Subject: Re: Feedback on ODA hemp RAC draft
Date: Wednesday, October 15, 2025 at 11:06:04 AM Pacific Daylight Time
From: WERNETTE Danette * ODA <Danette.WERNETTE@oda.oregon.gov>
To: CROWLEY Steven * OLCC <Steven.Crowley@olcc.oregon.gov>, SUMMERS Sunny * ODA <Sunny.SUMMERS@oda.oregon.gov>

Good morning, Steven.

Thank you so much for this feedback. We'll take this all under consideration.

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From: CROWLEY Steven * OLCC <Steven.Crowley@olcc.oregon.gov>
Date: Wednesday, October 15, 2025 at 9:07 AM
To: WERNETTE Danette * ODA <Danette.WERNETTE@oda.oregon.gov>, SUMMERS Sunny * ODA <Sunny.SUMMERS@oda.oregon.gov>
Subject: Feedback on ODA hemp RAC draft

Feedback on the draft rules

- 0010
  - I recommend getting rid of all the carriage returns (manual line breaks) and replace them with normal paragraph breaks – you can see the difference by toggling on hidden formatting symbols (ctrl-*). This will fix the uneven spacing between different rule sections/paragraphs. Fastest way to do this is do a find-and-replace, finding ^l and replacing with ^p. (I know it's a small thing, but it makes a huge difference in readability)
  - The definition of "Barrier" is ambiguous. See page B-3, section 2.d. of the Oregon AG's Administrative Law Manual. I don't know how a person is supposed to understand the phrasing "may include but is not limited to…." That phrasing implies that it also may *not* include the things listed in the rule in some circumstances. But also that it may – or may not – include any number of other things as well. It feels a bit unfair.
  - I understand the objective behind defining "Contiguous," but I think there's a more elegant way to do it. The word "contiguous" is used quite a few times through the rules, often in reference to contiguous lots, parcels, or tracts of land. If I'm understanding correctly, this definition isn't mean to apply to *those* instances of the word – it is only

meant to apply to references to contiguous production areas. If that's the case, I think it would be better to include this language within the definition of a "production area." As it stands, this definition of "contiguous" is really only used within the definition of "production area" and doesn't apply to any instance of the word "contiguous" outside the definitions rule.
    - "Immature hemp plant":
        - What is the difference between "flowers" and "floral material"?
        - Do you really want to consider it flowering when a part of the flower is visible to the naked eye? My understanding is that female plants cross that threshold a few weeks after planting. This is how plants are sexed to ensure there are no male plants (for crops that don't want male plants). This is why OLCC put a size requirement in our definition ("a mass of pistils measuring greater than two centimeters wide at its widest point").
        - If keeping the definition as-is, I recommend choosing whether or not to use oxford commas and being consistent. Both comma styles have situations where they can be ambiguous, but either one is better than having ambiguity about whether or not to expect an oxford comma in a list. (There is no official standard specified in the AG Admin Law Manual; OLCC marijuana and hemp rules consistently use oxford commas)
    - Should "immature hemp plant" and "mature hemp plant" have a "does not include a marijuana plant"? Or a "cannabis plant grown by a hemp grower at a hemp grow site"? Something to make clear that a cannabis plant at a marijuana producer or an illicit grow isn't hemp?
    - "Vendor site": Does this definition change mean that a website that sells hemp needs a vendor license for the site **and** a vendor license for the location where the hemp is stored? How does a vendor license for a website relate to physical space in reality? Would this allow a website to do popup sales at any location as long as they process the payments through their web domain?
- 0125
    - (3) is ungrammatical. I'm not sure what the relationship is supposed to between seeds and starts, but I think "from" should come before "seeds"
    - New language for (6): Admin law manual says to avoid using a colon except to introduce a numbered list. You could make subsections. E.g. "(a) Trim in accordance with OAR [cite endorsement rule]."
    - Transferring immature plants:
        - Add a space after ORS in "ORS571.055"
        - This seems to prohibit a grower from receiving immature plants from out of state, or from transferring immature plants to someone else out of state. May be justifiable, but probably worth checking into constitutional implications.
    - Transferring mature plants:
        - Same note about prohibiting import/export
        - Depending on the definition of mature, the requirement to pass preharvest testing may not be possible. Pre-harvest testing must be done within 30 days of harvest, but a plant may be "mature" after only a few weeks (if a plant is considered mature when there are any visible floral parts)
- Grower endorsements
    - I think there is some missing language. It doesn't actually say what the endorsements are, or how they are issued, or whether / for what reasons they can be denied, or what

recourse an applicant has in case of a proposed denial of an endorsement, or when/how a licensee can request to add or remove an endorsement. It just describes when a licensee can engage in certain activities, then says that ODA may revoke an endorsement (without ever having said that endorsements are a thing that you issue).
    - This rule talks about the LUCS showing that the use of the premises is "permitted"; compare with -0151(3)(b) which talks about uses that are "not prohibited." I am familiar with LUCS documents showing that a use is not prohibited, rather than affirming that it is permitted (my understanding is that permitted an activity can be an entirely separate process that might require a license or some other application, while a LUCS is solely meant to identify if it is a prohibited use of the property)
    - Have you correctly captured who signs the LUCS? I know we've run into edge cases where a city may make land use determination in an area that's outside city limits but within the UGB. OLCC rules talk about getting the LUCS from the "city or county that authorizes land use" for the proposed licensed premises.
    - An abbreviation only needs to be introduced once, or at least only once within a rule (if using throughout multiple rules, it can be in the definitions).
- 0150
    - (1) is at odds with the grower endorsements allowing a grower to do some handler activities. It might be a bit clearer to acknowledge that explicitly. You could add a "Notwithstanding [...]" up with the grower privileges, or add an "... except as otherwise permitted under these rules" here, or both.
- 0151
    - The first letter of each section/paragraph should be capitalized (capitalize "hemp" in (1)(a) to (d); I think this occurs in other parts of these rules as well)
    - (2) says "subsection (3)" – should be "section (3)" instead. In -xxxx(1)(a)(A)(i): (1) is the section, (a) is the subsection, (A) is the paragraph, and (i) is the subparagraph.
    - (3)(b): I think change "processing endorsement" to just "endorsements"? This is the only place where the phrase "processing endorsements" occurs, and it's not defined.
    - (3)(c): Feels like it's getting close to unpromulgated rulemaking, where your requirements differ depending on changes outside of your control. It's one thing if the LGB requires documentation before *they* sign a LUCS, but it feels strange if your documentation requirements change depending on whether the LGB wants them to or not (mechanism/authority for the LGB to require you to require the applicant to provide the documentation is not clear to me)
    - What about animal products? Separate endorsement? Or oral products require edible, skin/hair products require topical, etc., regardless of which species is the intended consumer?
    - (6): I forgot to flag this when talking about our rules, but we don't really use this language. I expect we will repeal it next time this rule is open. We no longer collect information about what products the business processes, so we don't need them to notify us when they stop processing a particular product. And it would be so much unnecessary effort to review their product list every time they start/stop processing a product. And just because they aren't processing something anymore doesn't mean they aren't allow to have that endorsement.
    - I'm unclear on the difference between the two (X) sections... they sound like two different ways of saying the same thing.
- 0175
    - Same comment as above in definitions regarding vendor licenses for a URL – How

does this interplay with real life space?

- 0400
  - (3): I definitely understand the impulse to require pre-approval, but there are challenges. It takes staff time. Sometimes it's just not realistic, for example with publicly traded companies – they don't know who is buying or selling stock until it happens, and it happens constantly every day. Especially with licensing vendors, there is the potential to have large privately-held businesses who would need to get pre-approval before transferring a handful of shares to a new investor.
- 0800
  - (4)(b)(A): replace "or" at the end of the paragraph with a period.
- 1000
  - (4)(a)(H): I think "603-048-2000" is meant to be "603-048-2300"
- 1500
  - (2)(a): I'm a little confused on this one. Specifically the bit about compliance with OAR 603-048-2300(4) not being required. I *think* the purpose of saying that is to make sure it's inclusive of out-of-state products? But it also looks like OAR 603-048-2300(4) is really the only thing putting specific requirements on the sampling and testing being in accordance with OAR chapter 333 div 7. I understand some of these requirements not applying well to out-of-state products (e.g. agreement to report failures to ODA) but I think this may be a broader exemption than you intended.
  - (3)(b): Check with ORELAP/David: Is ISO accreditation analyte-specific? Does this need to specify that they are accredited for all relevant analytes in the indicated matrices? Also, ISO is not defined.
- 2300
  - (1) & (2)(b): I think you want to keep "transfer" in the list. Otherwise it suggests it's a violation to offer the transfer but not a violation to actually transfer it.
  - (1), (3)(b), (4): These rules are written to apply *exclusively* to growers and handlers. While other rules make clear that out-of-state manufacturers/distributors/retailers are supposed to comply with OAR 603-048-2300 to -2480, these rules seems to completely omit out-of-state operators.
    - This is an issue throughout the testing rules in chapter 603 div 48, including some not included in this draft (e.g. 603-048-3215)
- 2310
  - (50): In the definition of "TNI Standards" – I recommend just citing the definition rule but omitting the section number – OAR 333-064-0025 instead of OAR 333-064-0025(52). That way you won't need to amend your rule if they add another definition that changes the numbering.
- 2450:
  - How is this rule intended to function for out-of-state businesses? Do those labs also need to notify ODA of the failure or request to remediate? If so, the rules above probably need to make clear that an out-of-state business requesting testing needs to notify the testing lab if they intend to sell the product in Oregon and have a contract with the lab ensuring that the lab will follow the obligations that apply to Oregon-licensed labs.
  - (6): Either remove the "must" before the colon, or remove the "Must" and "May" from the front of (a) and (b).
- 3220:
  - If this is a new requirement (I think it is?) there may be handlers who currently use

DMSO in topicals. If so, maybe consider whether this is fully prohibited vs prohibited for sale to Oregon consumers?
    - (2)(b): This is citing the marijuana serving/package limits. We do not currently have serving size identification requirements for hemp edibles (though this may be on the table for discussion next year).
- [Edible Endorsement]
    - (2)(b): I believe this practice is currently pretty widespread. Humm Kombucha (bottle Downshift), Rogue Brewery (bottles their own CBD seltzer), any handler at a commissary kitchen, etc. Prohibiting it would be a major change. (2)(a) might also be an issue for brew-pubs that are making or want to make hemp seltzers.
    - (2)(c): This would prohibit a handler from using out-of-state hemp concentrates/extracts.
- [Extract/Concentrate]
    - (2)(b)(A): My understanding is that the CoO is, by definition, issued by the local building official. I am not aware of fire marshals issues CoOs in Oregon, but if there's a jurisdiction where they do I think it would still be in the role of local building official. Maybe check with Office of the State Fire Marshal about this language?
    - (2)(b)(B): This is a rule where we inadvertently adopted language from a different draft than intended. We do not require or collect the inspection report for CO2 extraction units. Replacing "if applicable" with "if using hydrocarbon solvent in the equipment" would be clearer than our current language.
- [Inhalable]
    - As we discussed, OLCC intends to adopt the registry rules at our November Commission Meeting, to take effect January 1, 2026. However, the registry rules only apply for sale in Oregon. If you're intent is to adopt rules that apply to handlers generally, that will still probably require separate ODA rules.
- [Topical]
    - Same note as above under edibles: The concerns are similar, but not identical, for hemp topicals vs marijuana. But it's probably best to get a clear idea of

Big Picture:

- Temporary / special events with hemp: I know this has come up a couple times and will probably continue to. The status quo is tricky – handlers can more or less sell anywhere anytime, but everyone else needs an annual license for the sale location. I don't know if there's a great solution, but it would be at least simpler if it there weren't the big divide in privileges between handlers and vendors.
- If I recall correctly, handler privileges currently do not restrict the licensee to storing hemp items at the licensed premises. If that's the case, would you want to shore that up so you have clear authority to inspect any area where a licensee is storing hemp items?

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