemp to the grower or receiving industrial hemp from the grower including the outside state license number of the person;
(B) The unique identifier for the industrial hemp received:
(C) The date of receipt;
(D) The amount of industrial hemp (plants, material, seeds) received in pounds;
(E) All test reports for industrial hemp received;
(4) Handler Recordkeeping for Industrial Hemp. A handler must create and maintain records for the receipt or transfer of industrial hemp that includes the following information:
(a) For each harvest, seed, or immature plant lot received from a person within Oregon or transferred to a person in Oregon, as permitted under ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542), and these rules:
(A) The name and address of the person transferring the lot to the handler or receiving the lot from the handler, including the license number of the person;
(B) The lot identifier for each lot received or transferred;
(C) The date of receipt or transfer;
(D) The amount of industrial hemp (plants, material, seeds) received or transferred in pounds;
(E) All test reports for each lot received or transferred;
(F) If transferred to an OLCC licensee, the UID number(s), as that term is defined in OAR 845-025-1015, assigned to the lot(s).
(b) For each harvest, seed, or immature plant lot received from outside of Oregon or transferred outside of Oregon, to the extent such receipt or transfer is permitted under ORS 571.260 to 571.348, as amended by OL 2021, Ch. 542, and these rules:
(A) The name and address of the person transferring the industrial hemp to the handler or receiving industrial hemp from the handler;
(B) The unique identifier for the industrial hemp received:
(C) The date of receipt;
(D) The amount of industrial hemp (plants, material, seeds) received in pounds;
(E) All test reports for industrial hemp received;
(5) Handler Recordkeeping for Industrial Hemp Commodities and Products. A handler must create and maintain records for the receipt or transfer of industrial hemp commodities and products, to the extent such receipt is permitted under ORS 571.260 to 571.348, as amended by OL 2021, Ch. 542, and these rules that includes the following information:
(a) The name and address of the person transferring the commodities or products to the handler or receiving the commodities or products from the handler, including the license number if the person is licensed;
(b) The process lot identifier or unique identifier for the commodities or products received or transferred;
(c) The date of receipt or transfer;
(d) The amount in units or pounds of the commodity or product received or transferred;
(e) All test reports for the commodities or products received or transferred;
(f) If transferred to an OLCC licensee, the UID number(s), as that term is defined in OAR 845-025-1015, assigned to commodities or products transferred.
(6) Handler Recordkeeping for Disposition of Items Received and Transferred. A handler must create and maintain disposition information for all industrial hemp or hemp commodity or products received or transferred that includes the following information:
(a) Identification of the harvest, seed, or immature plant lot by unique identifier;
(b) Identification of the process lot by process lot identifier or identification of the hemp commodity or product by

unique identifier;
(c) Whether the harvest lot, immature plant lot, seed lot, process lot, industrial hemp or hemp commodity or product was transferred without processing;
(d) If processed:
(A) The process lot identifier;
(B) The method of processing;
(C) The type of industrial hemp commodity or product created from the industrial hemp or hemp commodity or product; and
(D) The amount in units or pounds of the industrial hemp commodity or product created from the industrial hemp or hemp commodity or product
(7) A grower must provide, upon the Department's request, records relating to the operation of the licensed business or any key participant in the licensed business, including but not limited to records required to be maintained by the business entity under ORS 60.771, 63.771, 65.771 67.150, 70.050 or other applicable laws.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260-571.348, OL 2021,Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021,Ch. 542

ADOPT: 603-048-0520

RULE TITLE: Co-Location of Hemp Production with Marijuana Production

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Creates a new rule regarding the co-location of hemp production with marijuana production. Prohibits co-location with marijuana unless a personal home grow or if the marijuana is tracked in CTS (seed to sale system).

RULE TEXT:

(1) For the purposes of this rule, the following definitions apply:

(a) "Medical marijuana grower registration" means a grower registration issued under ORS 475B.810.

(b) "Medical marijuana plot" means an area designated at a hemp grow site for producing cannabis plants under a medical marijuana grower registration.

(c) "Personal grow plot" means an area designated at a hemp grow site for producing cannabis plants pursuant to pursuant to ORS 475B.301.

(2) Medical Marijuana.

(a) If a grower produces cannabis pursuant to a medical marijuana grower registration at the grow site and uses CTS to track production, the grower must:

(A) Complete and implement a control plan, on a form provided by the Department, that describes how plants grown pursuant to the industrial hemp license shall be separated from plants grown pursuant to a medical marijuana grower registration. The control plan must identify how harvested plant material will be maintained and stored separately. Medical marijuana plots may not be in the same location or overlap with a production area.

(B) Maintain a copy of the control plan at the grow site at all times and immediately provide upon request.

(C) Ensure that only plants grown pursuant the industrial hemp license are grown in production areas and only plants grown pursuant to a medical marijuana grower registration are grown in medical marijuana plots;

(D) Post a grow site plan that identifies the location of the hemp production areas and medical marijuana plots;

(E) Visually demarcate the boundaries of hemp production areas and medical marijuana plots through signs, fencing, or cordoning.

(b) A grower may not co-locate cannabis grown pursuant to a medical marijuana grower registration at the grow site if the cannabis is not tracked in CTS.

(3) OLCC-Licensed Marijuana. If a grower produces cannabis pursuant to a license issued under ORS 475B.070, the grower shall submit a copy of the OLCC-approved control plan as described in OAR 845-025-1115(2)(f) to the Department.

(4) Personal Grows. Cannabis plants grown pursuant to ORS 475B.301 may not be located in a hemp production area. A grower that produces cannabis plants pursuant to ORS 475B.301 must:

(a) Ensure that only plants grown pursuant the industrial hemp license are grown only in production areas and only plants grown pursuant to ORS 475B.301 are grown in personal use plots;

(b) Post a grow site plan that identifies the location of the hemp production areas and any personal use plots.

(c) Visually demarcate the boundaries of hemp production areas and any personal use plots through signs, fencing, or cordoning.

(5) Any and all cannabis grown in a hemp production area identified in a grower application or later identified to the Department as a hemp production area is subject to sampling and testing under ORS 571.281(7) and OAR 603-048-8010.

(6) A grower that stores cannabis grown pursuant to a medical marijuana grower registration or under ORS 475B.301 must ensure that the harvested cannabis is segregated from its harvested industrial hemp. The grower must:

(a) Comply with the storage requirements in OAR 603-048-0540;

(b) Label all cannabis harvested from plants grown pursuant to a medical marijuana grower registration or under ORS 475B.301 with the following:

(A) Identify the cannabis as grown pursuant to a medical marijuana grower registration or as cannabis from a “personal grow”;

(B) The date the cannabis was harvested.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

ADOPT: 603-048-0540

RULE TITLE: Industrial Hemp Drying and Storage Requirements

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Creates a new rule establishing hemp drying and storage requirements.

RULE TEXT:

(1) When drying or storing industrial hemp, licensees must label each harvest lot with the following information:

(a) The license number of the grower that produced the harvest lot;

(b) The harvest lot identifier; and

(c) The date the harvest lot was harvested.

(2) The pre-harvest test results for each drying or stored harvest lot must be readily available at the drying or storage location and produced upon request.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

ADOPT: 603-048-0545

RULE TITLE: Transport THC Limitations

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Creates a new rule establishing THC limitations prohibiting transporting hemp commodities above 5% THC within the state of Oregon.

RULE TEXT:
A licensee may, within the boundaries of this state, transport to or receive from:
(1) Another licensee or a laboratory licensed under ORS 475B.560:
(a) industrial hemp; or
(b) An industrial hemp commodity that contains no more tetrahydrocannabinol than five percent THC if the industrial hemp or industrial hemp used in the industrial hemp commodity originated from a crop inspected under ORS 571.281(7) that was found to not contain an average tetrahydrocannabinol concentration exceeding the concentration specified by the Department by rule.
(2) If permitted by Commission rules, a person licensed under ORS 475B.090, 475B.100 or 475B.105 industrial hemp or an industrial hemp commodity or product that contains no more tetrahydrocannabinol than allowed by the Oregon Liquor Control Commission by rule if the industrial hemp or industrial hemp used in the industrial hemp commodity or product originated from a crop inspected under ORS 571.281 (7) that was found to not contain an average tetrahydrocannabinol concentration exceeding the concentration specified by the Department by rule.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

AMEND: 603-048-0600

RULE TITLE: Pre-Harvest Sampling and Testing for Tetrahydrocannabinol

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Prohibits repeat preharvest sampling and testing on harvest lots that have failed testing and any possible retesting allowed under 603-048-0630. Updates registration/registrant to license/licensee. Explicit language requiring destruction of harvest lots that have failed preharvest testing within 14 days of report of failed test.

RULE TEXT:

(1) A grower may not:

(a) Harvest a harvest lot until it has been sampled in accordance with these rules.

(b) Transfer or sell a harvest lot until it has passed testing in accordance with these rules.

(c) Conduct repeat preharvest sampling and testing on a harvest lot that has failed testing under these rules except as expressly permitted in OAR 603-048-0630.

(2) Required Sampling and Testing:

(a) A grower must ensure that the grower's entire crop is timely sampled and tested according to these rules.

(b) Harvest lots must be sampled and tested separately and may not be combined. At the discretion of the grower, industrial hemp grown in a contiguous field or growing area may be subdivided into separate harvest lots for sampling and testing consistent with these rules. Sampling must be conducted and testing must be reported using the harvest lot identifier described in OAR 603-048-0500(2).

(c) A grower must arrange for and ensure the sampling of a harvest lot no more than twenty-eight (28) days prior to harvest for the purpose of ensuring that the harvest lot does not exceed permissible THC concentration levels on a dry weight basis. Beginning on January 1, 2022, sampling of the harvest lot must occur not more than thirty (30) days prior to harvest. Harvest must be complete within the applicable time period for sampling or the grower must arrange for additional sampling of the unharvested cannabis in accordance with these rules.

(d) If a purpose of the harvest lot is to produce flower, the grower must arrange for sampling such that flowers are present at the time of sampling. In this case, only plants with flowers shall be sampled.

(e) The grower or authorized representative must provide the sampler with unrestricted and unobstructed access to all hemp and other cannabis plants whether growing or harvested and all lands, buildings, and other structures used for cultivation, handling, and storage of all hemp and Cannabis and all other locations listed in the grower's license.

(f) During a scheduled sampling, the grower, person in charge of the grow site, or an authorized representative of the grower shall be present at the grow site.

(3) All sampling and testing must be performed by the Department or a laboratory.

(4) If a grower uses a laboratory to perform testing and sampling the grower must ensure that the laboratory:

(a) Retains all documentation of sampling and testing for at least three years and can provide such documentation to the Department upon request.

(b) Complies with sample or matrix spike recovery requirements and Relative Percent Difference requirements as described in Exhibit B.

(c) Conducts sampling and testing in accordance with these rules.

(d) Can demonstrate that its limit of quantification (LOQ) for THC is at or below 0.3 percent THC.

(e) Requires all laboratory staff conducting sampling to complete annual sampling training with the Department prior to conducting sampling.

(f) Tests for and reports the total THC content of the harvest lot calculated in accordance with OAR 333-064-0100(4).

(5) To request sampling and testing, prior to sampling a grower must submit to the laboratory, or the Department, a completed sampling request form provided by the Department that includes:

(a) A written sampling request for THC analysis for each harvest lot, as identified by the harvest lot identifier, for which the grower is requesting sampling and testing and the total number of harvest lots to be sampled and tested;

(b) A description of the location of the production area of each harvest lot, as identified by the harvest lot identifier,

including the GPS coordinates or address of the harvest lot; and
(c) A written description and visual depiction of each harvest lot to be sampled and tested such that the production area for each harvest lot is apparent from a visual inspection of the premises and easily discernible from other harvest lots.
(6), Sampling of a harvest lot must:
(a) Occur after the laboratory or Department personnel fully complete the sampling form provided by the Department onsite at the production area.
(b) Produce a sample that is representative of the harvest lot.
(c) Be conducted:
(A) In accordance with the Department's Sampling Protocol prescribed in Exhibit A and incorporated by reference.
(B) Such that a sufficient sample size is taken and retained for analysis of all requested tests, any requested retest, and any quality control performed by the testing laboratory for these tests.
(7) A grower must ensure that:
(a) The laboratory conducts testing according to the Department's Testing Protocol prescribed in Exhibit B and incorporated by reference.
(b) The laboratory reports all test results electronically to the Department at HempTestReports@oda.state.or.us using the forms provided by or approved by the Department or via an online portal operated by the Department, and include for each sample tested:
(A) Grower's name and license number;
(B) Harvest lot identifier;
(C) Sample date;
(D) Sample size by weight;
(E) Testing date;
(F) Total THC percentage to the second decimal point only calculated in accordance with OAR 333-064-0100(4);
(G) The laboratory's measurement of uncertainty for THC testing of industrial hemp. Measurement of uncertainty means the parameter, associated with the result of the measurement, that characterizes the dispersion of the values that could reasonable be attributed to the particular quantity subject to measurement;
(H) Clear identification of the harvest lot by harvest lot identifier that corresponds to the sample and the location of the corresponding harvest lot's production area;
(I) Copy of grower's sampling request form required in section (5) of this rule; and
(J) Copy of the completed sampling form required in section (6) of this rule.
(c) Beginning January 1, 2022, the laboratory reports all results from testing conducted under this rule to the United States Department of Agriculture. The test results report must contain the following information:
(A) Grower's license number;
(B) Grower's name;
(C) Business address of the grower;
(D) Harvest lot identifier
(E) Name of the laboratory
(F) Date of the test and report
(G) Whether it is a retest;
(H) Test result.
(d) If a sample fails testing a grower must ensure that:
(A) The laboratory sends the failed test report electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department or via an online portal operated by the Department within 24 hours of the failed test report.
(B) The laboratory sends failed test reports to the grower who requested the testing using the forms provided or approved by the Department within 24 hours of the failed test report.
(C) The grower complies with OAR 603-048-0630.

(8) Until January 1, 2022, a sample fails testing if the test report indicates that the sample contains total THC content calculated in accordance with OAR 333-064-0100(4) of 0.35 percent or greater on a dry weight basis. Beginning on January 1, 2022, a sample fails testing when the application of the measurement of uncertainty to the amount of total THC of the sample calculated in accordance with OAR 333-064-0100(4) reported by a laboratory produces a distribution or range that does not include 0.3 percent or less on a dry weight basis. If the sample from a harvest lot fails required THC testing under these rules the harvest lot corresponding to the sample fails required THC testing.
(9) Until January 1, 2022, if the test report indicates that the sample contains total THC of less than 0.35 percent on a dry weight basis, as specified in sections (8) of this rule, and the harvest lot was sampled and tested in compliance with these rules, the harvest lot passes testing required by these rules. Beginning on January 1, 2022, a sample passes testing when the application of the measurement of uncertainty to the amount of total THC of the sample calculated in accordance with OAR 333-064-0100(4) reported by a laboratory produces a distribution or range that includes 0.3 percent or less on a dry weight basis and the harvest lot was sampled and tested in compliance with these rules. If the sample of the harvest lot passes THC testing under these rules, the harvest lot corresponding to the sample passes required THC testing.
(10) Upon receipt of a failed test report:
(a) The grower must immediately clearly label or place signage on the harvest lot that it failed testing.
(b) The grower must immediately detain the harvest lot at the grow site and may not sell, transfer, or process the harvest lot.
(c) The grower may not move the harvest lot from the grow site or allow the harvest lot to be removed from the grow site without written permission from the Department.
(d) If the harvest lot has not been harvested, the grower may continue normal agricultural processes to maintain the viability of the harvest lot, but may not harvest without written permission from the Department,
(e) If the harvest lot has been harvested, the grower must immediately segregate the failed harvest lots from any other harvest lots. If the failed harvest lot has been comingled, all cannabis commingled with a failed harvest lot must be detained and is subject to all of the requirements, including required disposal, of the failed harvest lot.
(11) For any harvest lot that fails testing, unless the harvest lot passes testing upon resampling or retesting in accordance with OAR 603-048-0630, the grower must dispose of the harvest lot, including all parts of the cannabis plants including the stalk and seed, in accordance with OAR 603-048-0640:
(a) Within fourteen (14) days of the failed test report if no resampling or retesting in accordance with OAR 603-048-0630 is sought unless extended by the Department in writing; or
(b) Within fourteen (14) days of any failed test report from any resampling or retesting completed in accordance with OAR 603-048-0630 unless extended by the Department in writing.
(12) Invalid Sampling or Testing:
(a) It is the grower's obligation to demonstrate and maintain documentation that each harvest lot was sampled and tested in accordance with these rules and passes THC testing required by these rules.
(b) Sampling or testing that does not meet all of the requirements and standards of these rules is invalid. The harvest lot corresponding to an invalid sampling or invalid testing fails to satisfy the required THC testing under these rules.
(c) The Department may detain, seize, embargo, and dispose of the harvest lot that fails THC testing under this rule or that was invalidly sampled or tested as provided under OAR 603-048-0900.
(13) The Department may, at its discretion, agree to conduct sampling and testing for a licensed grower. Prior to conducting the sampling and testing the grower must pay fees as described in OAR 603-048-0700 for each harvest lot requested to be sampled and tested.
(14) In addition to the testing required by this section the Department may inspect any industrial hemp and take a representative sample for testing for THC content. The Department may detain, seize, embargo, and dispose of any industrial hemp that fails THC testing as described in sections (8) of this rule.
(15) Beginning on January 1, 2023, all laboratories conducting sampling or testing must be registered with the United States Drug Enforcement Agency in accordance with 21 USC 823(f) unless the United States Department of Agriculture

issues written guidance or amends the federal rules to extend or waive this requirement.

STATUTORY/OTHER AUTHORITY: ORS 561.120, ORS 561.200, ORS 561.275, ORS 561.190, ORS 571.260-571.348, OL 2021, CH. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, CH. 542

Exhibit A: Sampling Protocol
Hemp Pre-Harvest Testing

To be valid pre-harvest THC sampling and testing required under OAR Chapter 603, Division 48, all sampling must be conducted as described in this Protocol.[1]

A. General Sampling Requirements

1. Sampling may only be performed by the Department or a laboratory licensed by the Oregon Liquor and Cannabis Commission (OLCC) under ORS 475B.560 and accredited by the Oregon Health Authority (OHA) pursuant to ORS 475B.565 [hereinafter, "Laboratory"].[2]
2. All sampling must be performed by personnel employed by a Laboratory [hereinafter sampler"] and in accordance with OAR 603-048-0600 and this Protocol. Samplers must complete annual sampling training with the Department before sampling.
3. The Laboratory must follow chain of custody procedures consistent OAR 333-064-0100(2) and be documented to record the collection, transport, and receipt of samples by the Department or Laboratory. Laboratory must maintain records for each harvest lot as identified by harvest lot identifier.
4. Sampling must produce a representative sample of the harvest lot.
5. The Laboratory must avoid contamination of the non-sampled material with sample containers that are free of analytes of interest and appropriate for the analyses requested.
6. The Laboratory shall only sample plants with flowers when a purpose of the harvest lot is to produce flower. If no flowering plants are present, the Laboratory shall reschedule the sampling for a later date when flowering plants are present.
7. The Laboratory must obtain a sufficient sample size to provide sufficient material to conduct all requested tests, any requested retest, and any quality control performed by the testing laboratory.

B. Initiating a Sampling Request

1. The Laboratory must receive a complete Hemp Sampling and Testing Request Form prior to sampling. The Laboratory must receive a new and separate "Harvest Lot Sampling Request Description" for each "Harvest Lot" to be sampled.
2. The Laboratory must complete the Hemp On-Site Sampling Form. The Laboratory must complete a new and separate "Harvest Lot On-Site Sampling Description" for each Harvest Lot to be sampled.
3. A "Harvest Lot" means:
   a. Means a quantity of cannabis of the same variety or strain harvested within a distinct timeframe that is:

[1] The definitions in OAR 603-048-0010 unless the context indicates otherwise.
[2] Note that the sampling of industrial hemp for pre-harvest THC concentration itself is not accredited by OHA.

A. Grown in one contiguous production area within a grow site; or
B. Grown in a portion or portions of one contiguous production area within a grow site.

b. Does not include cannabis grown in noncontiguous fields or noncontiguous growing areas.

4. Prior to beginning the sampling procedure, the sampler shall:
   a. Survey the site to identify the conditions to determine the appropriate sampling procedure as described in this Protocol.
   b. Visually establish the homogeneity of the harvest lot to establish the plants growing are of a like variety.
   c. Verify the description of the location of the production area of each harvest lot in the Hemp Sampling and Testing Request Form matches the location of the harvest lot to be sampled (including the GPS coordinates or the address of the harvest lot, and the written description and visual depiction of the harvest lot).

C. Survey and sample collection

1. The sample pattern must ensure that all parts of the harvest lot are adequately and proportionately represented in the plants inspected and sampled.
2. The sampler must use a sawtooth pattern when sampling the harvest lot. Two (2) sawtooth patterns are provided below. The approved sampler must choose one of the patterns most suitable for the field to be sampled. (Figure 1 and 2). The sampler must walk at right angles to the row of plants. The sampler must sample according to the pattern to the extent possible but may deviate from the pattern as necessary to account for particular physical growing conditions and to ensure that all parts of the harvest lot are adequately and proportionately sampled to produce a representative sample.
   a. A sample shall be obtained from flowering tops when flowering tops are present, and shall be approximately five to eight inches in length from the main stem (that includes the leaves and flowers), the terminal bud (that occurs at the end of a stem) or central cola (cut stem that could develop into a bud).[3] Samplers should avoid sampling dead, diseased, or mechanically injured plants.
   b. A sample shall consist of no more than one sample per plant, randomly chosen from the harvest lot. Place each sample in a paper bag.
   c. Since they are a measure of the entire harvest lot, all samples from the harvest lot may be collected into a single bag.
   d. Samplers should avoid collecting too many samples from the borders of the harvest lot.
3. Sample Size:
   a. <u>The sample size must be at least 4 ounces, which is the minimum amount necessary for laboratory tests and file samples.</u>
   b. Each composite sample should consist of a maximum 30 plant heads of about five to eight inches.
   c. For greenhouses, small fields, or when sampling from a known number of

[3] See note on harvest lots intended for flower production in the General Sampling Requirements.

plants, the Hypergeometric Table 1 below should be used.

Table 1. Hypergeometric Table for Random Sampling

For greenhouses, small fields or when sampling from a known number of plants, plants may be sampled follows:

Total number of plants:	Randomly select this number of plants to sample:
1-13	Sample all plants
14-15	13
16-17	14
18-19	15
20-22	16
23-25	17
26-28	18
29-32	19
33-38	20
39-44	21
45-53	22
54-65	23
66-82	24
83-108	25
109-157	26
158-271	27
272-885	28
886-200,000	29

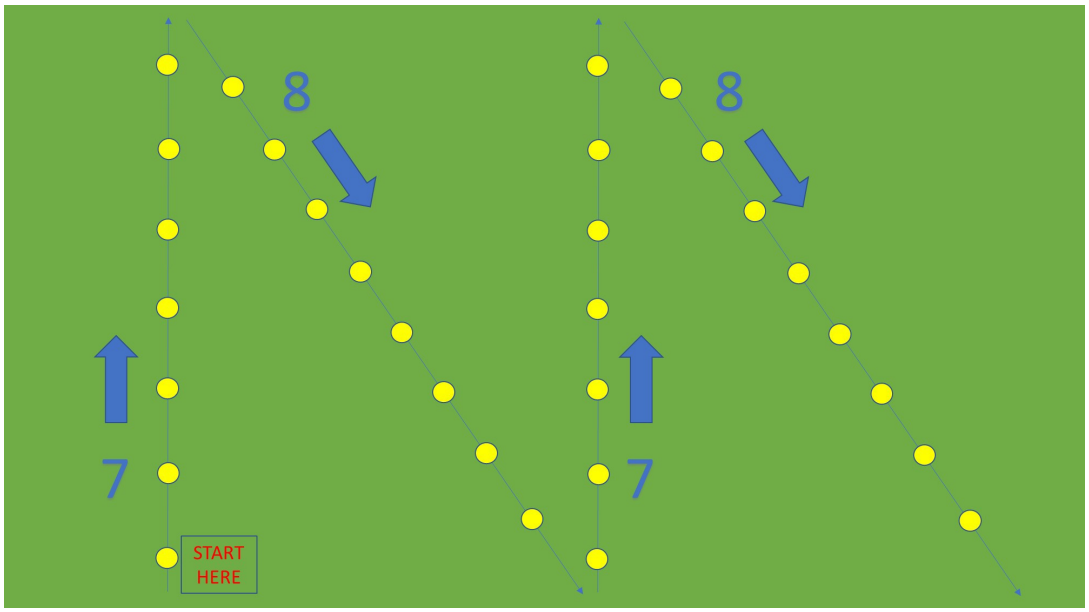

Figure 1. This is a typical sawtooth survey pattern starting in the lower “left” corner of the field. The yellow dots indicate the approximate locations to collect samples.

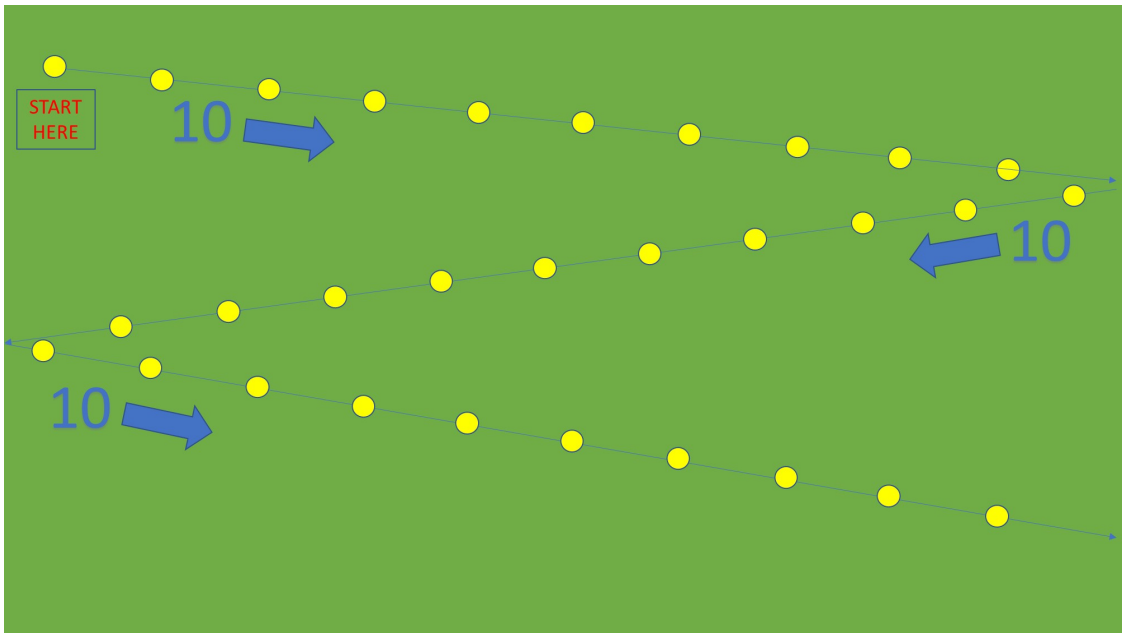

Figure 2. This is another typical sawtooth survey pattern starting in the top “left” corner of the field. The yellow dots indicate the approximate locations to collect samples.

D. Reporting and Recordkeeping Requirements

1. The Laboratory shall record data for all samples collected on the appropriate forms for sample collection. All records must clearly identify the harvest lots by harvest lot identifier.
2. The Laboratory shall submit a copy of the following forms for each Harvest Lot

with the samples when submitting for testing.
    a. Hemp Sampling and Testing Request Form
    b. Hemp On-Site Sampling Form
3. The Laboratory shall maintain standard operating procedures (SOP) that accurately reflect current sampling procedures.
    a. The SOP shall be readily accessible to all pertinent personnel and provided to ODA upon request.
    b. The SOP shall clearly indicate the effective date of the document, the revision number, and the signature of the approving authority.
    c. The sampling SOP shall use these protocols as minimum requirements and must include additional detail specific to laboratory procedures. Any changes, including use of a selected option, shall be documented and included on the sampling form. In cases where the published method has been modified or where the referenced method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described.
    d. All documents shall be controlled and retained in accordance with the TNI Environmental Laboratory standard as defined in 333-007-0310.
4. When procuring the sample, the Laboratory must create a Chain of Custody form that includes, but is not limited to, the information set out below. All sampling report forms must be signed by the sampler.
    a. Sampler's name
    b. Lab License Number
    c. Grower license number
    d. Field ID/Name and Harvest Lot Identifier
    e. Sampling Date/Time
    f. Custody transfer signatures
    g. Custody Transfer Dates/Times
5. The Laboratory shall provide to ODA upon request any and all records associated with the sampling, including SOPs, chain of custody forms, quality checks, etc.

E. Preparation of the Composite Sample

1. The Laboratory shall close the paper bag for collection and seal in a manner to show evidence of tampering. On the sample bag, record Field Name and the harvest lot identifier, date of sampling, sampler's signature, registered business or grower name.
2. The Laboratory must have detailed procedures on maintaining custody and sample integrity during transport. These procedures should take into consideration controlling temperature and other environmental factors.
3. Composite samples must always be identified by labeling or marking the sample container to associate them with the harvest lot from which they originated.
4. The Laboratory must submit the composite sample to the testing laboratory in its entirety.
5. The Laboratory shall submit a copy of all of the following forms with the

samples when submitting for testing:

a. Hemp Sampling and Testing Request Form - Completed by grower;
b. Hemp On-Site Sampling Form- Completed by Laboratory

F. Equipment and supplies

1. Forms (including extra sample request forms)
2. Paper bags for samples
3. Permanent pens for marking on paper sample bags
4. Pruning shears for collecting foliar samples
5. Single-use Coveralls
6. Gloves, disposable
7. Boots or booties (waterproof recommended)
8. Rain gear (recommended)
9. Boxes for storing sample equipment and samples
10. Bleach, 10% solution or other acceptable surface disinfectant for cleaning tools or boots between fields
11. Clipboard
12. Clicker to count the number of samples collected (optional)

G. Sanitation

1. Park vehicle on pavement or on designated roads within the field.
2. Clean collection tools with an appropriate disinfectant after finishing all sample collections within the field.
3. Dispose of coveralls and gloves in an appropriate receptacle before leaving the field or in a designated receptacle in the vehicle. Ensure that single-use coveralls are appropriately cleaned prior to next use and are not contaminated by used coveralls.
4. Field sampling equipment must be certified clean prior to use by the Laboratory.

H. Resampling

1. A Laboratory may resample a Harvest Lot upon receipt of a completed Sampling and Testing Request Form from a grower that indicates the request is for “Remediation Resampling.”
2. A Laboratory shall conduct any such resampling in accordance with all applicable rules and this protocol.

References

USDA APHIS National Seed Health Service. 2001. Reference manual B: Seed health testing and phytosanitary field inspection methods manual. Version dated 2/27/2001, USDA APHIS NSHS, Beltsville, MD, 56 pp.
http://www.aphis.usda.gov/import_export/plants/plant_exports/national_seed_health_system.sht ml
OAR Chapter 603, Division 48

Exhibit B: Testing Protocol Hemp Pre-Harvest Testing

To be sufficient to meet the requirement for pre-harvest THC sampling and testing under OAR Chapter 603, Division 48, testing must be conducted as described in this Protocol.[1]

A. Testing Requirements

1. Testing may only be performed by a laboratory licensed by the Oregon Liquor and Cannabis Commission (OLCC) under ORS 475B.560 and accredited by the Oregon Health Authority (OHA) pursuant to ORS 475B.565 to sample and test for tetrahydrocannabinol (THC) content (hereinafter, Laboratory)[2] or the Oregon Department of Agriculture (ODA).
2. All testing must be performed by personnel employed by a Laboratory and in accordance with OAR 603-048-0600 and this Protocol.
3. The Laboratory must follow chain of custody procedures consistent with OAR 333-064-0100(2) and be documented to record the collection, transport, and receipt of samples by the Laboratory.
4. Testing must be conducted in compliance with OAR 333-064-0100(3) – (7) except that the Laboratory need not test or report CBD values.
5. The Laboratory must perform testing under their Quality Management system as defined by their ORELAP accreditation.
6. The Laboratory must perform testing in a manner that avoids contamination of the non-sampled material with sample containers that are free of analytes of interest and appropriate for the analyses requested.
7. The Laboratory shall calculate total THC (meaning the molar sum of THC and THCA) percentage on a dry weight basis calculated in accordance with OAR 333-064-0100(4).
8. The Laboratory must estimate and report the measurement of uncertainty (MU) with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

[1] The definitions in OAR 603-048-0010 unless the context indicates otherwise.

[2] Note that the sampling of industrial hemp for pre-harvest THC concentration itself is not accredited by OHA.

B. Initiating a Testing Request

1. The Laboratory must receive a complete Industrial Hemp Sampling and Testing Request Form prior to testing. The Laboratory must receive a new and separate “Harvest Lot Sampling Request Description” for each Harvest Lot to be tested.
2. The Laboratory must receive a complete Industrial Hemp On-Site Sampling Form prior to testing. The Laboratory must receive a new and separate “Harvest Lot
   On-Site Sampling Description” for each Harvest Lot to be tested.
3. A “Harvest Lot” means:
   a. Means cannabis of the same variety or strain harvested in a distinct timeframe that is:
      i. Grown in one contiguous production area within a grow site; or
      ii. Grown in a portion or portions of one contiguous production area within a grow site.
   b. Does not include cannabis grown in noncontiguous fields or noncontiguous growing areas.

C. Sample Preparation Requirements

1. The Laboratory shall dry all of the leaf and flower of the sample (not obvious stem and seeds).
2. After drying, the Laboratory shall pulverize and sieve the sample using mesh size 1 mm as described in United Nations Office on Drugs and Crime: Recommended Methods for the Identification and Analysis of Cannabis and Cannabis Products. ISBN 978-92-1-148242-3. The Laboratory shall blend and homogenize the sieved material.
3. The Laboratory shall determine the dry weight of the sieved material.
4. The Laboratory shall divide the sieved, blended and homogenized sample into two portions: the test portion and the retained file sample. The Laboratory shall store the retained file sample in a freezer until needed. The retained file sample must be of sufficient material to conduct any requested retest and any quality control performed by the testing Laboratory.

D. Retesting Requirements

1. The Laboratory shall retest a Harvest Lot upon receipt of a completed Request for Retest from a grower. “Retest” or “Retesting” means the laboratory process of retesting a retained file sample for THC content after the sample failed initial testing for THC content. A retest does not include or permit taking a new sample from the harvest lot.
2. The Laboratory shall forward the retained file sample to another Laboratory or to the ODA upon receipt of a completed Request for Retest from the grower requesting that the sample be forwarded. The Laboratory shall:
   a. Use packaging appropriate for secure transport.
   b. Protect the sample from moisture and temperature extremes.
   c. Include all documentation with the sample.
   d. Forward the sample by the most expedient, secure, and legal means

to ensure that the sample continues to be representative of the harvest lot sampled and the chain of custody is accounted for to protect its integrity.

E. Testing After Resampling

1. The Laboratory may test a Harvest Lot after a valid resampling in accordance with OAR 603-048-0630.
2. The Laboratory shall conduct testing after a resampling like any other testing in accordance with this protocol.
3. The Laboratory shall report the test results as described in Part F of the Protocol, but shall indicate that the result is pursuant to resampling.

F. Reporting and Recordkeeping Requirements

1. All documentation of sampling and testing must be retained by the Laboratory for at least three years and be provided to the Department upon request. All records must clearly identify the harvest lots by harvest lot identifier.
2. The Laboratory shall make Standard Operating Procedure (SOPs) readily accessible to all pertinent personnel and provided to the Department upon request.
3. All documents shall be controlled and retained in accordance with the TNI Environmental Laboratory standard as defined in OAR 333-007-0310.
4. When testing or forwarding the sample, the Laboratory must create and use a Chain of Custody form that minimally includes the information set out below.
    a. Laboratory name
    b. Grower license number
    c. Analyst's name
    d. Lab License Number
    e. Field ID/Name and Harvest Lot Identifier
    f. Testing Date/Time
    g. Custody transfer signatures
    h. Custody Transfer Dates/Times
5. The Laboratory must estimate and report the measurement of uncertainty (MU) with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty. Measurement of uncertainty means the parameter, associated with the result of the measurement, that characterizes the dispersion of the values that could reasonable be attributed to the particular quantity subject to measurement.
6. The Laboratory shall provide to the Department upon request analytical data and any records associated with test results reported, including SOPs, chain of custody forms, quality checks, MU determination, etc.
7. The Laboratory shall report percentage of total THC in the sample on a dry weight basis to exactly two significant figures.
8. The Laboratory shall report whether the sample passes testing. Until

January 1, 2022, if the test report indicates that the sample contains total THC of less than 0.35 percent on a dry weight basis, as specified in sections (8) of this rule, and the harvest lot was sampled and tested in compliance with these rules, the harvest lot passes testing required by these rules. Beginning on January 1, 2022, a sample passes testing when the application of the measurement of uncertainty to the amount of total THC of the sample calculated in accordance with OAR 333-064-0100(4) reported by a laboratory produces a distribution or range that includes 0.3 percent or less on a dry weight basis and the harvest lot was sampled and tested in compliance with these rules.

9. The Laboratory shall report all test results electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, and include for each sample tested:
    a. Grower's name and license number;
    b. Sample date;
    c. Sample size by weight;
    d. Testing date;
    e. Total THC percentage to exactly two significant figures calculated in accordance with OAR 333-064-0100(4) and whether the sample passed testing;
    f. The Laboratory's uncertainty level for THC testing of cannabis;
    g. The harvest lot identifier that corresponds to the sample and the location of the corresponding harvest lot;
    h. Copy of grower's sampling request form corresponding to the harvest lot;
    i. Copy of the completed sampling form corresponding to the harvest lot; and
    j. Signature of the laboratory analyst.
10. The Laboratory shall send any failed test report electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department **within 24 hours of the failed test**.
11. The Laboratory shall send completed copies of the Sampling and Request Form and the On-Site Sampling Form corresponding to the Harvest Lot with each test report.
12. The laboratory shall report all test results, except for interim mid-season testing conducted for monitoring THC content during the growth cycle and not for pre-harvest testing, to the United States Department of Agriculture. The test results report must contain the following information:
    a. Grower's license number;
    b. Grower's name;
    c. Business address of the grower;
    d. Harvest lot identifier
    e. Name of the laboratory and beginning January 1, 2023, the DEA registration number of the laboratory;
    f. Date of the test and report;

g. Whether it is a retest;
h. Test result including whether the lot passed testing.

AMEND: 603-048-0630

RULE TITLE: Failed Pre-Harvest Testing; Retesting

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee.

RULE TEXT:

(1) If a sample tested under OAR 603-048-0600 fails an initial test, a grower may pursue retesting at the grower's own cost pursuant to sections (2) and (3) of this rule.

(2) Retesting of Failed Samples. If a sample tested under OAR 603-048-0600 fails an initial test, the laboratory that did the testing, or the Department if the Department did the testing, may retest the sample pursuant to the Testing Protocol, Exhibit B. If the sample passes, the sample must be retested by another laboratory or the Department and again pass testing to confirm the result in order for the harvest lot to pass testing.

(a) If a grower wishes to have a sample retested, the grower must request a retest within seven (7) days from the date the notice of the failed test was sent to the grower. The retest must be completed within 30 days from the date the retest was requested.

(b) To request retesting, the grower must provide the laboratory, or the Department, with the following on a form provided by the Department:

(A) A written request for retesting for each sample the grower requests be retested; and

(B) Notification that the sample is being retested because of the failed test and the failed test results.

(c) If a grower has requested a retest in accordance with subsection (2)(a) and (b) of this rule and the sample passes upon retest, the grower has seven (7) days from the date the notice of the passed test is sent to request that another laboratory, or the Department, retest the remaining file sample and confirm that the sample contains less than 0.35 percent total THC, calculated in accordance with OAR 333-064-0100(4). The initial laboratory must coordinate with the second laboratory or the Department to provide the remaining file sample for retesting. The retesting must be completed within 30 days from the date the retesting was requested.

(d) If a grower has requested an initial or secondary retest and the test report indicates that the sample failed testing as described in OAR 603-048-0600(8) the sample fails testing and no further testing is permitted under this subsection.

(e) Reporting:

(A) A grower must report electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, or via an online portal operated by the Department, any initial or secondary request for retest of a sample.

(B) A grower must ensure that a laboratory reports electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, or via an online portal operated by the Department, the testing results of the initial or secondary retest.

(3) Resampling Production Area. If a sample tested under OAR 603-048-0600 fails an initial test, a grower may seek resampling and retesting of the production area if:

(a) The original plants in the production area associated with the failed test remain standing and growing in the production area.

(b) The grower requests the resampling within seven (7) days from the date the notice of the failed test was sent to the grower.

(c) The grower subdivides the production area into separate harvest lots for resampling and retesting.

(d) The grower properly identifies the subdivided harvest lots in accordance with OAR 603-048-0500.

(e) The grower provides the laboratory or the Department with the following on a form provided by the Department:

(A) A written request for resampling for each harvest lot the grower requests be resampled that includes all of the information required in OAR 603-048-0600 for initial sampling; and

(B) Notification that the harvest lot is being resampled because of the failed test and the failed test results.

(f) The resampling occurs within ten (10) days of the request for resampling and the test results are reported within 30

days of the request for resampling.
(4) If the harvest lot fails testing after resampling conducted under section (3) of this rule, the grower may pursue retesting pursuant to section (2) of this rule, but may not pursue retesting under section (3) of this rule.
(5) Reporting:
(a) A grower must report electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the form provided or approved by the Department, or via an online portal operated by the Department any requests for resampling under this subsection.
(b) A grower must ensure that the laboratory reports electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, or via an online portal operated by the Department, the testing results of any resampling under this subsection.
(6) The Department may detain, seize, embargo the harvest lot corresponding to a sample, as provided under ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183, if the sample failed a test under OAR 603-048-0600.
(7) The Department may detain, seize, embargo, and dispose of the harvest lot corresponding to a sample, as provided under ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183, if the sample:
(a) Was not sampled and tested in compliance with all of the requirements and standards of these rules;
(b) Fails a test under OAR 603-048-0600 and the grower does not timely request a retest or resampling or informs the Department that retest or resampling will not be requested;
(c) Fails any retesting under section (2) of this rule and the grower:
(A) Does not timely request resampling;
(B) Informs the Department that resampling will not be requested; or
(C) Is no longer eligible for resampling;
(d) Fails any testing conducted under section (3) of this rule and the grower does not timely request a retest or informs the Department that retest will not be requested;
(e) Passes initial retesting but the grower fails to timely request secondary retesting to confirm the passed test result as described in section (2)(c) of this rule.
(f) Fails a test under OAR 603-048-0600 and the retained file sample lacks sufficient volume of harvest lot material to allow for the first and second retesting described in section (2)(c) of this rule and the grower:
(A) Does not timely request resampling;
(B) Informs the Department that resampling will not be requested; or
(C) Is no longer eligible for resampling.
(g) Fails a test under OAR 603-048-0600 and the harvest lot does not pass re-testing in accordance with these rules.
(8) If a sample passes the first and second retest described in section (2)(c) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules and is released from the restrictions in OAR 603-048-0600(10).
(9) If a sample passes testing after resampling conducted under section (3) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules and is released from the restrictions in OAR 603-048-0600(10). Any harvest lots that are not retested or that fail testing after resampling, the grower must dispose of in accordance with OAR 603-048-0640.
(10) If the amount of the harvest lot material collected for purposes of sampling is not sufficient to allow for the first and second retesting described in section (2)(c) of this rule, the sample and corresponding harvest lot fails to satisfy these rules.
(11) Beginning January 1, 2022, the grower must ensure that any additional testing is reported by the laboratory to the United States Department of Agriculture. The test results report must contain the following information:
(a) Grower's license number;
(b) Grower's name;
(c) Business address of the grower;
(d) Harvest lot identifier

(e) Name of the laboratory

(f) Date of the test and report

(g) Whether it is a retest;

(h) Test result.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 561.605-561.620, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

Exhibit A: Sampling Protocol
Hemp Pre-Harvest Testing

To be valid pre-harvest THC sampling and testing required under OAR Chapter 603, Division 48, all sampling must be conducted as described in this Protocol.[1]

A. General Sampling Requirements

1. Sampling may only be performed by the Department or a laboratory licensed by the Oregon Liquor and Cannabis Commission (OLCC) under ORS 475B.560 and accredited by the Oregon Health Authority (OHA) pursuant to ORS 475B.565 [hereinafter, "Laboratory"].[2]
2. All sampling must be performed by personnel employed by a Laboratory [hereinafter sampler"] and in accordance with OAR 603-048-0600 and this Protocol. Samplers must complete annual sampling training with the Department before sampling.
3. The Laboratory must follow chain of custody procedures consistent OAR 333-064-0100(2) and be documented to record the collection, transport, and receipt of samples by the Department or Laboratory. Laboratory must maintain records for each harvest lot as identified by harvest lot identifier.
4. Sampling must produce a representative sample of the harvest lot.
5. The Laboratory must avoid contamination of the non-sampled material with sample containers that are free of analytes of interest and appropriate for the analyses requested.
6. The Laboratory shall only sample plants with flowers when a purpose of the harvest lot is to produce flower. If no flowering plants are present, the Laboratory shall reschedule the sampling for a later date when flowering plants are present.
7. The Laboratory must obtain a sufficient sample size to provide sufficient material to conduct all requested tests, any requested retest, and any quality control performed by the testing laboratory.

B. Initiating a Sampling Request

1. The Laboratory must receive a complete Hemp Sampling and Testing Request Form prior to sampling. The Laboratory must receive a new and separate "Harvest Lot Sampling Request Description" for each "Harvest Lot" to be sampled.
2. The Laboratory must complete the Hemp On-Site Sampling Form. The Laboratory must complete a new and separate "Harvest Lot On-Site Sampling Description" for each Harvest Lot to be sampled.
3. A "Harvest Lot" means:
   a. Means a quantity of cannabis of the same variety or strain harvested within a distinct timeframe that is:

[1] The definitions in OAR 603-048-0010 unless the context indicates otherwise.
[2] Note that the sampling of industrial hemp for pre-harvest THC concentration itself is not accredited by OHA.

A. Grown in one contiguous production area within a grow site; or
B. Grown in a portion or portions of one contiguous production area within a grow site.

b. Does not include cannabis grown in noncontiguous fields or noncontiguous growing areas.

4. Prior to beginning the sampling procedure, the sampler shall:
   a. Survey the site to identify the conditions to determine the appropriate sampling procedure as described in this Protocol.
   b. Visually establish the homogeneity of the harvest lot to establish the plants growing are of a like variety.
   c. Verify the description of the location of the production area of each harvest lot in the Hemp Sampling and Testing Request Form matches the location of the harvest lot to be sampled (including the GPS coordinates or the address of the harvest lot, and the written description and visual depiction of the harvest lot).

C. Survey and sample collection

1. The sample pattern must ensure that all parts of the harvest lot are adequately and proportionately represented in the plants inspected and sampled.
2. The sampler must use a sawtooth pattern when sampling the harvest lot. Two (2) sawtooth patterns are provided below. The approved sampler must choose one of the patterns most suitable for the field to be sampled. (Figure 1 and 2). The sampler must walk at right angles to the row of plants. The sampler must sample according to the pattern to the extent possible but may deviate from the pattern as necessary to account for particular physical growing conditions and to ensure that all parts of the harvest lot are adequately and proportionately sampled to produce a representative sample.
   a. A sample shall be obtained from flowering tops when flowering tops are present, and shall be approximately five to eight inches in length from the main stem (that includes the leaves and flowers), the terminal bud (that occurs at the end of a stem) or central cola (cut stem that could develop into a bud).[3] Samplers should avoid sampling dead, diseased, or mechanically injured plants.
   b. A sample shall consist of no more than one sample per plant, randomly chosen from the harvest lot. Place each sample in a paper bag.
   c. Since they are a measure of the entire harvest lot, all samples from the harvest lot may be collected into a single bag.
   d. Samplers should avoid collecting too many samples from the borders of the harvest lot.
3. Sample Size:
   a. <u>The sample size must be at least 4 ounces, which is the minimum amount necessary for laboratory tests and file samples.</u>
   b. Each composite sample should consist of a maximum 30 plant heads of about five to eight inches.
   c. For greenhouses, small fields, or when sampling from a known number of

[3] See note on harvest lots intended for flower production in the General Sampling Requirements.

plants, the Hypergeometric Table 1 below should be used.

Table 1. Hypergeometric Table for Random Sampling

For greenhouses, small fields or when sampling from a known number of plants, plants may be sampled follows:

Total number of plants:	Randomly select this number of plants to sample:
1-13	Sample all plants
14-15	13
16-17	14
18-19	15
20-22	16
23-25	17
26-28	18
29-32	19
33-38	20
39-44	21
45-53	22
54-65	23
66-82	24
83-108	25
109-157	26
158-271	27
272-885	28
886-200,000	29

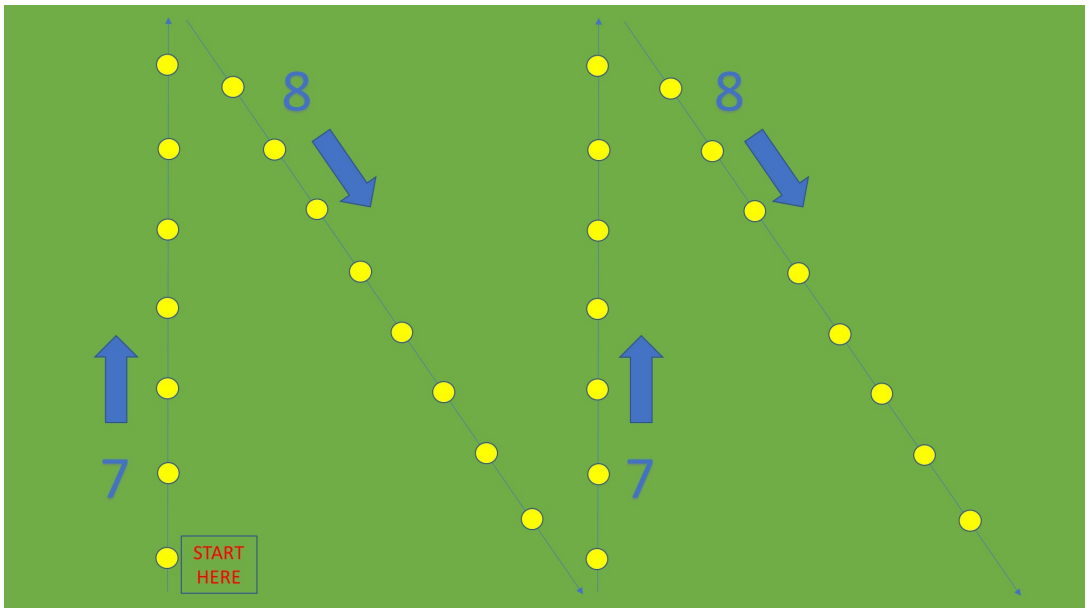

Figure 1. This is a typical sawtooth survey pattern starting in the lower “left” corner of the field. The yellow dots indicate the approximate locations to collect samples.

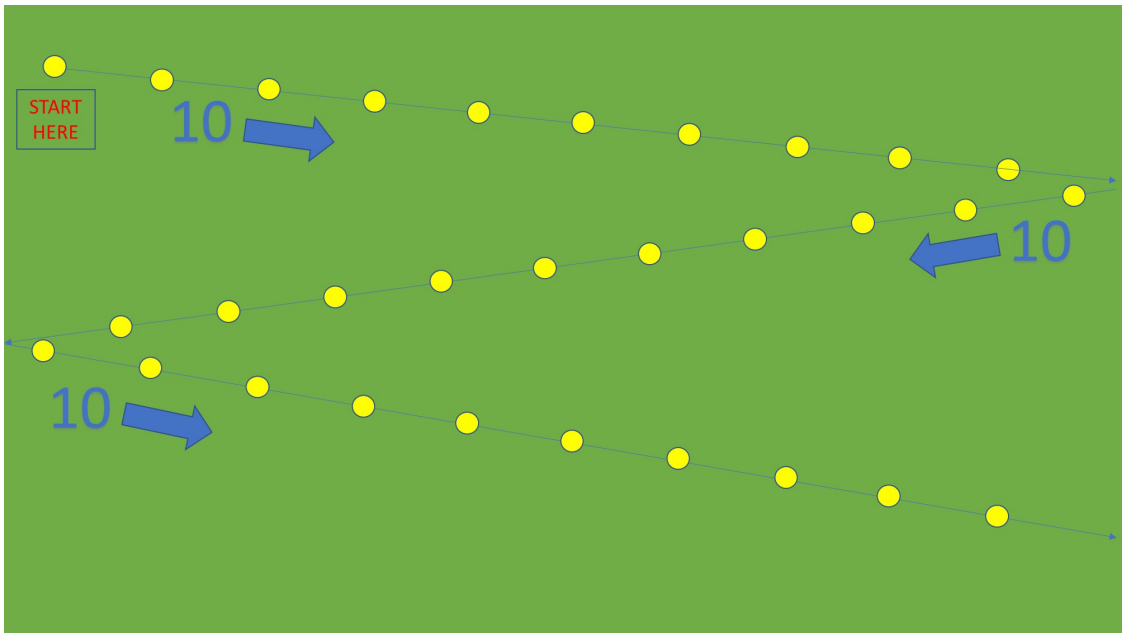

Figure 2. This is another typical sawtooth survey pattern starting in the top “left” corner of the field. The yellow dots indicate the approximate locations to collect samples.

D. Reporting and Recordkeeping Requirements

1. The Laboratory shall record data for all samples collected on the appropriate forms for sample collection. All records must clearly identify the harvest lots by harvest lot identifier.
2. The Laboratory shall submit a copy of the following forms for each Harvest Lot

with the samples when submitting for testing.
    a. Hemp Sampling and Testing Request Form
    b. Hemp On-Site Sampling Form
3. The Laboratory shall maintain standard operating procedures (SOP) that accurately reflect current sampling procedures.
    a. The SOP shall be readily accessible to all pertinent personnel and provided to ODA upon request.
    b. The SOP shall clearly indicate the effective date of the document, the revision number, and the signature of the approving authority.
    c. The sampling SOP shall use these protocols as minimum requirements and must include additional detail specific to laboratory procedures. Any changes, including use of a selected option, shall be documented and included on the sampling form. In cases where the published method has been modified or where the referenced method is ambiguous or provides insufficient detail, these changes or clarifications shall be clearly described.
    d. All documents shall be controlled and retained in accordance with the TNI Environmental Laboratory standard as defined in 333-007-0310.
4. When procuring the sample, the Laboratory must create a Chain of Custody form that includes, but is not limited to, the information set out below. All sampling report forms must be signed by the sampler.
    a. Sampler's name
    b. Lab License Number
    c. Grower license number
    d. Field ID/Name and Harvest Lot Identifier
    e. Sampling Date/Time
    f. Custody transfer signatures
    g. Custody Transfer Dates/Times
5. The Laboratory shall provide to ODA upon request any and all records associated with the sampling, including SOPs, chain of custody forms, quality checks, etc.

E. Preparation of the Composite Sample

1. The Laboratory shall close the paper bag for collection and seal in a manner to show evidence of tampering. On the sample bag, record Field Name and the harvest lot identifier, date of sampling, sampler's signature, registered business or grower name.
2. The Laboratory must have detailed procedures on maintaining custody and sample integrity during transport. These procedures should take into consideration controlling temperature and other environmental factors.
3. Composite samples must always be identified by labeling or marking the sample container to associate them with the harvest lot from which they originated.
4. The Laboratory must submit the composite sample to the testing laboratory in its entirety.
5. The Laboratory shall submit a copy of all of the following forms with the

samples when submitting for testing:

a. Hemp Sampling and Testing Request Form - Completed by grower;
b. Hemp On-Site Sampling Form- Completed by Laboratory

F. Equipment and supplies

1. Forms (including extra sample request forms)
2. Paper bags for samples
3. Permanent pens for marking on paper sample bags
4. Pruning shears for collecting foliar samples
5. Single-use Coveralls
6. Gloves, disposable
7. Boots or booties (waterproof recommended)
8. Rain gear (recommended)
9. Boxes for storing sample equipment and samples
10. Bleach, 10% solution or other acceptable surface disinfectant for cleaning tools or boots between fields
11. Clipboard
12. Clicker to count the number of samples collected (optional)

G. Sanitation

1. Park vehicle on pavement or on designated roads within the field.
2. Clean collection tools with an appropriate disinfectant after finishing all sample collections within the field.
3. Dispose of coveralls and gloves in an appropriate receptacle before leaving the field or in a designated receptacle in the vehicle. Ensure that single-use coveralls are appropriately cleaned prior to next use and are not contaminated by used coveralls.
4. Field sampling equipment must be certified clean prior to use by the Laboratory.

H. Resampling

1. A Laboratory may resample a Harvest Lot upon receipt of a completed Sampling and Testing Request Form from a grower that indicates the request is for “Remediation Resampling.”
2. A Laboratory shall conduct any such resampling in accordance with all applicable rules and this protocol.

References

USDA APHIS National Seed Health Service. 2001. Reference manual B: Seed health testing and phytosanitary field inspection methods manual. Version dated 2/27/2001, USDA APHIS NSHS, Beltsville, MD, 56 pp.
http://www.aphis.usda.gov/import_export/plants/plant_exports/national_seed_health_system.sht ml
OAR Chapter 603, Division 48

Exhibit B: Testing Protocol Hemp Pre-Harvest Testing

To be sufficient to meet the requirement for pre-harvest THC sampling and testing under OAR Chapter 603, Division 48, testing must be conducted as described in this Protocol.[1]

A. Testing Requirements

1. Testing may only be performed by a laboratory licensed by the Oregon Liquor and Cannabis Commission (OLCC) under ORS 475B.560 and accredited by the Oregon Health Authority (OHA) pursuant to ORS 475B.565 to sample and test for tetrahydrocannabinol (THC) content (hereinafter, Laboratory)[2] or the Oregon Department of Agriculture (ODA).
2. All testing must be performed by personnel employed by a Laboratory and in accordance with OAR 603-048-0600 and this Protocol.
3. The Laboratory must follow chain of custody procedures consistent with OAR 333-064-0100(2) and be documented to record the collection, transport, and receipt of samples by the Laboratory.
4. Testing must be conducted in compliance with OAR 333-064-0100(3) – (7) except that the Laboratory need not test or report CBD values.
5. The Laboratory must perform testing under their Quality Management system as defined by their ORELAP accreditation.
6. The Laboratory must perform testing in a manner that avoids contamination of the non-sampled material with sample containers that are free of analytes of interest and appropriate for the analyses requested.
7. The Laboratory shall calculate total THC (meaning the molar sum of THC and THCA) percentage on a dry weight basis calculated in accordance with OAR 333-064-0100(4).
8. The Laboratory must estimate and report the measurement of uncertainty (MU) with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

[1] The definitions in OAR 603-048-0010 unless the context indicates otherwise.

[2] Note that the sampling of industrial hemp for pre-harvest THC concentration itself is not accredited by OHA.

B. Initiating a Testing Request

1. The Laboratory must receive a complete Industrial Hemp Sampling and Testing Request Form prior to testing. The Laboratory must receive a new and separate “Harvest Lot Sampling Request Description” for each Harvest Lot to be tested.
2. The Laboratory must receive a complete Industrial Hemp On-Site Sampling Form prior to testing. The Laboratory must receive a new and separate “Harvest Lot
   On-Site Sampling Description” for each Harvest Lot to be tested.
3. A “Harvest Lot” means:
   a. Means cannabis of the same variety or strain harvested in a distinct timeframe that is:
      i. Grown in one contiguous production area within a grow site; or
      ii. Grown in a portion or portions of one contiguous production area within a grow site.
   b. Does not include cannabis grown in noncontiguous fields or noncontiguous growing areas.

C. Sample Preparation Requirements

1. The Laboratory shall dry all of the leaf and flower of the sample (not obvious stem and seeds).
2. After drying, the Laboratory shall pulverize and sieve the sample using mesh size 1 mm as described in United Nations Office on Drugs and Crime: Recommended Methods for the Identification and Analysis of Cannabis and Cannabis Products. ISBN 978-92-1-148242-3. The Laboratory shall blend and homogenize the sieved material.
3. The Laboratory shall determine the dry weight of the sieved material.
4. The Laboratory shall divide the sieved, blended and homogenized sample into two portions: the test portion and the retained file sample. The Laboratory shall store the retained file sample in a freezer until needed. The retained file sample must be of sufficient material to conduct any requested retest and any quality control performed by the testing Laboratory.

D. Retesting Requirements

1. The Laboratory shall retest a Harvest Lot upon receipt of a completed Request for Retest from a grower. “Retest” or “Retesting” means the laboratory process of retesting a retained file sample for THC content after the sample failed initial testing for THC content. A retest does not include or permit taking a new sample from the harvest lot.
2. The Laboratory shall forward the retained file sample to another Laboratory or to the ODA upon receipt of a completed Request for Retest from the grower requesting that the sample be forwarded. The Laboratory shall:
   a. Use packaging appropriate for secure transport.
   b. Protect the sample from moisture and temperature extremes.
   c. Include all documentation with the sample.
   d. Forward the sample by the most expedient, secure, and legal means

to ensure that the sample continues to be representative of the harvest lot sampled and the chain of custody is accounted for to protect its integrity.

E. Testing After Resampling

1. The Laboratory may test a Harvest Lot after a valid resampling in accordance with OAR 603-048-0630.
2. The Laboratory shall conduct testing after a resampling like any other testing in accordance with this protocol.
3. The Laboratory shall report the test results as described in Part F of the Protocol, but shall indicate that the result is pursuant to resampling.

F. Reporting and Recordkeeping Requirements

1. All documentation of sampling and testing must be retained by the Laboratory for at least three years and be provided to the Department upon request. All records must clearly identify the harvest lots by harvest lot identifier.
2. The Laboratory shall make Standard Operating Procedure (SOPs) readily accessible to all pertinent personnel and provided to the Department upon request.
3. All documents shall be controlled and retained in accordance with the TNI Environmental Laboratory standard as defined in OAR 333-007-0310.
4. When testing or forwarding the sample, the Laboratory must create and use a Chain of Custody form that minimally includes the information set out below.
    a. Laboratory name
    b. Grower license number
    c. Analyst's name
    d. Lab License Number
    e. Field ID/Name and Harvest Lot Identifier
    f. Testing Date/Time
    g. Custody transfer signatures
    h. Custody Transfer Dates/Times
5. The Laboratory must estimate and report the measurement of uncertainty (MU) with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty. Measurement of uncertainty means the parameter, associated with the result of the measurement, that characterizes the dispersion of the values that could reasonable be attributed to the particular quantity subject to measurement.
6. The Laboratory shall provide to the Department upon request analytical data and any records associated with test results reported, including SOPs, chain of custody forms, quality checks, MU determination, etc.
7. The Laboratory shall report percentage of total THC in the sample on a dry weight basis to exactly two significant figures.
8. The Laboratory shall report whether the sample passes testing. Until

January 1, 2022, if the test report indicates that the sample contains total THC of less than 0.35 percent on a dry weight basis, as specified in sections (8) of this rule, and the harvest lot was sampled and tested in compliance with these rules, the harvest lot passes testing required by these rules. Beginning on January 1, 2022, a sample passes testing when the application of the measurement of uncertainty to the amount of total THC of the sample calculated in accordance with OAR 333-064-0100(4) reported by a laboratory produces a distribution or range that includes 0.3 percent or less on a dry weight basis and the harvest lot was sampled and tested in compliance with these rules.

9. The Laboratory shall report all test results electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, and include for each sample tested:
    a. Grower's name and license number;
    b. Sample date;
    c. Sample size by weight;
    d. Testing date;
    e. Total THC percentage to exactly two significant figures calculated in accordance with OAR 333-064-0100(4) and whether the sample passed testing;
    f. The Laboratory's uncertainty level for THC testing of cannabis;
    g. The harvest lot identifier that corresponds to the sample and the location of the corresponding harvest lot;
    h. Copy of grower's sampling request form corresponding to the harvest lot;
    i. Copy of the completed sampling form corresponding to the harvest lot; and
    j. Signature of the laboratory analyst.
10. The Laboratory shall send any failed test report electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department **within 24 hours of the failed test**.
11. The Laboratory shall send completed copies of the Sampling and Request Form and the On-Site Sampling Form corresponding to the Harvest Lot with each test report.
12. The laboratory shall report all test results, except for interim mid-season testing conducted for monitoring THC content during the growth cycle and not for pre-harvest testing, to the United States Department of Agriculture. The test results report must contain the following information:
    a. Grower's license number;
    b. Grower's name;
    c. Business address of the grower;
    d. Harvest lot identifier
    e. Name of the laboratory and beginning January 1, 2023, the DEA registration number of the laboratory;
    f. Date of the test and report;

g. Whether it is a retest;
h. Test result including whether the lot passed testing.

ADOPT: 603-048-0640

REPEAL: Temporary 603-048-0640 from DOA 22-2021

RULE TITLE: Cannabis Waste and Cannabis Disposal

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Makes permanent temporary rules filed July 2021. Updates registration/registrant to license/licensee.

RULE TEXT:

(1) For the purposes of this rule, "cannabis waste" includes cannabis grown at the grower's registered grow site or under a grower's license that the licensee determines has lost its market value due to mold, pest, disease, or that the licensee otherwise does not intend to process, transfer, or sell. "Cannabis waste" does not include minimal amounts of cannabis pruned or removed from cannabis plants in the course of normal agricultural practices such as removing male plants.

(2) A licensee must comply with the following when disposing of cannabis that fails testing under OAR 603-048-0600 to 603-048-0625 or if the licensee is otherwise ordered by the Department to dispose of cannabis plants.

(a) The licensee must request approval from the Department at least seven (7) calendar days prior to the date of proposed disposal on a form provided by the Department that includes the following information:

(A) Proposed date of disposal;

(B) Amount of plants to be disposed;

(C) Proposed method of disposal; and

(D) Grow site, production area, and harvest lots from which plants are proposed to be disposed.

(b) The licensee must permit Department staff, or the Department's designee, to observe the destruction if required by the Department.

(c) The licensee must have written Department approval prior to beginning disposal.

(d) The licensee must document the disposal as follows:

(A) Photograph the disposal such that the destruction of each separate production area or harvest lot is identifiable. Documentation must include photos of the separate production areas or harvest lots before and after the disposal method is applied. The photos must depict all parts of the subject production area or harvest lots. Alternatively, the licensee may video the destruction if the video satisfies the requirements described for the photographs.

(B) The licensee must maintain the photos and video required in subsection (A) for at least three years from the date of disposal and provide immediately to the Department upon request.

(e) Within seven (7) calendar days of completing disposal, the licensee must submit a disposal report on a form provided by the Department that includes but is not limited to the following information:

(A) Date of disposal;

(B) Amount of plants disposed;

(C) Method of disposal; and

(D) Grow site, production area, and harvest lots from which plants were disposed.

(3) A licensee who determines that any portion of the cannabis grown at the grow site is cannabis waste must:

(a) Request approval from the Department within 14 days of the determination and at least seven (7) days prior to the date of proposed disposal using a form provided by the Department that includes the following information:

(A) Proposed date of disposal

(B) Amount of cannabis waste to be disposed

(C) Proposed method of disposal

(D) Grow site, production area, and harvest lots from which the cannabis waste derives from.

(E) Description of the reason why the cannabis is waste (disease, mold, etc.)

(b) Comply with all of the requirements in section (2)(b)-(e) of this rule

(4) To dispose of cannabis waste or cannabis that fails pre-harvest testing as described in OAR 603-048-0600 to 603-048-0625 such that destruction is required or when otherwise ordered by the Department to dispose of cannabis, the

licensee must render the cannabis waste or cannabis into a non-retrievable or non-ingestible form. Licensee may use any of the following methods for disposal as consistent with other local, state, and federal laws or regulations:
(a) Plowing under
(b) Mulching/composting
(c) Disking
(d) Brush mower/chopper
(e) Deep burial
(f) Burning
(5) It is a Class I violation to fail to comply with any provision of this rule.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 569.445, ORS 571.260 - 571.348, ORS 633.511-633.996, OL 2021, Ch.542

STATUTES/OTHER IMPLEMENTED: ORS 571.260 - 571.315, OL 2021, Ch.542

AMEND: 603-048-0650

RULE TITLE: Industrial Hemp Inspection and Record Reviews

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee.

RULE TEXT:

(1) The Department, as it deems necessary in the enforcement and carrying out its laws may, during normal business hours, inspect premises, machinery, equipment, and facilities of licensees and inspect any crop during any growth phase or harvested crop, and sample for analysis.

(2) Upon not less than three (3) days' notice, the Department may subject licensee records to inspection or audit during normal business hours. The Department may make an inspection or audit for the purpose of ensuring compliance with:

(a) A provision of ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542);

(b) A rule adopted under a provision of ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542); or

(c) An order issued by the Department pursuant to a provision of ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542) or rule adopted under a provision of ORS 571.260 to 571.348 (as amended by OL 2021, Ch. 542), including a detainment order.

(3) A licensee must permit Department staff, or its designee, to inspect and access all parts of the licensed grow site, equipment, facilities, and any area where cannabis is grown pursuant to the license and cooperate with such an inspection. Failure to permit or cooperate with an inspection includes, but is not limited to:

(a) Failing to appear at the licensed grow site within a reasonable period of time after being notified of an on-site inspection.

(b) After reasonable notice of an onsite inspection, failing to appoint a licensee representative knowledgeable about operations at the grow site to be available to the Department staff, or its designee, during an inspection.

(c) Failing to timely respond to Department staff, or its designee, communications to set up a time for inspection.

(d) Refusing to grant access to all areas of the licensed grow site.

(e) Failing to maintain safe conditions at a grow site, such that the Department or its designee cannot reasonably and safely inspect the grow site. Failing to maintain safe conditions may include allowing unrestrained animals on the grow site or maintaining hazards or other dangerous conditions on the grow site.

(f) Failure to provide to the Department, upon request, information concerning compliance with these rules.

(g) Failure to provide confirmation, upon request by the Department or its designee, of the presence or absence of hazards or dangerous conditions at a grow site.

(h) Ending an inspection or engaging in aggressive or confrontational behavior that requires Department staff or its designee to end an inspection prior to the Department or its designee finishing all inspection tasks and duties.

(i) Failing to permit the Department or its designee to conduct sampling for the purposes of testing under ORS 571.281 or OAR 603-48-8010.

STATUTORY/OTHER AUTHORITY: ORS 561.120, ORS 561.200, ORS 561.275, ORS 561.190, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260 - 571.348, OL 2021, Ch. 542

AMEND: 603-048-1000

RULE TITLE: Violations and Penalties

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Creates a violation for failing to identify each production area including failing to submit a change form identifying any additional production areas not on the original application.

RULE TEXT:
(1) The Department may impose a civil penalty not to exceed $2,500 on a person for violating:
(a) A provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542);
(b) A rule adopted under a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542); or
(c) An order issued by the Department pursuant to a provision of ORS 571.260 to ORS 571.348 (as amended by OL 2021, Ch. 542), or a rule adopted thereunder, including a detainment order.
(2) The Department may impose a civil penalty based on the classification of the violation. The civil penalty amount for each classification is as follows:
(a) Class 1 violation, $2,500;
(b) Class 2 violation, $1000;
(c) Class 3 violation, $500.
(3) The civil penalty amount for each classification are guidelines. If the Department finds one or more mitigating or aggravating circumstances, it may assess a lesser or greater amount.
(4) Common violations are classified as follows:
(a) Class 1 violations include:
(A) Failing to obtain a license with the Department when required under ORS 571.260-571.348 (as amended by OL 2021, Ch. 542) or rules adopted thereunder;
(B) Providing false or misleading information to the Department or to a laboratory when requesting required testing under these rules;
(C) Falsifying information or records required to be maintained by the Department or submitted to the Department;
(D) Failing to test a hemp item in accordance with OAR 603-048-2300 through 603-048-2480;
(E) Failing to test a harvest lot in accordance with these rules;
(F) Altering or falsifying a laboratory test report or result;
(G) Selling or attempting to sell a hemp item that fails to meet testing requirements required by OAR 603-048-2000 through 603-048-2480;
(H) Selling, transferring, receiving, attempting to transfer, sell, or receive, processing or attempting to process a harvest lot that:
(i) Has not been sampled and tested in accordance with these rules;
(ii) Failed testing under OAR 603-048-0600 and did not otherwise pass testing under OAR 603-048-0630;
(iii) Was invalidly tested as described in OAR 603-048-0600.
(I) Growing or handling hemp with Total THC calculated in accordance with OAR 333-064-0100(4) that exceeds 3 percent on a dry weight basis.
(J) Failing to ensure cannabis, industrial hemp, or industrial hemp commodity or product, or any portion thereof, that is subject to a detainment, embargo, seizure, or destruction order complies with the order as described in OAR 603-048-0900(4).
(K) Failing to timely dispose of cannabis as described in OAR 603-048-0640 or cannabis that is determined to be presumptively marijuana and is required to be destroyed under OAR 603-48-8010 to 603-048-8040.
(L) Failing to permit Department staff, or its designee, to inspect and access all parts of the licensed or proposed grow site, equipment, facilities, and any area where cannabis is grown pursuant to a license or failing to cooperate with any such inspection in accordance with OAR 603-048-0650(3).
(M) Failing to timely report cannabis waste or disposal in accordance with OAR 603-048-0640.

(N) Repeat violations of Class 2 or Class 3 violations.
(O) Any other violation of ORS 571.2600 to ORS 571.348 (OL 2021, Ch. 542) or OAR 603-048-0100 to 603-048-2500 that may cause an immediate threat to the public health or safety.
(P) Failing to provide an accurate legal description of land where hemp is produced.
(b) Class 2 violations include, but are not limited to:
(A) Failing to ensure test reports for the THC content of each harvest lot is timely reported to the Department as required by 603-048-0400.
(B) Failing upon request to timely provide the Department with laboratory test results that verify compliance with these rules.
(C) Failing to identify each non-contiguous production area where cannabis is produced including failing to submit a change form with the Department identifying any additional production areas not identified in the licensee's application.
(D) Any other uncategorized violation.
(c) Class 3 violations include but are not limited to:
(A) Failure to keep or provide information or records as required by the Department;
(B) Growing or handling hemp with total THC calculated in accordance with OAR 333-064-0100(4) that fails testing as described in OAR 603-048-0600 but does not exceed 3 percent total THC;
(C) Failing to ensure failed test results of a hemp item are reported to the Department within 24 hours as required by OAR 603-048-2300.
(5) In addition to the penalty described in subsection (1) of this rule, the Department may impose a civil penalty not to exceed $10,000 against a licensed grower if the Department determines that the licensee produced cannabis on a licensed grow site that contains an average tetrahydrocannabinol concentration of at least 10 percent on a dry weight basis.

STATUTORY/OTHER AUTHORITY: ORS 561.120, ORS 561.200, ORS 561.275, ORS 561.190, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260 - 571.348, OL 2021, Ch. 542

ADOPT: 603-048-1001

REPEAL: Temporary 603-048-1001 from DOA 22-2021

RULE TITLE: Presumptive Marijuana Violations

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Makes permanent temporary rules filed July 2021. Creates violations of presumptive marijuana to include meeting the presumptive marijuana definition (OAR 845-026-4100), failure to comply with a presumptive marijuana inspection, failing to timely dispose of presumptive cannabis. Includes language of when ODA can may revoke, deny, or refuse a grower license for any presumptive marijuana violations.

RULE TEXT:

(1) It is a Class I violation of these rules to:

(a) Produce cannabis that is determined to be presumptively marijuana in accordance with OAR 845-026-4100 and the presumption is not rebutted in accordance with OAR 603-048-8010 to 603-048-8040.

(b) Fail to timely dispose of presumptive marijuana as required by OAR 603-048-8020 or 603-048-8030.

(c) Fail to permit or cooperate as described in OAR 603-048-0650 with an inspection to conduct presumptive marijuana sampling as described in OAR 603-048-8010 by Department or its designee.

(d) Fail to comply with a detainment, seizure, embargo, or disposal order issued as described in OAR 603-048-8040.

(e) Fail to timely comply with any other requirement in 603-048-8010 to 8040.

(2) The Department may revoke, deny, or refuse to renew a grower's license if the grower commits any of the violations listed in section (1) of this rule.

(3) The Department shall revoke a person's hemp grower license or deny the person's hemp grower application for a license if the person fails to comply with OAR 603-048-0400, including but not limited to if the cannabis subject to detainment, seizure, embargo, or disposal notice or order is removed from the location identified in the notice or order without prior permission from the Department.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260-571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260-571.348, OL 2021, Ch. 542

AMEND: 603-048-1500

RULE TITLE: Retail Sale Requirements; Restrictions

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Prohibits the sales of any adult use cannabis item with more than 0.5mg of THC. Clarifies that testing rules apply to all hemp products sold in Oregon.

RULE TEXT:

(1) For the purposes of this section, "consumer" means a person who purchases, acquires, owns, holds or uses an industrial hemp commodity or products other than for the purpose of resale.

(2) A person may not sell, transfer or deliver to a consumer an industrial hemp commodity or product that contains cannabinoids and is intended for human consumption unless:

(a) If it is a hemp item, the hemp item has been tested in accordance with ORS 571.330 and OAR 603-048-2300 to 603-048-2500;

(b) If the hemp commodity or product is intended for human consumption by ingestion, the hemp commodity or product was processed in a facility licensed by the State Department under ORS 616.695 to 616.755 or in a facility in another state or jurisdiction that meets requirements substantially similar to requirements established under ORS 616.695 to 616.755;

(c) The person obtains and maintains documentation of the results of any testing required under these rules;

(d) If the industrial hemp commodity or product is sold to a person under 21 years of age or any representations are made to the consumer about the concentration of delta-8-tetrahydrocannabinol, the results of the testing required under this subsection demonstrate the concentration of delta-8-tetrahydrocannabinol;

(e) The industrial hemp commodity or product does not contain more than 0.3 percent tetrahydrocannabinol or the concentration of tetrahydrocannabinol allowed under federal law, whichever is greater; and

(f) The industrial hemp commodity or product does not exceed the concentration of adult use cannabinoids established by OAR 845-026-0100, OAR 845-026-0300, and OAR 845-026-0400.

(3) The testing required under this rule may be conducted only by:

(a) A laboratory licensed by the commission under ORS 475B.560 and accredited by the authority under ORS 475B.565; or

(b) If the industrial hemp commodity or product was processed outside of this state, a laboratory accredited to the same or more stringent standards as a laboratory described in paragraph (a) of this subsection.

(4) A person may not sell or deliver an adult use cannabis item as defined by OAR 845-026-0100 and OAR 845-026-0300 to a person under 21 years of age.

(5) Restriction on industrial hemp product sales: A person may not sell an industrial hemp product that contains more than 0.3 percent total THC to a consumer unless licensed as a retailer by OLCC.

(6) Compliance with these rules does not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities.

STATUTORY/OTHER AUTHORITY: ORS 561.190, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2021, Ch. 542

AMEND: 603-048-2300

RULE TITLE: Testing of Industrial Hemp for Human Consumption and Hemp Items:

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee.

RULE TEXT:

(1) A grower or handler may not sell or transfer industrial hemp for human consumption or a hemp item unless it is first tested by a laboratory as required by these rules.

(2) Violations of these rules may result in the suspension or revocation of a licensee's license or the imposition of civil penalties, or both. Violations include:

(a) Failure to test industrial hemp for human consumption or a hemp item in accordance with these rules;

(b) Selling, transferring, or attempting to sell or transfer industrial hemp for human consumption or a hemp item that fails to meet testing requirements required by these rules;

(c) Failure to maintain a copy of all required test reports as required by OAR 603-048-0500; and

(d) Failure to report failed test results to the Department electronically to HempTestReports@oda.state.or.us using the forms provided by the Department within 24 hours after receipt of failed result.

(e) Altering or falsifying a laboratory test report or result.

(3) These rules require industrial hemp for human consumption and hemp items to be sampled, tested, and reported in a manner consistent with the Authority's marijuana sampling and testing rules in OAR 333-007-0300 to 333-007-0500 and OAR 333-064. In applying those rules:

(a) Industrial hemp for human consumption and hemp items are treated as their marijuana equivalents as described in OAR 603-048-2310;

(b) References to "licensee or registrant" or "processor or processing site" should be read as "grower" or "handler";

(c) References to "Authority or the Commission" should be read as "Department"; and

(d) References to "consumer or patient" should be read as "consumer" as that is defined in OAR 603-048-2310.

(4) To be sufficient to meet the requirement for testing under these rules, a grower or handler must ensure through a testing agreement or contract with the laboratory that the laboratory:

(a) Samples industrial hemp for human consumption and hemp items according to OAR 333-007-0360 and OAR 333-064-0100;

(b) Tests industrial hemp for human consumption and hemp items according to OAR 333-007-0390 to 333-007-0440 and 333-064-0100;

(c) Keeps records in accordance with OAR 333-064-0100.

(d) Reports all failed tests to the Department electronically to HempTestReports@oda.state.or.us using the forms provided by the Department consistent with reporting requirements under OAR 333-064-0110;

(e) Provides the handler with test reports that meet the requirements in OAR 333-064-0110.

(f) Provides test reports that clearly identify the process lot identifier.

(g) Meets the proficiency testing requirements in OAR 333-064-0120.

(h) Can demonstrate that its limit of quantification (LOQ) for THC is at or below 0.3 percent THC.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.315, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.315, OL 2021, Ch. 542

AMEND: 603-048-2305

RULE TITLE: Purpose

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Clarifies the version of testing rule references to OAR Chapter 333, Division 7 are to the rules in effect as of July 27, 2021.

RULE TEXT:

(1) The purpose of OAR 603-048-2300 to 603-048-2480 is to establish minimum testing standards for industrial hemp for human consumption and hemp items.

(2) All references to OAR Chapter 333, Division 7 refer to the rules in effect as of July 27, 2021.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2021, Ch.542

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2021, Ch.542

AMEND: 603-048-2310

RULE TITLE: Definitions

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Alphabetizes definitions. Updates definition of industrial hemp for human consumption.

RULE TEXT:

As used in OAR 603-048-2300 to 603-048-2500, the following definitions apply:

(1) “Authority” means the Oregon Health Authority.

(2) “Batch” means:

(a) A quantity of hemp, usable hemp or hemp stalk from a harvest lot; or

(b) A quantity of hemp concentrate or extract or hemp cannabinoid product from a process lot.

(3) "Cannabinoid" means any of the chemical compounds that are the active constituents of the cannabis plant.

(4) "Cannabinoid capsule"

(a) Means a small, soluble pill, tablet, or container that contains liquid or powdered hemp cannabinoid product, hemp concentrate, or hemp extract and is intended for human ingestion.

(b) For sampling and testing purposes is equivalent to a cannabinoid capsule as that is defined in OAR 333-007-0310.

(c) Does not mean a cannabinoid suppository.

(5) "Cannabinoid hemp product"

(a) Means a hemp edible or any other product intended for human consumption including a hemp topical or hemp transdermal patch, that contains cannabinoids from industrial hemp or the dried leaves or flowers of hemp; or

(b) Usable hemp, hemp extracts and hemp concentrates that have been combined with an added substance.

(c) Cannabinoid hemp product does not include usable hemp by itself, hemp stalk by itself, a hemp concentrate or extract by itself, hemp seed incapable of germination by itself, or other products derived only from hemp seeds incapable of germination that may include other non-hemp ingredients.

(d) For sampling and testing purposes is equivalent to a cannabinoid product as that is defined in OAR 333-007-0310.

(6) "Cannabis Tracking System" or "CTS" means the Commission’s system for tracking the transfer of hemp and marijuana items and other information as authorized by ORS 475B.177, ORS 571.336 and 571.337.

(7) “CBD” means cannabidiol, Chemical Abstracts Service Number 13956-29-1.

(8) "CBDA" means cannabidiolic acid, Chemical Abstracts Service Number 1244-58-2.

(9) "Chain of custody procedures" means procedures employed by laboratory personnel using a chain of custody form to record the possession of samples from the time of sampling through the retention time specified by the Department.

(10) “Consumer” includes:

(a) A person who purchases, acquires, owns, holds or uses hemp items other than for the purpose of resale; and

(b) A person who purchases, receives, or otherwise uses hemp items who is not a registered handler or a marijuana processor, wholesaler or retailer licensed by the Commission.

(11) Consumption means ingestion, inhalation, or topical application to the skin or hair.

(12) "Control study" means a study performed on items of unknown homogeneity to assure required uniformity of item accomplished through sampling and testing as described in OAR 603-048-2440.

(13) "Field duplicate sample" means sample increments taken in an identical manner to sample increments taken from the primary sample and representative of the same hemp item being sampled that is prepared and analyzed separately from the primary sample.

(14) “Finished hemp concentrate or extract” means a hemp concentrate or extract that is in its final form ready for packaging for sale or transfer to a consumer.

(15) “Finished cannabinoid hemp product” means a cannabinoid hemp product that is in its final form ready for packaging for sale or transfer to a consumer and includes all ingredients whether or not the ingredients contain cannabinoids.

(16) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in

whole or in part for human consumption, chewing gum and includes beverages.
(17) “Hemp concentrate or extract”
(a) Means a substance obtained by separating cannabinoids from industrial hemp leaves, flowers, or stalk by a mechanical, chemical or other process.
(b) For sampling and testing purposes is equivalent to a cannabinoid concentrate or edible as that is defined in OAR 333-007-0310.
(18) “Hemp edible”
(a) Means a food or potable liquid into which industrial hemp, a hemp concentrate, a hemp extract, or the dried leaves or flowers of hemp have been incorporated.
(b) Does not mean hemp seed incapable of germination by itself or other products derived only from hemp seeds incapable of germination that may include other non-hemp ingredients.
(c) For sampling and testing purposes is equivalent to a cannabinoid edible as that is defined in OAR 333-007-0310.
(19) “Hemp item”
(a) Means usable hemp, hemp stalk, a hemp cannabinoid product, or a hemp concentrate or extract.
(b) For sampling and testing purposes is equivalent to a marijuana item as that is defined in OAR 333-007-0310.
(20) “Hemp stalk”
(a) Means the stalk of industrial hemp intended for human consumption.
(b) For sampling and testing purposes is equivalent to usable marijuana as that is defined in OAR 333-007-0310.
(21) “Hemp tincture”
(a) Means a liquid hemp cannabinoid product packaged in a container of four fluid ounces or less that consists of either:
(A) A non-potable solution of at least 25 percent non-denatured alcohol, in addition to a hemp concentrate, hemp extract, or usable hemp and perhaps other ingredients intended for human consumption that is exempt from the Liquor Control Act under ORS 471.035; or
(B) A non-potable solution comprised of glycerin, plant-based oil, or concentrated syrup; hemp concentrate or extract or usable hemp, and perhaps other ingredients that does not contain any added sweeteners and is intended for human consumption or ingestion.
(b) For sampling and testing purposes is equivalent to a cannabinoid tincture as that is defined in OAR 333-007-0310.
(22) “Hemp topical”
(a) Means a substance intended to be applied to skin or hair that contains a hemp cannabinoid product, hemp concentrate or extract and for purposes of testing includes a hemp transdermal patch.
(b) For sampling and testing purposes is equivalent to a cannabinoid topical as that is defined in OAR 333-007-0310.
(23) “Hemp transdermal patch”
(a) Means an adhesive substance applied to human skin that contains a hemp cannabinoid product, hemp concentrate or extract for absorption into the bloodstream.
(b) For sampling and testing purposes is equivalent to a cannabinoid transdermal patch as that is defined in OAR 333-007-0310.
(24) “High heat” means a temperature exceeding 180 degrees Fahrenheit.
(25) "Homogeneous" means a hemp cannabinoid product, hemp concentrate or extract has uniform composition and properties throughout each process lot.
(26) “Industrial hemp for human consumption” means industrial hemp that is intended to be processed and used for human consumption.
(27) “Marijuana testing rules” means Authority testing rules for marijuana items found in OAR Chapter 333, Divisions 7 and 64, and all referenced tables and exhibits.
(28) "ORELAP" means the Oregon Environmental Laboratory Accreditation Program administered by the Authority pursuant to ORS 438.605 to 438.620.
(29) "Process lot" means:
(a) Any amount of hemp concentrate or extract of the same type and processed using the same extraction methods,

standard operating procedures and batches from the same or a different harvest lot; or
(b) Any amount of a hemp cannabinoid product of the same type and processed using the same ingredients, standard operating procedures and batches from the same or a different harvest lot or process lot of hemp concentrate or extract.
(30) "Relative percentage difference" or "RPD" means the comparison of two quantities while taking into account the size of what is being compared as calculated under OAR 333-064-0100.
(31) "Relative standard deviation" or "RSD" means the standard deviation expressed as a percentage of the mean recovery as calculated under OAR 333-064-0100.
(32) "Remediation":
(a) Means a process or technique applied to a hemp item to remove pesticides or solvents.
(b) Does not include dilution.
(33) "Sample" means an amount of a hemp item collected by laboratory personnel from a grower or handler and provided to a laboratory for testing.
(34) "Sample increment" means an amount of a hemp item collected by laboratory personnel from a grower or handler that may be combined into a sample for purposes of testing or, in the case of a control study, is tested individually.
(35) "Sterilization" means the removal of all microorganisms and other pathogens from a hemp item by treating it with approved chemicals or subjecting it to high heat.
(36) "Test batch" means a group of samples from a batch submitted collectively to a laboratory for testing purposes.
(37) “Texture” means the feel, appearance, or consistency of a hemp item.
(38) "THC" means tetrahydrocannabinol and has the same Chemical Abstracts Service Number as delta-9 THC.
(39) "THCA" means tetrahydrocannabinolic acid, Chemical Abstracts Service Number 23978-85-0.
(40) “These rules” means OAR 603-048-2300 through 603-048-2500.
(41) "TNI" means The NELAC (National Environmental Laboratory Accreditation Conference) Institute, a voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish consensus standards for accrediting environmental laboratories.
(42) "TNI EL Standards" means the adopted 2009 TNI Environmental Lab Standards (© 2009 The NELAC Institute), which describe the elements of laboratory accreditation developed and established by the consensus principles of TNI and that meet the approval requirements of TNI procedures and policies.
(43) “Unit of sale” means an amount of a hemp item commonly packaged for transfer or sale to a consumer or capable of being packaged for transfer or sale to a consumer.
(44) "Usable hemp"
(a) Means the flowers and leaves of industrial hemp intended for human consumption that does not fall within meaning hemp concentrate or extract, hemp edible, or hemp cannabinoid product.
(b) Includes, for purposes of these rules, pre-rolled hemp as long as the pre-roll consists of only dried hemp leaves and flowers, an unflavored rolling paper and a filter or tip.
(c) For sampling and testing purposes is equivalent to usable marijuana as that is defined in OAR 333-007-0310.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2021, Ch.542

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2021, Ch.542

AMEND: 603-048-2315

RULE TITLE: Ordering Tests

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updates registration/registrant to license/licensee.

RULE TEXT:

(1) A grower or handler must provide a laboratory, prior to the laboratory taking samples, with at a minimum the following information:

(a) The handler's or grower's license number.

(b) The name, address and contact information of the grower or handler.

(c) Whether the hemp items are subject to tracking in CTS.

(d) Identification as hemp and type of hemp item.

(e) Harvest lot identifier that is associated with the batch, if applicable.

(f) Process lot identifier that is associated with the batch, if applicable.

(g) Batches to be sampled.

(h) Total mass or volume of each batch to be sampled.

(i) For hemp cannabinoid products, the unit of sale.

(j) Identification of the test or tests the laboratory is being requested to conduct.

(k) Whether the test or tests being requested are compliance tests.

(l) Whether the test or tests being requested are quality control or research and development tests.

(m) Whether a batch is being re-sampled because of a failed test, the date the failed test result was received by the licensee and laboratory identification number of the laboratory that conducted the initial test.

(n) Whether the hemp item has a certified control study or a control study is being requested.

(o) Whether the hemp or hemp item was remediated, if remediation is permitted under OAR 603-048-2450.

(2) If a handler is requesting a control study, the request must be submitted on a form prescribed by the Department, as specified in OAR 603-048-2440.

(3) If the hemp or hemp item is being re-sampled after a failed test or has a certified control study, the grower or handler must provide the laboratory with documentation of the failed test or certified control study as applicable.

(4) It is the responsibility of the grower or handler to order the tests necessary to comply with these rules.

(5) A grower or handler may not order more than one compliance test for the same hemp or hemp item.

(6) It is a violation of these rules for a grower or handler to:

(a) Fail to provide the information required in these rules to the laboratory; or

(b) Submit false or misleading information to a laboratory.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.315, OL 2021, Ch. 542

AMEND: 603-048-2380

RULE TITLE: Site Requirements for Labeling, Storing, and Securing Pre-Tested Industrial Hemp for Human Consumption or Hemp Items; Recordkeeping

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updating registration/registrant to license/licensee.

RULE TEXT:

(1) After a laboratory has taken samples from a harvest or process lot batch, the grower or handler must:

(a) Label the batch with the following information:

(A) The grower or handler's license number;

(B) The harvest or process lot identifier;

(C) The name and accreditation number of the laboratory that took samples and the name and accreditation number of the laboratory responsible for the testing, if different;

(D) The test batch or sample unique identification numbers supplied by the laboratory personnel;

(E) The date the samples were taken; and

(F) In bold, capital letters, no smaller than 12 point font, "ITEM NOT TESTED."

(b) Store and secure the batch in a manner that prevents the industrial hemp for human consumption or hemp item from being tampered with or transferred prior to test results being reported.

(c) Be able to easily locate a batch stored and secured under subsection (1)(b) of this rule and provide that location to the Department or a laboratory upon request.

(2) If the samples pass testing, the batch of industrial hemp for human consumption or hemp items satisfies the testing required by ORS 571.330 and these rules.

(3) If the samples do not pass testing, the handler must comply with OAR 603-048-2450.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2021, Ch. 542

AMEND: 603-048-2500

RULE TITLE: Quality Control and Research and Development Testing

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Updating registration/registrant to license/licensee.

RULE TEXT:

(1) A person 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 person may not request that a laboratory conduct pesticide testing on industrial hemp or hemp items for the purpose of quality control or for research and development. A pesticide test on industrial hemp or hemp items is considered by the Department to be a compliance test. Test results may be used by the Department, including the Department's Pesticide Program, for enforcement of state pesticide laws and rules.

(3) A person that submits industrial hemp or hemp items for quality control or research and development testing is not subject to OAR 603-048-2320 to 603-078-2470.

(4) A laboratory result from a quality control or research and development test cannot be used as a compliance test result and industrial hemp or a hemp item that has only undergone a quality control or research and development test may not be transferred or sold, unless the hemp item has also passed required compliance testing.

(5) 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 Department.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300-571.348, OL 2021, Ch.542

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2021, Ch.542

ADOPT: 603-048-8010

REPEAL: Temporary 603-048-8010 from DOA 22-2021

RULE TITLE: Presumptive Marijuana

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Makes permanent temporary rules filed July 2021. Creates definitions for presumptive marijuana requirements.

RULE TEXT:

(1) For the purposes of this Division, unless the context provides otherwise or section (2) of this rule provides an alternative definition, the definitions in OAR 603-048-0010 apply.

(2) In addition to the definitions in section (1) of this rule, the following definitions apply:

(a) “Applicant” means a person, joint venture, or cooperative who has submitted an application for a grower license in accordance with OAR 603-048-0200.

(b) “Good cause" includes, but is not limited to, when an action, delay, or failure to act arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party or agency relating to procedural requirements, or from fraud, misrepresentation, or other misconduct of a party or agency participating in the proceeding.

(c) “OAH” means the Office of Administrative Hearings.

(d) “Pre-harvest testing” means sampling and testing of growing cannabis by a laboratory conducted in accordance with OAR 603-048-0600.

(e) “Presumptive test” means testing conducted in accordance with OAR 845-026-4100.

(f) “Licensee” means a person, joint venture or cooperative that produces industrial hemp and is licensed with the Department under ORS 571.281.

(3) Cannabis plants may be distinguished between industrial hemp and marijuana in three methods:

(a) Testing pursuant to OAR 603-048-0600 to 603-48-0625.

(b) Testing by the State Department of Agriculture pursuant to ORS 571.281(7).

(c) Presumptive testing in accordance with OAR 845-026-4100.

(4) In the Department’s discretion, the Department or its designee may inspect and sample cannabis grown at a licensed or proposed grow site or grown pursuant to a grower’s license to conduct presumptive testing as described in OAR 845-026-4100.

(5) A licensed grower or applicant must permit Department staff, or its designee, to inspect and access all parts of the grow site or proposed grow site, equipment, facilities, and any area where cannabis is grown pursuant to the license and cooperate with such an inspection in accordance with OAR 603-048-0650(3).

(6) Sampling for a presumptive test shall be conducted in accordance with OAR 845-026-4100.

(7) The Department may detain, seize, or embargo all cannabis at a grow site if any sampling at the grow site conducted pursuant to OAR 845-026-4100 contains total THC of 0.35 percent or more. Any such action shall be conducted in accordance with OAR 603-048-0900.

(8) The provisions of OAR 603-048-8010 to 603-048-8040 apply to all sampling and testing conducted under Oregon Laws 2021, Ch. 542 and OAR 845-026-4100 that occurred on or after July 20, 2021.

(9) Except for as specifically identified in OAR 603-048-8010 to 8040, the provisions of OAR 603-048-0010 to 603-048-2500 do not apply to OAR 603-048-8010 to 8040.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: ORS 571.260 - 571.348, OL 2021, Ch. 542

ADOPT: 603-048-8020

REPEAL: Temporary 603-048-8020 from DOA 22-2021

RULE TITLE: Notice of Detainment for Presumptive Marijuana

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Makes permanent temporary rules filed July 2021. Creates rules for when ODA may detain, seize, or embargo cannabis determined to be presumptive marijuana, when ODA can require destruction, how a licensee can rebut the finding of presumptive marijuana, hearing process for presumptive marijuana, and how discovery and exchange of exhibits and witness lists during a hearing will be conducted.

RULE TEXT:

(1) The Department may detain, seize, or embargo all cannabis that is determined to be presumptive marijuana pursuant to OAR 845-026-4100 in accordance with ORS 561.605 to 561.630.

(a) If the licensee or person in possession of the subject cannabis does not timely request a hearing, withdraws a request for hearing, notifies the Department or the administrative law judge that they will not appear, or fails to appear at a scheduled hearing, the Department may summarily destroy or otherwise dispose of the cannabis, or summarily issue an order requiring the licensee or person in possession to dispose of the subject cannabis in accordance with OAR 603-048-0640.

(b) A licensee may only rebut a finding that the cannabis is presumptively marijuana by conducting valid pre-harvest testing in accordance with OAR 603-048-0600. The Department is not responsible for any costs for any pre-harvest testing.

(A) The Department shall notify the licensee or person in possession in writing of the deadline for submitting passing valid test results for the cannabis to the Department.

(B) The licensee must notify the Department within three (3) calendar days from the date of the notification in subsection (1)(b)(A) if they plan to obtain preharvest testing.

(C) The licensee must notify the Department, in a manner specified by the Department, at least 24 hours prior to the scheduled testing and allow the Department or its designee to observe sampling.

(D) In addition to the requirements in OAR 603-048-0600 for requesting sampling and testing, the licensee must provide a copy of the detainment order to the laboratory.

(E) Harvest lots or production areas sampled and tested in compliance with OAR 603-048-0600 that pass testing under OAR 603-048-0600, and the results are timely provided to the Department by the laboratory, may be released from detainment. The Department may extend the deadline to submit test results, if in the Department's discretion, there is good cause. The Department shall not issue an order to destroy until the time to submit test results has expired if the licensee timely notifies the Department of the intent to obtain preharvest testing in accordance with (1)(b)(B).

(F) Cannabis that does not pass testing or a valid passing test result is not otherwise timely provided, must be destroyed. The Department may request, and the laboratory shall provide, the file samples from the pre-harvest sampling and the Department may analyze the samples for THC content.

(2) Hearings.

(a) If a hearing is timely requested, the hearing and the order shall be issued as soon as practicable and not later than the timelines set out in this rule, unless the reason for the delay is explained in the final order.

(A) A hearing held pursuant to a timely request shall be conducted within 11-20 calendar days of the request unless the Department requests a postponement, or the licensee requests a delay and the administrative law judge determines there is good cause or the Department otherwise agrees to a postponement.

(B) The record shall be closed within 48 hours from the conclusion of the hearing.

(C) A proposed or final order must be issued by the administrative law judge within five (5) days, excluding weekends and holidays, from the closing of the record unless the administrative law judge determines there is good cause to delay the proposed or final order.

(b) OAH may select a hearing date and notify the licensee and the Department in writing. The hearing date may be

changed with good cause.
(c) OAH may serve and communicate with the licensee by electronic mail unless the licensee requests in writing that service be accomplished by facsimile or regular mail. Service by e-mail is effective at the time a properly addressed email is sent. For cases where final order authority is delegated to OAH, OAH shall also mail a copy of the final order to the licensee.
(d) Discovery and Exchange of Exhibits and Witness Lists.
(A) Witness information and documents or objects planned to be offered as evidence as described in OAR 137-003-0566(1)(a)-(c) must be exchanged no later than three (3) calendar days before the hearing date unless there is good cause for delay.
(B) Requests for production of documents to the Department are limited to the following:
(i) The licensee's application for the current license;
(ii) Sampling and testing documentation for the cannabis subject to the disputed notice of detainment;
(iii) Any inspection report regarding the sampling and testing of the cannabis subject to the disputed notice of detainment prepared by the Department or the Department's designee.
(C) Requests for admission and written interrogatories are limited to a total of 10 separate requests (each subpart to count as a separate request).
(D) Depositions of Department witnesses, staff, or designees are not authorized.
(e) Motions for summary determination are not available in contested case proceedings regarding notices of detainment issued under this rule.
(f) A final order issued by OAH that finds in the Department's favor shall require the licensee or person in possession to dispose of the subject cannabis in accordance with OAR 603-048-0640 within ten (10) calendar days from the date of the order unless extended in writing by the Department.
(3) A licensee subject to a detainment, seizure, embargo, or disposal order under this section must comply with OAR 603-048-0900(4) except that the cannabis may be sampled by authorized laboratory representatives for the purposes of pre-harvest testing in accordance with this rule.
(4) A licensee must dispose of presumptive marijuana ordered to be disposed under this rule in accordance with OAR 603-048-0640, except that when requesting approval to dispose of the presumptive marijuana in accordance with OAR 603-048-0640(2)(a), the licensee must submit the request at least two (2) calendar days, not including weekends and holidays, prior to disposal. The licensee must dispose of the presumptive marijuana by the date the final order requires destruction unless extended by the Department in writing.
(5) The Department does not offer collaborative dispute resolution regarding notices issued under this rule.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 561.605 - 561.620, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: OL 2021, Ch. 542, ORS 571.263

ADOPT: 603-048-8030

REPEAL: Temporary 603-048-8030 from DOA 22-2021

RULE TITLE: Final Order of Disposal of Presumptive

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Makes permanent temporary rules filed July 2021. Creates rules for when ODA may issue final order of destruction of presumptive marijuana, how a licensee can rebut the finding, timeline for notifying ODA, and requirements for disposal of presumptive marijuana.

RULE TEXT:

(1) For presumptive marijuana that meets any of the following criteria, the Department may issue a final order requiring destruction of all cannabis determined to be presumptively marijuana pursuant to OAR 845-026-4100:

(a) At least fifty percent of composite samples taken from mature plants test at or above ten percent total delta-9-THC.

(b) The average total delta-9-THC among the composite samples taken from mature plants tests at or above ten percent.

(2) A final order issued under this rule shall be appealable as an order in other than contested case order under ORS 183.484.

(3) A licensee may only rebut a finding that the cannabis is presumptively marijuana by conducting pre-harvest testing in accordance with OAR 603-048-0600. The Department is not responsible for any costs for any pre-harvest testing. To rebut the finding, the licensee must:

(a) Notify the Department within three (3) calendar days from the date of the final order was issued if they plan to obtain preharvest testing.

(b) In addition to the requirements in OAR 603-048-0600 for requesting sampling and testing, the licensee must provide a copy of the detainment order to the laboratory.

(c) Notify the Department, in a manner specified by the Department, at least 24 hours prior to the scheduled testing and allow the Department or its designee to observe sampling.

(d) Submit the test results to the Department by the deadline specified in the final order unless the deadline is extended in writing.

(4) The Department shall amend or withdraw a final order if a harvest lot or production area passes testing under OAR 603-048-0600 and the grower complies with all requirements in this rule. A grower must destroy presumptive marijuana in accordance with the destruction order if:

(a) The presumptive marijuana does not pass testing under OAR 603-048-0600;

(b) Valid test results are not timely provided to the Department; or

(c) The grower fails to comply with the requirements of this rule.

(5) A licensee must dispose of presumptive marijuana ordered to be disposed under this rule in accordance with OAR 603-048-0640, except that when requesting approval to dispose of the presumptive marijuana in accordance with OAR 603-048-0640(2)(a), the licensee must submit the request at least two (2) calendar days, not including weekends and holidays, prior to disposal. The licensee must dispose of the presumptive marijuana by the date the final order requires destruction unless extended by the Department in writing.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 561.605 - 561.620, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: OL 2021, Ch. 542, ORS 571.263

ADOPT: 603-048-8040

REPEAL: Temporary 603-048-8040 from DOA 22-2021

RULE TITLE: Compliance with Detainment, Seizure, Embargo, Disposal Notice or Order

NOTICE FILED DATE: 10/29/2021

RULE SUMMARY: Makes permanent temporary rules filed July 2021. Creates rules for requirements for licensee compliance with any notice or order for detainment, seizure, embargo, or disposal. Includes that failure to meet the requirements shall involve ODA revoking or deny the grower license.

RULE TEXT:

(1) A person subject to a detainment, seizure, embargo, or disposal notice or order based on a determination that the cannabis is presumptive marijuana must ensure that the cannabis subject to the action are not removed from the location identified in the notice of the action or subject to any harvesting, processing, or manufacturing processes without written permission from the Department.

(a) A person subject to a detainment, seizure, embargo or disposal notice or order shall take all reasonable steps to prevent theft or removal of the cannabis from the location identified in the notice of the action.

(b) A person subject to a detainment, seizure, embargo, or disposal notice or order is strictly liable for any violation of the notice or order, including removal of the cannabis from the location identified in the notice without permission or direction from the person subject to the action.

(c) A person subject to a detainment, seizure, embargo, or disposal notice or order may submit a written request to harvest, move, or take other action to preserve the cannabis pending a legal proceeding challenging the proprietary of the order. The person may only take such action upon written permission from the Department and subject to any requirements or restrictions imposed by the Department.

(2) The Department shall revoke a person's hemp grower license or deny the person's hemp grower application for a license if the person fails to comply with section (1) of this rule, including but not limited to if the cannabis subject to detainment, seizure, embargo, or disposal notice or order is removed from the location identified in the notice or order without prior written permission from the Department.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 561.605 - 561.620, ORS 571.260 - 571.348, OL 2021, Ch. 542

STATUTES/OTHER IMPLEMENTED: OL 2021, Ch. 542, ORS 571.263