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PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Standards for Aspergillus Contaminant Compliance Testing on Marijuana Items and Industrial Hemp-Derived Vapor Items

EFFECTIVE DATE: 12/20/2023

AGENCY APPROVED DATE: 12/07/2023

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Filed By:
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AMEND: 333-007-0390

REPEAL: Temporary 333-007-0390 from PH 43-2023

RULE TITLE: Standards for Microbiological Contaminants Compliance Testing

NOTICE FILED DATE: 10/27/2023

RULE SUMMARY: OAR 333-007-0390 is being permanently amended to adopt changes from a temporary rule that was filed and effective on September 15, 2023 (Temporary Administrative Order PH 43-2023), to remove the requirement for Aspergillus testing. In addition to removing the testing requirement, the rule amendments make it clear that marijuana items and industrial hemp-derived vapor items that failed for Aspergillus and were remediated, or were attempted to be remediated, on or before August 25, 2023, must be resampled and retested for all required tests due to the item either changing forms or undergoing a fundamental change. Remediated items are not required to be tested for Aspergillus. The rule amendments also specify that for the purposes of OAR 333-007-0450, any items that were found to contain Aspergillus during testing on or before August 25, 2023, are not considered to have failed a compliance test.

RULE TEXT:

- (1) A marijuana item or industrial hemp-derived vapor item required to be tested for microbiological contaminants under OAR 333-007-0320 to 333-007-0342 must be sampled using appropriate aseptic technique and tested by a laboratory for Shiga toxin-producing *Escherichia coli* and *Salmonella* species.
- (2) A batch fails microbiological contaminants testing if, during an initial test where no reanalysis is requested or upon reanalysis as described in OAR 333-007-0450(1) the laboratory detects:
 - (a) Shiga toxin-producing *Escherichia coli* in one gram; or
 - (b) *Salmonella* spp. in one gram.
- (3) Marijuana items and industrial hemp-derived vapor items tested for Aspergillus on or before August 25, 2023, in accordance with the rules that were in effect at the time, that have a laboratory test report indicating the samples contained pathogenic *Aspergillus flavus*, *A. fumigatus*, *A. niger* or *A. terreus* that were remediated or were attempted to be remediated must be resampled and retested in accordance with OAR 333-007-0450(6)(c) but are not required to be tested for pathogenic *Aspergillus flavus*, *A. fumigatus*, *A. niger* or *A. terreus*.

(4) A marijuana item or industrial hemp-derived vapor item tested for *Aspergillus* on or before August 25, 2023, in accordance with the rules that were in effect at the time, that have a laboratory test report indicating the samples contained pathogenic *Aspergillus flavus*, *A. fumigatus*, *A. niger* or *A. terreus*, is not considered to have failed a compliance test for the purposes of OAR 333-007-0450.

STATUTORY/OTHER AUTHORITY: ORS 475C.544

STATUTES/OTHER IMPLEMENTED: ORS 475C.544