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PERMANENT ADMINISTRATIVE ORDER

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DEPARTMENT OF AGRICULTURE

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FILING CAPTION: Permanent rules: growing, handling, retail sales, and testing of industrial hemp and products, and commodities.

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RULES:

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AMEND: 603-048-0010

REPEAL: Temporary 603-048-0010 from DOA 7-2019

RULE TITLE: Definitions

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

The following definitions apply to OAR 603-048-0010 through 603-048-2500 unless the context requires otherwise.

- (1) "Agricultural hemp seed" means Cannabis seed:
 - (a) That is sold to or intended to be sold to registered growers for planting; or
 - (b) That remains in an unprocessed or partially processed condition that is capable of germination.
- (2) "Agricultural hemp seed producer" means a person who produces agricultural hemp seed or processes industrial hemp into agricultural hemp seed.
- (3) "Cannabis Tracking System" or "CTS" means the Oregon Liquor Control Commission's system for tracking the transfer of marijuana items.
- (4) "CBD" means cannabidiol, Chemical Abstracts Service Number 13956-29-1.
- (5) "Consumption" means to ingest, inhale, topically apply to the skin or hair.
- (6) "Crop" means industrial hemp grown under a single registration.
- (7) "Department" means the Oregon Department of Agriculture.
- (8) "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.
- (9) "Grower" means a person, joint venture or cooperative that produces industrial hemp.
- (10) "Grow site" means one contiguous lot, parcel, or tract of land used to produce or intended to produce industrial hemp.
- (11) "Handler" means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed.
- (12) "Handling site" means one contiguous lot, parcel, or tract of land used to handle or intended to handle industrial hemp.
- (13) "Harvest Lot":
 - (a) Means a quantity of industrial hemp 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 industrial hemp comprised of industrial hemp grown in noncontiguous production areas.
- (14) "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.
- (15) "Hemp Item" has the meaning provided in OAR 603-048-2310.
- (16) "Industrial hemp":
 - (a) Means all non-seed parts and varieties of the Cannabis plant, whether growing or not, that contain an average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.
 - (b) Means any Cannabis seed:
 - (A) That is part of a crop;
 - (B) That is retained by a grower for future planting;
 - (C) That is agricultural hemp seed;
 - (D) That is for processing into or for use as agricultural hemp seed; or
 - (E) That has been processed in a manner or to an extent that the Cannabis seed is incapable of germination.
 - (c) Does not mean:

- (A) Industrial hemp commodities or products; or
- (B) Marijuana, as that is defined in ORS 475B.015.
- (17) 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.
- (18) "Laboratory" means a laboratory that is licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority under ORS 475B.565.
- (19) "OLCC" means the Oregon Liquor Control Commission.
- (20) "Process" means the processing, compounding, or conversion of industrial hemp into industrial hemp commodities or products or agricultural hemp seed.
- (21) "Production area" means the area at a grow site where industrial hemp is produced or is intended to be produced and may include fields, greenhouses, or other buildings.
- (22) "Process lot identifier" means a unique numerical identifier that begins with the last seven numbers of the handler's registration number or the name of the handler, then the year of processing, and then a unique number to identify the process lot.
- (23) "Produce" means the planting, cultivation, growing, or harvesting of industrial hemp.
- (24) "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.
- (25) "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.
- (26) "Registrant" means a grower or handler or agricultural hemp seed producer registered with the Department under these rules.
- (27) "Tetrahydrocannabinol" or "THC" means tetrahydrocannabinol and has the same meaning as delta-9 THC.

(28) "Total THC" means the molar sum of THC and THCA.

STATUTORY/OTHER AUTHORITY: ORS 561.90, ORS 571.300-571.348, OL 2018, Ch.116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch.116

AMEND: 603-048-0100

RULE TITLE: Registration, generally

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) Industrial hemp is an agricultural product subject to regulation by the Department.
- (2) Only a registrant may produce industrial hemp, except as provided in Oregon Laws 2018, Chapter 116, Section 20.
- (3) Registrations:
 - (a) Apply only to the individual or entity identified on an application that is approved by the Department.
 - (b) Are a personal privilege and may not be transferred.
 - (c) May not be sold or transferred.
- (4) For transfers and sales within Oregon, a registrant may sell or transfer industrial hemp or agricultural hemp seed to:
 - (a) Another registrant; or
 - (b) An OLCC licensee in accordance with ORS 571.336, OR Laws 2018, Chapter 116, Section 15 and 15a, and rules adopted thereunder.
- (6) Restriction on industrial hemp product sales:
 - (a) For the purposes of this section, "consumer" means a person who purchases, acquires, owns, holds or uses industrial hemp products other than for the purpose of resale.
 - (b) A registrant 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.
- (7) Registration and 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, ORS 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-0150

RULE TITLE: Handler Registration

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) Only a handler registered with the Department may process industrial hemp.
- (2) Industrial hemp may only be handled at handling sites registered with the Department. A hemp handling registration applies to only one handling site. A handler must obtain a separate registration for each handling site.
- (3) Handler Registration by Reciprocity. A marijuana processor licensed under ORS 475B.090 with a hemp endorsement as described in OAR 845-025-03285 from the OLCC may be registered by reciprocity with the Department as a handler in accordance with OAR 603-048-0225(8). A marijuana processor registered by reciprocity:
 - (a) Is deemed to be in compliance with the recordkeeping requirements in OAR 603-048-0500 if the marijuana processor tracks all industrial hemp and industrial hemp products and commodities in the Cannabis Tracking System as required by OAR Chapter 845, Division 25.
 - (b) Is deemed to be in compliance with testing requirements for hemp items if the marijuana processor tests all hemp items as required in OAR Chapter 845, Division 25

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300-571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch. 116

AMEND: 603-048-0200

RULE TITLE: Applications to Register or Renew Grower Registration

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) Registrations are valid for a one-year term beginning on January 1 of each calendar year.
- (2) Renewal Application. A registrant with a current valid registration may renew the registration by submitting a renewal application no later than December 30 of the current registration year.
- (3) The Department shall review and act on applications in the order they are received. An individual is not registered with the Department until the Department has approved the registration and notified the registrant of registration.
- (4) To apply for a grower registration, an applicant must submit to the Department:
 - (a) A complete grower registration application on a form provided by the Department;
 - (b) A complete grow site registration application on a form provided by the Department for each grow site; and
 - (c) 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 registration as described in OAR 603-048-0300.
- (6) A grower registration application must include all of the following information:
 - (a) The name, legal type of registrant (individual, corporation, etc.), and contact information of the applicant;
 - (b) The address of each grow site; and
 - (c) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as 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.
 - (d) Any other information or forms required by the Department.
- (7) Each grow site registration application must include all of the following information:
 - (a) The address of the grow site;
 - (b) If industrial hemp is grown or is intended to be 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 production area showing clear boundaries of the production area;

- (c) If industrial hemp is grown or is intended to be grown in a greenhouse or other building:
 - (A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building;
 - (B) The approximate dimension or square feet of the greenhouse or other building; and
 - (D) A map of the production area showing clear boundaries of the production area.
- (8) To add a grow site to an existing registration, the registered grower must submit to the Department:
 - (a) A complete grow site registration form as described in section (6) of this rule.
 - (b) All applicable fees as described in OAR 603-048-0700(2)(a).
- (9) In addition to the requirements in sections (4) to (7), all applicants for registration 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 registrant;
 - (b) The Department 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.
- (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 applicant fails to provide all of the information required, the Department shall notify the applicant of the missing information and allow the applicant 30 calendar 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 from the applicant. If an applicant fails to submit information necessary for the Department to verify information on the application or accompanying documentation, 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 the applicant fails to satisfy any of the requirements for initial registration.
 - (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 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116),
 - (ii) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);
 - (iii) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or a rule adopted thereunder;
 - (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

STATUTORY/OTHER AUTHORITY: ORS 561.190, 569.445, 571.300-571.348, 633.511-633.996, OL 2018, Ch.116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.315, OL 2018, Ch.116

AMEND: 603-048-0225

RULE TITLE: Application to Register or Renew Handler Registration

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) Registrations are valid for a one-year term beginning on January 1 of each calendar year.
- (2) Renewal Application. A registrant with a current valid registration may renew the registration by submitting a renewal application to the Department by no later than December 30 of the current registration year.
- (3) The Department shall review and act on applications in the order they are received. An individual is not registered with the Department until the Department has approved the registration and notified the registrant of registration.
- (4) To apply for a handler registration, 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 registration as described in OAR 603-048-0300.
- (6) An application for a handler registration must:
 - (a) Include all of the following information:
 - (A) The name, legal type of registrant (individual, corporation, etc.), and contact information of the applicant;
 - (B) The name and address of applicant's handling site;
 - (C) 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 ODA land use compatibility statement 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 registration 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 registrant;
 - (b) The Department 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.

(e) Registration 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) Incomplete Applications.

(a) If an applicant does not provide all of the information required in subsection (6) of this rule or pay the applicable fee, the Department shall reject the application as incomplete.

(b) If an applicant fails to provide all of the information required, the Department shall notify the applicant of the missing information and allow the applicant thirty calendar 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 from the applicant. If an applicant fails to submit information necessary for the Department to verify information on the application or accompanying documentation, 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.

(9) 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 registration.

(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 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116),

(ii) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);

(iii) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or a rule adopted thereunder;

(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.

(10) Registration by Reciprocity. On and after January 1, 2020, a marijuana processor licensed under ORS 475B.090 with a hemp endorsement as described in OAR 845-025-03285 from the OLCC may apply for registration by submitting to the Department:

(a) A complete reciprocity handler registration 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.

STATUTORY/OTHER AUTHORITY: ORS 561.190, 571.300-571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.315, OL 2018, Ch. 116

AMEND: 603-048-0300

RULE TITLE: Application to Register or Renew Agricultural Hemp Seed Producer Registration

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

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

(2) Renewal Application: A registrant with a current valid registration may renew the registration by submitting an application no later than December 30 of the current registration year.

(3) A registered grower or handler seeking to produce or process agricultural hemp seed must register with the Department, on forms provided by the Department, as an agricultural hemp seed producer unless:

(a) A registered 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 registered grower produces Cannabis seeds that are incapable of germination; or

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

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

(a) The name, legal type of registrant (individual, corporation, etc.), 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 production area 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 entrance of the greenhouse or other building;

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

(D) A map of the production area 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.
- (5) An application to process agricultural hemp seed must include all of the following information:
 - (a) The name legal type of registrant (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 or forms required by the Department.
- (6) A registered grower may retain agricultural hemp seed without registering as an agricultural hemp seed producer for the purpose of personally propagating industrial hemp in future years, except that a registered 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 a registration for agricultural hemp seed.
- (7) An applicant for registration 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 registrant;
 - (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) Registration and compliance with industrial hemp rules does not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities.
- (8) Incomplete Applications.
 - (a) If an applicant does not provide all of the information required in subsection (5) of this rule or pay the applicable fee, the Department shall reject the application as incomplete.
 - (b) If an applicant fails to provide all of the information required, the Department shall notify the applicant of the missing information and allow the applicant 30 calendar 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 from the applicant. If an applicant fails to submit information necessary for the Department to verify information on the application or accompanying documentation, 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.
- (9) Denial.
 - (a) The Department must deny an initial or renewal application if the applicant is not registered as a grower or handler.
 - (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 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116),
 - (ii) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);
 - (iii) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or a rule adopted thereunder; 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.
- (10) Registrations are valid for a one-year term beginning January 1 of each calendar year.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-0400

RULE TITLE: Reporting Requirements

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) A registrant must immediately report, within 48 hours, the theft or loss of industrial hemp or hemp items to the Department.
- (2) An applicant or registrant must report to the Department in writing within 10 calendar days of the following:
 - (a) A disciplinary proceeding or enforcement action by another government entity that may affect the registrant's business;
 - (b) Temporary closures of more than 30 days or a permanent closure of a grow site or a handling site.
- (3) On forms provided by Department, a registrant must report to the Department:
 - (a) Changes to the name, address, or telephone number of the registrant within 10 calendar days of the change;
 - (b) 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 registered with the Department.
- (4) Changes in Business Structure or Ownership. A registrant 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 registrant proceeds with the change without an approved Change in Business or Ownership form, the registrant must surrender the registration in writing or the Department shall propose to revoke the registration.
 - (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 registration is expiring in less than 90 calendar days, the registrant 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 registrant has a change in ownership that is 51% or greater, a new application and application fees must be submitted.
- (5) On and after January 1, 2020, registrants must pay the change fee described in OAR 603-048-0700 for each change form submitted under section (2)(b), (3), or (4)(a) of this rule.
- (6) 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.

(7) For purposes of studying the growth, cultivation, and marketing of industrial hemp prior to expiration of the registration year or prior to applying to renew registration, whichever comes first:

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

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

(B) Number of pounds harvested; and

(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.

STATUTORY/OTHER AUTHORITY: ORS 561.190, 571.300 - 571.378, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-0500

REPEAL: Temporary 603-048-0500 from DOA 7-2019

RULE TITLE: Record Keeping Requirements

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

(1) Registrants must maintain records required under this rule for no less than three (3) years after the total disposition of each harvest or process lot, as identified by harvest or process lot identifier, or 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) 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.

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

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

(3) Grower Recordkeeping. 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 of industrial hemp received from a person within Oregon or transferred to a person in Oregon, as permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules:

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

(B) The harvest lot identifier for each harvest lot received or transferred;

(C) The date of receipt or transfer;

(D) The amount of industrial hemp received or transferred in pounds;

(E) All test reports for each harvest 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 harvest lot(s).

(b) For industrial hemp received from outside of Oregon, or transferred outside of Oregon, to the extent such receipt or transfer is permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, 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;
 - (B) The unique identifier for the industrial hemp received;
 - (C) The date of receipt;
 - (D) The amount of industrial hemp 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 lot of industrial hemp received from a person within Oregon or transferred to a person in Oregon, as permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules:
 - (A) The name and address of the person transferring the harvest lot to the handler or receiving the harvest lot from the handler, including the a registration number of the person;
 - (B) The harvest lot identifier for each harvest lot received or transferred;
 - (C) The date of receipt or transfer;
 - (D) The amount of industrial hemp received or transferred in pounds;
 - (E) All test reports for each harvest 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 harvest lot(s).
 - (b) For industrial hemp received from outside of Oregon or transferred outside of Oregon, to the extent such receipt or transfer is permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, 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 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 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, 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 a registration number if the person is registered;
 - (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 product received or transferred that includes the following information:
- (a) Identification of the harvest lot by harvest lot identifier or identification of the industrial hemp 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, 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

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300-571.348, OL 2018, Ch.116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch.116

AMEND: 603-048-0600

REPEAL: Temporary 603-048-0600 from DOA 7-2019

RULE TITLE: Pre-Harvest Sampling and Testing for Tetrahydrocannabinol

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

(1) The requirement that a harvest lot not exceed permissible total THC concentration levels and the requirement that laboratories must test for and report total THC are in effect on and after January 1, 2020. Prior to January 1, 2020, a harvest lot may not exceed 0.3 percent THC and laboratories must test for and report THC.

(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) calendar 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.

(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.

(3) To be sufficient to meet required THC testing under these rules 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) Can demonstrate that its limit of quantification (LOQ) for THC is at or below 0.3 percent THC.

(d) Requires laboratory staff to complete sampling training with the Department prior to conducting sampling.

(e) Prior to January 1, 2020, tests for and reports the THC content of the harvest lot.

(f) On and after January 1, 2020, 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) To be sufficient to meet the requirement for sampling under these rules, 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) To be sufficient to meet the required THC testing under these rules a grower must ensure that:

(a) Testing of a harvest lot is done by the laboratory according to the Department's Testing Protocol prescribed in Exhibit B and incorporated by reference.

(b) All test results are reported by the laboratory electronically to the Department at

HempTestReports@oda.state.or.us using the forms provided by the Department, and include for each sample tested:

(A) Grower's name and registration number;

(B) Harvest lot identifier;

(C) Sample date;

(D) Sample size by weight;

(E) Testing date;

(F) Prior to January 1, 2020, THC percentage to the second decimal point only;

(G) On and after January 1, 2020, total THC percentage to the second decimal point only calculated in accordance with OAR 333-064-0100(4);

(H) At the request of the Department, the laboratory's uncertainty level for THC testing of industrial hemp;

(I) 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;

(J) Copy of grower's sampling request form required in section (5) of this rule; and

(K) Copy of the completed sampling form required in section (6) of this rule.

(c) 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 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 by the Department within 24 hours of the failed test report.

(C) The grower must comply with OAR 603-048-0630.

(d) Samples from a harvest lot do not exceed 0.35 percent or greater:

(A) THC on a dry weight basis, prior to January 1, 2020.

(B) Total THC on a dry weight basis on and after January 1, 2020.

(8) For testing done prior to January 1, 2020, a sample fails testing if the test report indicates that the sample contains THC of 0.35 percent or greater on a dry weight basis. If a sample from a harvest lot fails required THC testing under these rules the harvest lot fails required THC testing.

(9) For testing done on and after January 1, 2020, 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. If a sample from a harvest lot fails required THC testing under these rules the harvest lot fails required THC testing.

(10) If the test report indicates that the sample contains THC or total THC of less than 0.35 percent on a dry weight basis, as specified in sections (8) and (9) 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. The Department considers samples reported to contain less than 0.35 percent THC or total THC as specified in sections (8) and (9) of this rule that were sampled and tested in compliance with these rules to satisfy the required THC concentration of no more than 0.3 percent.

(11) Invalid Sampling or Testing:

(a) It is the grower's obligation to demonstrate each harvest lot was sampled and tested in accordance with these rules and passes THC testing required by these rules.

(b) A sample that does not meet all of the requirements and standards of these rules is invalid. The harvest lot corresponding to an invalid sample 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 as provided under OAR 603-048-0900.

(12) The Department may, at its discretion, agree to conduct sampling and testing for a registered 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.

(13) 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) and (9) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300-571.348, OL 2018, Ch.116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch. 116, Sec. 28

REPEAL: 603-048-0625

RULE TITLE: Failed Harvest Lot THC Samples

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

Failed Harvest Lot THC Samples

(1) 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) calendar 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 ODA:

(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 (1)(a) and (b) of this rule and the sample passes upon retest, the grower has seven (7) calendar 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 THC. To be sufficient under this rule, 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 contains an average THC concentration 0.35 percent or greater, the sample fails testing and no further testing is permitted under these rules.

(2) Reporting:

(a) A grower must report electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided 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 by the Department the testing results of the initial or

secondary retest.

(3) 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.

(4) 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 informs the Department that retest will not be requested;

(c) Fails any retesting under section (1) of this rule;

(d) Passes initial retesting but the grower fails to timely request secondary retesting to confirm the passed test result as described in section (1)(c) of this rule.

(e) 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 OAR 603-048-0625(1)(c).

(5) If a sample passes the first and second retest described in section (1)(c) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules.

(6) 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 (1)(c) of this rule, the sample and corresponding harvest lot fails to satisfy these rules. The Department may detain, seize, embargo, and dispose of the harvest lot corresponding to the insufficient sample, as provided under ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183.

STATUTORY/OTHER AUTHORITY: ORS 571.300 - 571.315, as amended by OL 2016, Ch. 71, ORS 561.605 to 561.620, ORS Chapter 183

STATUTES/OTHER IMPLEMENTED:

AMEND: 603-048-0630

REPEAL: Temporary 603-048-0630 from DOA 7-2019

RULE TITLE: Failed Pre-Harvest Testing; Retesting

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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) calendar days from the date the notice of the failed test was sent to the grower. The retest must be completed within 30 calendar 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) calendar 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 THC or total THC, calculated in accordance with OAR 333-064-0100(4), as specified in OAR 603-048-0600(8) and (9). To be sufficient under this rule, 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 calendar 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 contains exceeds 0.35 percent THC as specified in OAR 603-048-0600(8) and (9), 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 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 by the Department the testing results of the initial or secondary retest.

(3) Retesting of Failed Samples for 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) calendar 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 in accordance with OAR 603-048-0600.

(d) The grower properly identifies the subdivided harvest lots in accordance with OAR 603-048-0100(14).

(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(5); 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) calendar days of the request for resampling and the test results are reported within 30 calendar 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 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 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.

(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. Any harvest lots that are not retested or that fail testing after resampling shall be disposed of in accordance with ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183.

(8) 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.

STATUTORY/OTHER AUTHORITY: ORS 561.190, 561.605-561.620, ORS 571.300-571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch. 116

AMEND: 603-048-0700

RULE TITLE: Registration Fees

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

(1) Registration Fees. At the time of application an applicant must pay the following fees beginning with the 2020 registration year:

- (a) A fee of \$250.00 for a grower registration application.
- (b) A fee of \$500.00 for each grow site registration application.
- (c) A fee of \$1,300 for each handler registration application;
- (d) A fee of \$500 for each hemp handler registration by reciprocity application; and
- (e) A fee of \$500.00 for an agricultural hemp seed producer registration.

(2) Change Fees. For each change described in OAR 603-048-0400(2)(b), (3)(b) or (4), the registrant must pay a \$125.00 change fee.

(3) Sampling and Testing Fee. The fee for pre-harvest THC sampling and testing by the Department as described in OAR 603-048-0600 includes:

(a) Sampling Fee:

- (A) A charge for a minimum of four hours of service at a rate of \$92 per hour;
- (B) Travel time at the rate of \$92 per hour;
- (C) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services;
- (D) Overtime Charges: For all services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus \$30.00 per hour for all time involved figured to the nearest one-half hour:
 - (i) After eight hours (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;
 - (ii) At any time on Saturdays or Sundays; and
 - (iii) At any time on any day which is declared by law to be a holiday for state employees.

(E) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours; and

(b) Laboratory Testing Fee: \$375 per harvest lot.

(4) These fees apply to:

- (a) Any application for registration starting with the 2020 registration year.

(b) Any change request described in OAR 603-048-0400(2)(b), (3) or (4) submitted on or after January 1, 2020.

(c) Any sampling or testing conducted by the Department on or after May 15, 2019.

STATUTORY/OTHER AUTHORITY: 571.300 - 571.315, ORS 561.190, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: 571.300 - 571.315, OL 2018, Ch. 116, Sec. 28

AMEND: 603-048-1000

REPEAL: Temporary 603-048-1000 from DOA 7-2019

RULE TITLE: Violations and Penalties

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch.116)

(b) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch.116); or

(c) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch.116) or a rule adopted thereunder.

(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 register with the Department;

(B) Providing false or misleading information to the Department;

(C) Falsifying information or records required to be maintained by the Department;

(D) Failing to test a hemp item in accordance with OAR 603-048-2300 through 603-048-2480 prior to sale, transfer, or attempt to sale or transfer;

(E) Failing to test a harvest lot in accordance with 603-048-0600;

(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, attempting to transfer or sell, processing or attempting to process a harvest lot that:

(i) Has not been sampled and tested under OAR 603-048-0600;

- (ii) Failed testing as described in OAR 603-048-0630(4) and (6);
- (iii) Was invalidly tested as described in OAR 603-048-0600(8).
- (I) Growing or handling hemp with:
 - (i) On or after January 1, 2020, total THC calculated in accordance with OAR 333-064-0100(4) that exceeds 3 percent on a dry weight basis; or
 - (ii) Prior to January 1, 2020, THC that exceeds 3 percent on a dry weight basis.
- (J) Repeat violations of Class 2 or Class 3 violations.
- (K) Any other violation of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or OAR 603-048-0100 to 603-048-2500 that may cause an immediate threat to the public health or safety.
- (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) 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:
 - (i) On or after January 1, 2020, total THC calculated in accordance with OAR 333-064-0100(4) that exceeds 0.3 percent on a dry weight basis but does not exceed 3 percent total THC; or
 - (ii) Prior to January 1, 2020, THC that exceeds 0.3 percent on a dry weight basis but does not exceed 3 percent 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.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300-571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch. 116

AMEND: 603-048-1500

RULE TITLE: Retail Sale Requirements; Restrictions

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) For the purposes of this section, "consumer" means a person who purchases, acquires, owns, holds or uses industrial hemp products other than for the purpose of resale.
- (2) A person may not sell an industrial hemp commodity or product to a consumer unless the industrial hemp used to process the commodity or product complied with the laws and regulations for the jurisdiction where the hemp was grown to ensure compliance with the 0.3 percent THC limit.
- (3) A person may not sell a hemp item to a consumer unless:
 - (a) The hemp item is tested in accordance with OAR 603-048-2300 to 603-048-2500; or
 - (b) The person obtains and maintains documentation that any hemp commodity or product used to make the hemp item was tested as required by subsection (3)(a) of this rule and the documentation demonstrates that the hemp item does not contain more than 0.3 percent total THC.
- (4) Testing may only be conducted by
 - (a) A laboratory licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority under ORS 475B.565; or
 - (b) A laboratory accredited to the same or more stringent standards as laboratories described in section (3)(a) of this rule if the hemp item was processed outside the state of Oregon.
- (4) Section (3) of this rule does not apply to growers or handlers. Growers and handlers must comply with OAR 603-048-2300 to 603-048-2500 to sell or transfer a hemp item.
- (6) 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.
- (7) 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 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch. 116, Sec. 11, 16

AMEND: 603-048-2300

REPEAL: Temporary 603-048-2300 from DOA 7-2019

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

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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 registrant's registration 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 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.315, OL 2018, Ch. 116

AMEND: 603-048-2305

REPEAL: Temporary 603-048-2305 from DOA 7-2019

RULE TITLE: Purpose

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

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. OAR 603-048-2300 to 603-048-2480 apply to any sampling or testing conducted on or after March 1, 2019.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2310

REPEAL: Temporary 603-048-2310 from DOA 7-2019

RULE TITLE: Definitions

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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) "CBD" means cannabidiol, Chemical Abstracts Service Number 13956-29-1.
- (6) "CBDA" means cannabidiolic acid, Chemical Abstracts Service Number 1244-58-2.
- (7) "Cannabis Tracking System" or "CTS" means the Oregon Liquor Control Commission's system for tracking the transfer of hemp and marijuana items and other information as authorized by ORS 475B.177 and Oregon Laws 2018, Chapter 116, Section 15.
- (8) "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.
- (9) "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 OLCC.
- (10) Consumption means to ingest, inhale or topically apply to the skin or hair.
- (11) "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.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(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

(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 marijuana, 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 all non-seed parts and varieties of the Cannabis plant, whether growing or not, that pre-harvest contained an average tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis, and 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 marijuana 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 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2315

REPEAL: Temporary 603-048-2315 from DOA 7-2019

RULE TITLE: Ordering Tests

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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 registration 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 registrant 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, 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.315, OL 2018, Ch. 116

AMEND: 603-048-2320

REPEAL: Temporary 603-048-2320 from DOA 7-2019

RULE TITLE: Compliance Testing Requirements for Industrial Hemp for Human Consumption and Usable Hemp

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) A grower or handler must have every harvest lot of industrial hemp for human consumption tested as required and in the same manner as marijuana under OAR 333-007-0320 prior to sale or transfer.
- (2) A grower or handler must test a harvest lot of usable hemp or hemp stalks for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Department.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2330

REPEAL: Temporary 603-048-2330 from DOA 7-2019

RULE TITLE: Compliance Testing Requirements for Hemp Concentrate or Extract

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) A handler must have every process lot of a hemp concentrate or extract intended for use by a person to make a hemp cannabinoid product tested in the same manner as a cannabinoid concentrate or extract under OAR 333-007-0330(2) prior to sale or transfer, except for a cannabinoid concentrate that meets the criteria in section (4) of this rule.
- (2) A handler must have every process lot of a finished hemp concentrate or extract tested in the same manner as a finished cannabinoid concentrate or extract under OAR 333-007-0330(1) prior to sale or transfer.
- (3) A handler must have a process lot of a hemp concentrate or extract tested for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Department.
- (4) A process lot of a hemp concentrate that is made only using food grade animal fat or food grade plant-based oil is not required to be tested for pesticides if:
 - (a) All industrial hemp or usable hemp used to make the concentrate was tested for pesticide and passed pesticide testing;
 - (b) The solvent used to make the concentrate is food grade animal fat or food grade plant-based oil; and
 - (c) The concentrate itself is only used to make a hemp cannabinoid product intended for human consumption or use but not intended for inhalation and the concentrate is not sold directly to consumers.

STATUTORY/OTHER AUTHORITY: ORS 561.190, 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.315, OL 2016, Ch 71, Sec. 9

AMEND: 603-048-2340

REPEAL: Temporary 603-048-2340 from DOA 7-2019

RULE TITLE: Compliance Testing Requirements for Hemp Cannabinoid Products

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) A handler must have every process lot of a finished hemp cannabinoid product prior to sale or transfer to a consumer tested for THC and CBD concentration in the same manner as cannabinoid products under OAR 333-007-0340.
- (2) A handler must have a process lot of a finished hemp cannabinoid product tested for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Department.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2350

REPEAL: Temporary 603-048-2350 from DOA 7-2019

RULE TITLE: Batch Requirements for Compliance Testing

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) Usable hemp: A handler must separate each harvest lot into no larger than 30 pound batches.
- (2) Hemp concentrates or extracts:
 - (a) A process lot of a hemp concentrate or extract is considered a batch.
 - (b) The size of a process lot submitted for sampling and testing for purposes of a control study under OAR 333-007-0440 and OAR 603-048-2440 defines the maximum process lot for that concentrate or extract for purposes of sampling and testing after a control study has been certified.
- (3) Hemp Cannabinoid products.
 - (a) A handler must separate process lots into not larger than 35,000 unit of sale batches.
 - (b) The size of a process lot submitted for sampling and testing for purposes of a control study under OAR 333-007-0440 and OAR 603-048-2440 defines the maximum process lot for that product for purposes of sampling and testing after a control study has been certified.
- (4) A handler must assign each batch a process lot identifier as described in OAR 603-048-0500 and that process lot identifier must be:
 - (a) Provided to the individual responsible for taking samples; and
 - (b) Included on the batch label as required in OAR 603-048-2380.
- (5) A handler may not reuse a process lot identifier.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2380

REPEAL: Temporary 603-048-2380 from DOA 7-2019

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

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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 registration 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 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2440

REPEAL: Temporary 603-048-2440 from DOA 7-2019

RULE TITLE: Control Study

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) A handler may request that a laboratory perform a control study on hemp concentrates, extracts, or hemp cannabinoid products in accordance with OAR 333-007-0440(1).
- (2) To be sufficient to satisfy the requirements of a control study under these rules, a laboratory must:
 - (a) Conduct the control study in accordance with OAR 333-007-0440; and
 - (b) Identify on a form prescribed by the Department if a batch undergoing a control study passed testing requirements identified in OAR 333-007-0440(6), and must send the form at the handler's request to the Department:
- (3) A control study passes or fails according to OAR 333-007-0440.
- (4) A process lot sampled and tested for purposes of a control study that passes all the required tests satisfies the testing required by ORS 571.330 and these rules.
- (5) If a hemp concentrate, extract or hemp cannabinoid product successfully passes a control study and the control study has been certified by the Department, future batches of the hemp concentrate, extract or hemp cannabinoid product may be sampled and tested according to OAR 333-007-0440(9)–(11) for a two year period unless a control study is invalidated under OAR 333-007-0440(10).
- (6) The Department will certify a control study for a hemp concentrate, extract or hemp cannabinoid product that passes all the required tests in accordance with this rule.
- (7) A control study is invalidated as specified in OAR 333-007-0440(10). A handler must report to the Department if a control study is invalidated under OAR 333-007-0440(10) and failure to report is a violation of these rules.
- (8) Any testing performed as part of a control study is considered a compliance test.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300-571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300-571.348, OL 2018, Ch. 116

AMEND: 603-048-2450

REPEAL: Temporary 603-048-2450 from DOA 7-2019

RULE TITLE: Failed Test Samples

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) If a sample or a field duplicate sample (collectively referred to as "sample" for the purposes of this rule) fails any initial test, the laboratory that did the testing may reanalyze the sample. The laboratory that did the initial test may not subcontract the reanalysis. If a primary sample or a field duplicate sample fails, both must be reanalyzed. If the sample passes, another laboratory must resample the batch and confirm that result in order for the batch to pass testing.
- (a) If a grower or handler wishes to have a sample reanalyzed, the grower or handler must request a reanalysis within seven (7) calendar days from the date the laboratory sent notice of the failed test to the handler. The reanalysis must be completed by the laboratory within 30 calendar days from the date the reanalysis was requested.
- (b) If a grower or handler has requested a reanalysis in accordance with subsection (1)(a) of this rule and the sample passes, the handler has seven (7) calendar days from the date the laboratory sent notice of the passed test to request that another laboratory resample the batch and confirm the passed test result. The retesting must be completed by the second laboratory within 30 calendar days from the date the retesting was requested.
- (c) A grower or handler must inform the Department within 24 hours, of the following, electronically to HempTestReports@oda.state.or.us using the forms provided the Department:
- (A) A request for reanalysis of a sample;
- (B) The testing results of the reanalysis;
- (C) A request for retesting; and
- (D) The results of retesting.
- (2) If a sample fails a test or a reanalysis under section (1) of this rule, the batch:
- (a) May be remediated or sterilized in accordance with the OAR 333-007-0450; or
- (b) Must be destroyed as required by OAR 333-007-0450 in a manner specified by the Department if the batch is not or cannot be remediated or sterilized under OAR 333-007-0450 or fails testing as described in OAR 333-007-0450.
- (3) If a grower or handler is permitted to remediate under this rule, the grower or handler must provide notice to the Department of the handler's intent to remediate.
- (4) A grower or handler must inform a laboratory prior to samples being taken that the batch has failed a test and is being retested after undergoing remediation or sterilization.

(5) A grower or handler must, as applicable:

(a) Have detailed procedures for sterilization processes to remove microbiological contaminants and for reducing the concentration of solvents.

(b) Document all sampling, testing, sterilization, remediation and destruction that are a result of failing a test under these rules.

(c) A grower or handler must report failed test results to the Department within 24 hours of receipt of the failed test report electronically to HempTestReports@oda.state.or.us using the forms provided by the Department.

(6) If a batch fails a test under these rules, the grower or handler must store, segregate, label, and may not remove the batch from the registered premises without permission from the Department in accordance with OAR 333-007-0450.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-2480

REPEAL: Temporary 603-048-2480 from DOA 7-2019

RULE TITLE: Additional Testing

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

RULE TEXT:

- (1) The Department may require a grower or handler to submit samples identified by the Department to a laboratory of the handler's choosing to be tested in order to determine whether a grower or handler is in compliance with OAR 603-048-2300 through 603-048-2500, and may require additional testing that is not required by these rules.
- (2) To be sufficient to meet the requirement for audit testing under this rule, a grower or handler must ensure, through a testing agreement or contract, that the laboratory conducting the testing complies with these rules, to the extent they are applicable, and if conducting testing not required by these rules, may only use Authority approved methods.
- (3) The Department may establish a process for the random testing of hemp items for microbiological contaminants.
- (4) Any testing ordered under this rule must be paid for by the grower or handler.

STATUTORY/OTHER AUTHORITY: ORS 561.190, 571.300 - 571.348, OL 2018, Ch. 116

STATUTES/OTHER IMPLEMENTED: ORS 571.300 -571.315, OL 2018, Ch. 116

AMEND: 603-048-2500

REPEAL: Temporary 603-048-2500 from DOA 7-2019

RULE TITLE: Quality Control and Research and Development Testing

NOTICE FILED DATE: 03/27/2019

RULE SUMMARY: Under state law, ORS 571.330, industrial hemp intended for human consumption and hemp items must be tested in the same manner that marijuana is required to be tested under OHA's rules. OHA recently adopted new testing rules. ODA filed temporary rules on March 1, 2019 to make ODA's testing rules consistent with OHA's new testing rules in order to fully comply with state law and to avoid confusion. ODA proposes to adopt these rule changes permanently.

The department also proposes to adopt these rules to address HB 4089's changes to the hemp program and to otherwise clarify existing rules that were not adopted in the December 2018 filing. To summarize, the proposed permanent rules; Restructure the grower registration application process and fees; Restructure handler registration application processes and fees and adds the option for registration by reciprocity for OLCC-licensed processors certified to process industrial hemp; Clarify and update recordkeeping and reporting; Clarify the option to remediate through resampling if a harvest lot fails pre-harvest testing; Revise sampling procedures for pre-harvest THC testing; Establish a fee for submission of change form; Adopt a fee for department-provided pre-harvest THC testing; Clarify requirements for individuals making retail sales of industrial hemp in Oregon; and as stated above, Clarify purpose of testing rules.

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) Registrants 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 2018, Ch. 116

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