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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILED

07/31/2020 9:55 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update to Hemp Rules-Compliance with USDA IFR Requirements

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/16/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Amy Bingham
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/08/2020

TIME: 9:00 AM - 12:00 PM

OFFICER: Amy Bingham

ADDRESS: Virtual Hearing:

GoToMeeting

635 Capitol St. NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Hemp Rules Public Comment Meeting

Thu, Oct 8, 2020 9:00 AM - 11:00 AM

(PDT)

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NEED FOR THE RULE(S):

The 2018 Farm Bill (Farm Bill) created a federal framework for regulating hemp through the US Department of Agriculture (USDA). The Farm Bill requires states that want to have the delegated authority to regulate hemp in their state to submit a state plan to USDA for review and approval within a year of the USDA publishing their rules. The USDA published Interim Final Rules (IFR) on October 31, 2019. ODA is updating their rules to meet the Farm Bill and IFR requirements in order to submit a state plan for review to the USDA. The primary changes being made are background check requirements, changes to pre-harvest sampling requirements, transportation requirements for intermediate hemp commodities, and updates to enforcement. There is a possibility that the US Congress may pass a bill extending the time states can continue to operate under the 2014 Farm Bill. These rules include a new rule that limits these changes if that were to happen.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 571, 2018 Farm Bill, USDA IFR, USDA Sampling Guidelines

Available from ODA Hemp website at <https://oda.direct/hemp>

FISCAL AND ECONOMIC IMPACT:

We anticipate minimal fiscal and economic impact to all parties.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s): No cost of compliance anticipated for state agencies, local government or members of the public.

(2) Effect on small businesses: (a) estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, record keeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

A) In calendar year 2019, ODA issued 2,558 registrations to growers and handlers. To date in calendar year 2020, ODA has issued 2,030 registrations to growers and handlers and will continue to accept applications through November 2020.

B) Additional reporting to USDA will be required.

C) Minimal to none.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small business owners were included as members on the rules advisory committee in the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

603-048-0010, 603-048-0100, 603-048-0125, 603-048-0150, 603-048-0200, 603-048-0225, 603-048-0300, 603-048-0400, 603-048-0550, 603-048-0600, 603-048-0610, 603-048-0630, 603-048-0800, 603-048-0900, 603-048-1000, 603-048-8000

AMEND: 603-048-0010

RULE SUMMARY: • Added definition of conviction/convicted

- Updated definition of harvest lot to meet USDA IFR needs
- Defined key participant and ownership interest

CHANGES TO RULE:

603-048-0010

Definitions ¶¶

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) "Conviction" or "convicted" means any plea of guilty or no contest, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. A conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or no contest and enter a plea of guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction.¶¶

(7) "Crop" means industrial hemp grown under a single registration.¶¶

(78) "Department" means the Oregon Department of Agriculture.¶¶

(89) "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.¶¶

(910) "Grower" means a person, joint venture or cooperative that produces industrial hemp.¶¶

(101) "Grow site" means one contiguous lot, parcel, or tract of land used to produce or intended to produce industrial hemp.¶¶

(112) "Handler" means a person, joint venture or cooperative that receives industrial hemp for processing into

commodities, products or agricultural hemp seed.¶

(123) "Handling site" means one contiguous lot, parcel, or tract of land used to handle or intended to handle industrial hemp.¶

(134) "Harvest Lot":¶

(a) Means a quantity of ~~industrial hemp~~ Cannabis of the same variety or strain harvested in a distinct timeframe that is:¶

(A) Grown in one contiguous production area within a grow site; or¶

(B) Grown in a portion or portions of one contiguous production area within a grow site.¶

(b) Does not include a quantity of industrial hemp comprised of industrial hemp Cannabis grown in noncontiguous production areas.¶

(145) "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.¶

(156) "Hemp Item" has the meaning provided in OAR 603-048-2310.¶

(167) "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.¶

(178) 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.¶

~~(189)~~ "Key participant" means any person listed on an application for a grower registration and:¶

(a) If the applicant is a limited partnership, each partner in the limited partnership;¶

(b) If the applicant is a limited liability company, each member or manager of the limited liability company;¶

(c) If the applicant is a corporation, each director and officer of the corporation;¶

(d) Any individual or legal entity with an ownership interest in the business proposed to be registered.¶

~~(20)~~ "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.¶

~~(219)~~ "OLCC" means the Oregon Liquor Control Commission.-¶

~~(22)~~ "Ownership interest":¶

(a) Includes any person or legal entity that exercises control over, or is entitled to exercise control over, the business. Control over the business includes but is not limited to the authority to enter into a contract or similar obligations on behalf of the business.¶

(b) Does not include an employee acting under the direction of the owner or other non-executive employees such as farm, field, or shift managers that do not make financial planning decisions and that do not vote or exercise control of the business.¶

~~(203)~~ "Process" means the processing, compounding, or conversion of industrial hemp into industrial hemp commodities or products or agricultural hemp seed.¶

~~(214)~~ "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.¶

~~(225)~~ "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. ¶

~~(236)~~ "Produce" means the planting, cultivation, growing, or harvesting of industrial hemp.¶

~~(247)~~ "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.¶

~~(258)~~ "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.¶

~~(269)~~ "Registrant" means a grower or handler or agricultural hemp seed producer registered with the Department under these rules.¶

~~(2730)~~ "Tetrahydrocannabinol" or "THC" means tetrahydrocannabinol and has the same meaning as delta-9 THC.¶

~~(2831)~~ "Total THC" means the molar sum of THC and THCA.

Statutory/Other Authority: ORS 561.90, ORS 571.~~30~~260-571.348, OL 2018, Ch.116

Statutes/Other Implemented: ORS 571.~~30~~260-571.348, OL 2018, Ch.116

AMEND: 603-048-0100

RULE SUMMARY: • Fixes language that accidentally got changed last time as to what a grower can do

- Also makes a carve out for seed labs that do germination tests

CHANGES TO RULE:

603-048-0100

Registration, generally ¶¶

(1) Industrial hemp is an agricultural product subject to regulation by the Department.¶¶

(2) Only a registrant may ~~produce~~sell, store, or transfer industrial hemp, except as provided in ~~Oregon Laws 2018, Chapter 116, Section 20~~ORS 475B.301, ORS 571.266 and this rule.¶¶

(a) Laboratories are not required to be registered to sample, test, or transfer or store industrial hemp for sampling and testing purposes; and¶¶

(b) Seed testing facilities with a registered seed technologist registered by the Society of Commercial Seed Technologist or certified seed analyst certified by the Association of Official Seed Analysts are not required to be registered to sample, test, treat, or transfer or store industrial hemp seed or seedlings for sampling and testing purposes.¶¶

(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~~ORS 571.337, and rules adopted thereunder.-¶¶

~~(65)~~ 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.¶¶

~~(76)~~ 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.~~302~~260 - 571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.~~302~~260 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-0125

RULE SUMMARY: • Follows on for the carve out for seed labs made in 603-048-0100

CHANGES TO RULE:

603-048-0125

Grower Registration

(1) Only a grower registered with the Department may produce industrial hemp except as exempted in OAR 603-048-0100.¶

(2) Industrial hemp may only be produced at grow sites registered with the Department except as exempted in OAR 603-048-0100.¶

(3) A registered grower may use any propagation method, including planting seeds from, or starts, or the use of clones or cuttings, to produce industrial hemp.¶

(4) The Department shall make available to registered growers information that identifies registered agricultural hemp seed producers from whom growers may purchase agricultural hemp seed.

Statutory/Other Authority: ORS 561.190, 569.445, 571.30260-571.348 & 633.511-633.996

Statutes/Other Implemented: ORS 571.30260-571.348

AMEND: 603-048-0150

RULE SUMMARY: Updates statutory references

CHANGES TO RULE:

603-048-0150

Handler Registration

- (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 845-025-0328510 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 571.30260-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.30260-571.348, OL 2018, Ch. 116

AMEND: 603-048-0200

RULE SUMMARY: • Adds requirement for background checks and no felony associated with a controlled substance to meet USDA IFR

• Makes it clear that if applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration ODA will not issue a registration

CHANGES TO RULE:

603-048-0200

Applications to Register or Renew Grower Registration ¶¶

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

(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. All application requirements for a registration apply to an application for renewing a registration except that a copy of a criminal background check as described in section (4)(d) is only required to be submitted every three years.¶¶

(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.¶¶

(d) For a grower registration for 2021 or later, a copy of a criminal background check completed for the applicant or if the applicant is a business entity, every key participant in the applicant business. The criminal background check must have been completed within the 60 days before the date the application is submitted. The criminal background check must be obtained by the individual applicant or key participant by submitting a request for their own criminal history records with the Oregon State Police or for their own Identity History Summary with the United State Federal Bureau of Investigation.¶¶

(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 and all key participants;¶¶

(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)~~ (C) 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:¶
 - (A) The applicant fails to satisfy any of the requirements for initial registration.¶
 - (B) The applicant or any key participant has been convicted of a felony relating to a controlled substance within the last ten years from the date of application unless the convicted individual was growing hemp lawfully under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 before October 31, 2019.¶
 - (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; or¶
 - (C) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration.¶

NOTE: More information on how to request a criminal history check is available at
 Statutory/Other Authority: ORS 561.190, 569.445, 571.30260-571.348, 633.511-633.996, OL 2018, Ch.116
 Statutes/Other Implemented: ORS 571.30260-571.315, OL 2018, Ch.116

AMEND: 603-048-0225

RULE SUMMARY: • Clarification about applications and renewals

- Clarification about Oregon Secretary of State requirements
- Updates statutory references

CHANGES TO RULE:

603-048-0225

Application to Register or Renew Handler Registration

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

(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. All application requirements for a registration apply to an application for renewing a registration.

(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 571.30260 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);¶¶

(ii) A rule adopted under a provision of ORS 571.30260 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 571.30260 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; or¶¶

(C) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration.¶¶

(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 845-025-0328510 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, 571.30260-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.30260-571.315, OL 2018, Ch. 116

AMEND: 603-048-0300

RULE SUMMARY: • Clarification about applications and renewals

- Clarification about Oregon Secretary of State requirements
- Updates statutory references

CHANGES TO RULE:

603-048-0300

Application to Register or Renew Agricultural Hemp Seed Producer Registration

- (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. All application requirements for a registration apply to an application for renewing a registration.¶
- (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 571.30260 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);;¶

(ii) A rule adopted under a provision of ORS 571.30260 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 571.30260 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; or¶

(C) The applicant is a business entity that is required to be registered with the Oregon Secretary of State but does not have an active registration.¶

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

Statutory/Other Authority: ORS 561.190, ORS 571.30260 - 571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.30260 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-0400

RULE SUMMARY: • Updates reporting requirements regarding background checks and criminal history

- Adds requirement to report information to USDA FAS

CHANGES TO RULE:

603-048-0400

Reporting Requirements ¶

(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.¶

(c) Beginning January 1, 2021, a felony conviction of the applicant or registrant, or if a business entity, any key participant, relating to a controlled substance.¶

(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.¶

(5e) On and after January 1, 2020, ¶The registrant must submit with the Change in Business or Ownership a copy of a criminal background check for any new key participant in the registrant business in accordance with OAR 603-048-0200(4)(d) except that the criminal background check must have been completed within the 60 days before the date the change form is submitted.¶

(5) 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); planted;¶

(B) Amount of industrial hemp harvested;¶

(BC) Number Amount of pounds harvested industrial hemp disposed, if applicable; and¶

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

~~(b8) Hand~~ Growers shall report to the ~~Department on forms provided by the Department~~ United States Department of Agriculture Farm Service Agency the following information:¶

~~(Aa) Type of industrial hemp commodities and products produced;~~ Street address and geospatial location for each production area;¶

~~(Bb) The amount of industrial hemp commodities and products produced per type~~ Acreage dedicated to the production of hemp or greenhouse or indoor square footage dedicated to hemp; and¶

~~(Cc) Any other information as specified on the forms by the Department~~ ODA grower registration number.

Statutory/Other Authority: ORS 561.190, 571.30260 - 571.378, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.30260 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-0550

RULE SUMMARY: Adds requirements for hemp handlers to have specific paperwork available when transporting hemp commodities

CHANGES TO RULE:

603-048-0550

Transport Requirements

(1) When transporting industrial hemp or agricultural hemp seed, registrants must ensure a copy of the hemp registration and a copy of the pre-harvest test results that corresponds to the harvest lot in transit as identified by harvest lot identifier accompanies the industrial hemp or agricultural hemp seed.

(2) "Industrial hemp commodities" for the purpose of this rule means industrial hemp items that are not, or are not yet, packaged for retail sale.

(3) When transporting industrial hemp commodities, handlers must ensure a copy of the hemp registration accompanies the industrial hemp commodities.

Statutory/Other Authority: ORS 561.190, 571.302~~60~~-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.302~~60~~-571.348, OL 2018, Ch. 116

AMEND: 603-048-0600

RULE SUMMARY: • Sampling and testing now split out into two separate rules

- Updates language to mirror USDA IFR language
- Adds requirement for annual training for all staff of a lab that are in the field doing the sampling

CHANGES TO RULE:

603-048-0600

Pre-Harvest Sampling and Testing for Tetrahydrocannabinol ¶¶

~~(1) The requirement that a harvest lot not exceed permissible total THC concentration levels and the requirement that a grower must ensure that the grower's entire crop is timely sampled and tested according to these rules. A grower may not 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. A harvest lot until it has been sampled in accordance with these rules.¶¶~~

~~(2) The grower or authorized representative must provide the sampler with unrestricted access to all hemp and other Cannabis plants whether growing or harvested and all lands, buildings, and other structures used for cultivation, handling, and storage of all hemp and Cannabis and all other locations listed in the grower's registration.¶¶~~

~~(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 a~~ 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~~ conducts sampling in accordance with these rules.¶¶

~~(d) Requires all laboratory staff~~ conducting sampling to complete annual 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.¶
- (68) ~~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 571.302-571.348, OL 2018, Ch.116

Statutes/Other Implemented: ORS 571.302-571.348, OL 2018, Ch. 116, Sec. 28

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Exhibit A: Sampling Protocol

Hemp Pre-Harvest Testing

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

A. General Sampling Requirements

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

B. Initiating a Sampling Request

1. The Laboratory must receive a complete Hemp Sampling and Testing Request Form prior to sampling. The Laboratory must receive a new and separate "Harvest Lot Sampling Request Description" for each "Harvest Lot" to be sampled.
2. The Laboratory must complete the Hemp On-Site Sampling Form. The Laboratory must complete a new and separate "Harvest Lot On-Site Sampling Description" for each Harvest Lot to be sampled.
3. A "Harvest Lot" means:
 - a. Means a quantity of Cannabis of the same variety or strain harvested within a distinct timeframe that is:
 - A. Grown in one contiguous production area within a grow site; or
 - B. Grown in a portion or portions of one contiguous production area within a grow site.
 - b. Does not include cannabis grown in noncontiguous fields or noncontiguous growing areas.
4. Prior to beginning the sampling procedure, the sampler shall:

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

² Note that the sampling of hemp for pre-harvest THC concentration itself is not accredited by OHA. Exhibit A: Sampling Protocol.

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

C. Survey and sample collection

1. The sample pattern must ensure that all parts of the harvest lot are adequately and proportionately represented in the plants inspected and sampled.
2. The sampler must use a sawtooth pattern when sampling the harvest lot. Two (2) sawtooth patterns are provided below. The approved sampler must choose one of the patterns most suitable for the field to be sampled. (Figure 1 and 2). The sampler must walk at right angles to the row of plants. The sampler must sample according to the pattern to the extent possible but may deviate from the pattern as necessary to account for particular physical growing conditions and to ensure that all parts of the harvest lot are adequately and proportionately sampled to produce a representative sample.
 - a. A sample shall be obtained from flowering tops when flowering tops are present. The cut shall be made just underneath the flowering material, meaning inflorescence (the flower or bud of a plant), located at the top one-third {1/3} of the plant.³ Samplers should avoid sampling dead, diseased, or mechanically injured plants.
 - b. A sample shall consist of no more than one sample per plant, randomly chosen from the harvest lot. Place each sample in a paper bag.
 - c. Since they are a measure of the entire harvest lot, all samples from the harvest lot may be collected into a single bag.
 - d. Samplers should avoid collecting too many samples from the borders of the harvest lot.
3. Sample Size:
 - a. **The sample size must be at least 4 ounces wet weight, which is the minimum amount necessary for laboratory tests and file samples.**
 - b. When sampling from a smaller production area, select a minimum of one (1) plant. For production areas of two (2) to ten (10) acres, select a minimum of one plant per acre.
 - c. For production areas larger than ten (10) acres, the number of plants to be selected is based on the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999. Table 1 provides the number of plants to be selected for 0-173 acres production areas.

³ See note on harvest lots intended for flower production in the General Sampling Requirements. Exhibit A: Sampling Protocol.

Table 1. Sampling Table

Number of Acres:	Minimum number of plants to sample:	Number of Acres:	Minimum number of plants to sample:	Number of Acres:	Minimum number of plants to sample:	Number of Acres:	Minimum number of plants to sample:
Less than 1	1	30	28	68	56	115-116	84
1	1	31-32	29	69-70	57	117-118	85
2	2	33	30	71	58	119-120	86
3	3	34	31	72-73	59	121-122	87
4	4	35	32	74	60	123-124	88
5	5	36	33	75-76	61	125-126	89
6	6	37-38	34	77	62	127-128	90
7	7	39	35	78-79	63	129-130	91
8	8	40	36	80-81	64	131-132	92
9	9	41-42	37	82	65	133-134	93
10	10	43	38	83-84	66	135-136	94
11	11	44	39	85-86	67	137-138	95
12	12	45-46	40	87	68	139-140	96
13	13	47	41	88-89	69	141-143	97
14	14	48	42	90-91	70	144-145	98
15	15	49-50	43	92	71	146-147	99
16	16	51	44	93-94	72	148-149	100
17	17	52	45	95-96	73	150-152	101
18-19	18	53-54	46	97-98	74	153-154	102
20	19	55	47	99	75	155-156	103
21	20	56	48	100-101	76	157-158	104
22	21	57-58	49	102-103	77	159-161	105
23	22	59	50	104-105	78	162-163	106
24	23	60-61	51	106-107	79	164-166	107
25-26	24	62	52	108	80	167-168	108
27	25	63-64	53	109-110	81	169-170	109
28	26	65	54	111-112	82	171-173	110
29	27	66-67	55	113-114	83		

For harvest lots with additional acres, use the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999 to determine the number of plants to sample.

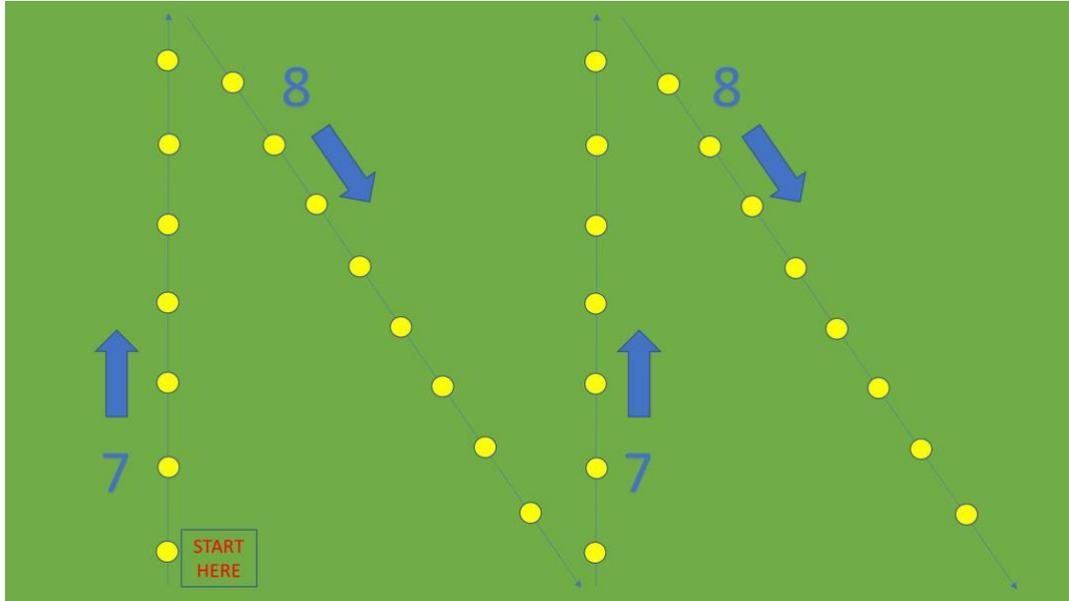


Figure 1. This is a typical sawtooth survey pattern starting in the lower “left” corner of the field. The yellow dots indicate the approximate locations to collect samples.

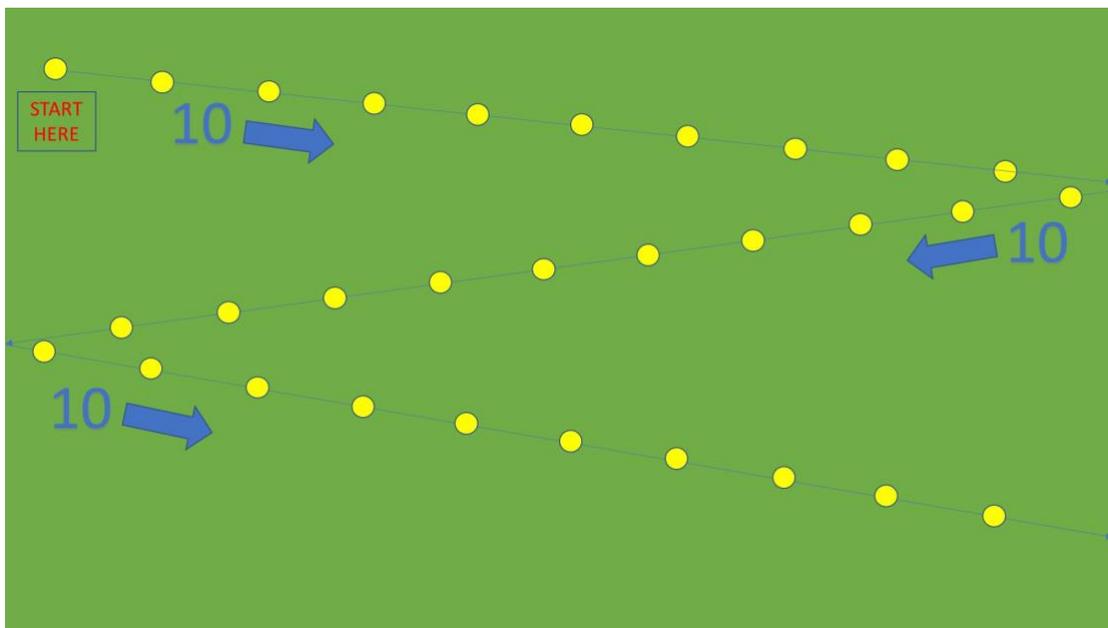


Figure 2. This is another typical sawtooth survey pattern starting in the top “left” corner of the field. The yellow dots indicate the approximate locations to collect samples.

D. Reporting and Recordkeeping Requirements

1. The Laboratory shall record data for all samples collected on the appropriate forms for sample collection. All records must clearly identify the harvest lots by harvest lot identifier.
2. Sampling staff shall submit to the testing Laboratory a copy of the following forms for each Harvest Lot with the samples when submitting for testing.
 - a. Hemp Sampling and Testing Request Form

Exhibit A: Sampling Protocol.

Oregon Department of Agriculture Hemp Program Phone: (503) 986-4652 Email: hemp@oda.state.or.us Website: <https://oda.direct/hemp> Rev. July 2020

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

E. Preparation of the Composite Sample

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

F. Equipment and supplies

1. Forms (including extra sample request forms)
2. Paper bags for samples
3. Permanent pens for marking on paper sample bags

4. Pruning shears for collecting foliar samples
5. Single-use Coveralls
6. Gloves, disposable
7. Boots or booties (waterproof recommended)
8. Rain gear (recommended)
9. Boxes for storing sample equipment and samples
10. Bleach, 10% solution or other acceptable surface disinfectant for cleaning tools or boots between fields
11. Clipboard
12. Clicker to count the number of samples collected (optional)
13. GPS Device or device with GPS capabilities

G. Sanitation

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

H. Resampling

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

References

USDA APHIS National Seed Health Service. 2001. Reference manual B: Seed health testing and phytosanitary field inspection methods manual. Version dated 2/27/2001, USDA APHIS NSHS, Beltsville, MD, 56 pp.

http://www.aphis.usda.gov/import_export/plants/plant_exports/national_seed_health_system.shtml

OAR Chapter 603, Division 48

ADOPT: 603-048-0610

RULE SUMMARY: • New rules; separate sampling and testing

- Updates language to mirror USDA IFR language
- Requires labs to report test results to USDA (in addition to ODA)

CHANGES TO RULE:

603-048-0610

Preharvest Testing for Tetrahydrocannabinol

(1) All testing must be performed by the Department or a laboratory. ¶

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

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

HempTestReports@oda.state.or.us using the forms provided or approved by the Department, or via an online portal operated by the Department, 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) 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.¶

(3) If a sample fails testing a grower must ensure that:¶

(a) The laboratory sends the failed test report electronically to the Department in accordance with subsection

(2)(c) of this rule within 24 hours of the failed test report.¶

(b) The laboratory sends failed test reports to the grower who requested the testing using the forms provided or approved by the Department within 24 hours of the failed test report.¶

(4) 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.¶

(5) 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.¶

(6) 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 (4) and (5) 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 (4) and (5) 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.

(7) 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) Sampling or testing that does not comply with all of the requirements and standards of these rules is invalid. A harvest lot that has been invalidly sampled or tested 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.

(8) Upon receipt of a failed test report:

(A) The grower must immediately segregate the harvest lot and clearly label that it has failed testing.

(B) The grower must immediately detain the harvest lot at the grow site and may not sell, transfer, or process the harvest lot.

(C) The grower may not move the harvest lot from the grow site without written permission from the Department.

(9) For any harvest lot that fails testing, unless the harvest lot passes testing upon resampling or retesting in accordance with OAR 603-048-0630, the grower must:

(a) Dispose of the harvest lot, including all parts of the Cannabis plants including the stalk and seed, in accordance with Department guidance

(A) Within fourteen (14) days of the failed test report if no resample or retesting is sought unless extended by the Department in writing; or

(B) Within fourteen (14) days of any failed test report from any resampling or retesting if pursuing resampling or retesting in accordance with OAR 603-048-0630 unless extended by the Department in writing.

(b) Submit a disposal report to the Department on a form provided by the Department within seven (7) days of completing disposal.

(10) 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.

(11) In addition to the testing required by this section the Department may inspect any grower's crop or portion thereof and take a representative sample for testing for THC content. The Department may detain, seize, embargo, and dispose of any Cannabis that fails THC testing as described in sections (4) and (5) of this rule.

(12) Beginning January 1, 2021, the grower must ensure that the laboratory that conducted the testing reports the test results for all samples tested to the United States Department of Agriculture. The test results report must contain the following information:

(a) Grower's registration number;

(b) Grower's name;

(c) Business address of the grower;

(d) Harvest lot identifier;

(e) Name of the laboratory;

(f) Date of the test and report;

(g) Whether it is a retest;

(h) Test result.

NOTE: Department guidance on disposal is available at <https://oda.direct.hemp>.

Statutory/Other Authority: ORS 561.190, ORS 571.260-.348

Statutes/Other Implemented: ORS 571.260-.348

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

Exhibit B: Testing Protocol Hemp Pre-Harvest Testing

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

A. Testing Requirements

1. Testing may only be performed by a laboratory licensed by the Oregon Liquor Control Commission (OLCC) under ORS 475B.560 and accredited by the Oregon Health Authority (OHA) pursuant to ORS 475B.565 to sample and test for tetrahydrocannabinol (THC) content (hereinafter, Laboratory)² or the Oregon Department of Agriculture (ODA).
2. All testing must be performed by personnel employed by a Laboratory and in accordance with OAR 603-048-0600 and this Protocol.
3. The Laboratory must follow chain of custody procedures consistent with OAR 333-064-0100(2) and be documented to record the collection, transport, and receipt of samples by the Laboratory.
4. Testing must be conducted in compliance with OAR 333-064-0100(3) – (7) except that the Laboratory need not test or report CBD values.
5. Until the Laboratory develops its own criteria, sample or matrix spike recovery must fall between 70-130 percent. The Laboratory must develop its own criteria after obtaining 30 data points and the sample or matrix spike recovery must fall between 70-130 percent or within more restrictive acceptance limits. Until the Laboratory develops its own criteria, the Relative Percent Difference (RPD) between duplicates must be less than or equal to 20 percent. The Laboratory must develop its own criteria after obtaining 30 data points and the sample/sample duplicate RPD must be less than or equal to 20 percent or fall within more restrictive acceptance limits. The Laboratory shall include at least one sample or matrix spike and one set of duplicates to assess accuracy and precision for each extraction batch.
6. The Laboratory must perform testing under their Quality Management system as defined by their ORELAP accreditation.
7. The Laboratory must perform testing in a manner that avoids contamination of the non-sampled material with sample containers that are free of analytes of interest and appropriate for the analyses requested.
8. The Laboratory shall calculate total THC (meaning the molar sum of THC and THCA) percentage on a dry weight basis calculated in accordance with OAR 333-064-0100(4).

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

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

B. Initiating a Testing Request

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

C. Sample Preparation Requirements

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

D. Retesting Requirements

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

- d. Forward the sample by the most expedient, secure, and legal means to ensure that the sample continues to be representative of the harvest lot sampled and the chain of custody is accounted for to protect its integrity.

E. Testing After Resampling

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

F. Reporting and Recordkeeping Requirements

1. All documentation of sampling and testing must be retained by the Laboratory for at least three years and be provided to the Department upon request. All records must clearly identify the harvest lots by harvest lot identifier.
2. The Laboratory shall make Standard Operating Procedure (SOPs) readily accessible to all pertinent personnel and provided to the Department upon request.
3. All documents shall be controlled and retained in accordance with the TNI Environmental Laboratory standard as defined in OAR 333-007-0310.
4. When testing or forwarding the sample, the Laboratory must create and use a Chain of Custody form that minimally includes the information set out below.
 - a. Laboratory name
 - b. Analyst's name
 - c. Lab License Number
 - d. Grower's registration number
 - e. Field ID/Name and Harvest Lot Identifier
 - f. Testing Date/Time
 - g. Custody transfer signatures
 - h. Custody Transfer Dates/Times
5. The Laboratory shall determine the estimated measurement uncertainty (EMU) of the test for THC concentration of industrial hemp and make available to the Department upon request.
6. The Laboratory shall provide to the Department upon request analytical data and any records associated with test results reported, including SOPs, chain of custody forms, quality checks, EMU determination, etc.
7. The Laboratory shall report percentage of total THC in the sample on a dry weight basis to exactly two significant figures.
8. The Laboratory shall report all test results electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, or via an online portal operated by the Department, and include for each sample tested:
 - a. Grower's name and registration number;
 - b. Sample date;
 - c. Sample size by weight;
 - d. Testing date;

- e. Total THC percentage to exactly two significant figures calculated in accordance with OAR 333-064-0100(4) and whether the sample passed testing;
 - f. The Laboratory's uncertainty level for THC testing of cannabis;
 - g. The harvest lot identifier that corresponds to the sample and the location of the corresponding harvest lot;
 - h. Copy of grower's sampling request form corresponding to the harvest lot;
 - i. Copy of the completed sampling form corresponding to the harvest lot; and
 - j. Signature of the laboratory analyst.
9. The Laboratory shall send any failed test report electronically to the Department at HempTestReports@oda.state.or.us using the forms provided or approved by the Department, or via an online portal operated by the Department **within 24 hours of the failed test**.
10. The Laboratory shall send completed copies of the Sampling and Request Form and the On-Site Sampling Form corresponding to the Harvest Lot with each test report.
11. Beginning January 1, 2021, the laboratory shall report the test results for all samples tested to the United States Department of Agriculture. The test results report must contain the following information:
 - a. Grower's registration number;
 - b. Grower's name;
 - c. Business address of the grower;
 - d. Harvest lot identifier
 - e. Name of the laboratory
 - f. Date of the test and report
 - g. Whether it is a retest;
 - h. Test result.

AMEND: 603-048-0630

RULE SUMMARY: • Updates references

- Requires labs to report any retesting results to USDA (in addition to ODA)

CHANGES TO RULE:

603-048-0630

Failed Pre-Harvest Testing; Retesting

(1) If a sample tested under OAR 603-048-060~~10~~ 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 603-048-060~~10~~ 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, t.~~ 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~~ failed testing as described in OAR 603-048-060~~10~~(8) and (9),~~5~~ 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~~ or approved by the Department, or via an online portal operated by the Department, any initial or secondary request for retest of a sample.¶

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

(3) Retesting of Failed Samples for Production Area. If a sample tested under OAR 603-048-060~~10~~ 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~~5~~).¶

(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)~~ for initial sampling; and¶

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

(f) The resampling occurs within ten (10) 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 or approved by the Department, or via an online portal operated by the Department, the testing results of any resampling under this subsection.¶

(6) The Department may detain, seize, embargo the harvest lot corresponding to a sample, as provided under ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183, if the sample failed a test under OAR 603-048-060~~10~~.¶

(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 603-048-060~~10~~ 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 603-048-06~~100~~ 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 603-048-060~~10~~ and the harvest lot does not pass re-testing in accordance with these rules.¶

(8) If a sample passes the first and second retest described in section (2)(c) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules: and is released from the restrictions in OAR 603-048-0610(8). ¶

(9) If a sample passes testing after resampling conducted under section (3) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules and is released from the restrictions in OAR 603-048-0610(8). 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.¶

~~(810)~~ If the amount of the harvest lot material collected for purposes of sampling is not sufficient to allow for the first and second retesting described in section (2)(c) of this rule, the sample and corresponding harvest lot fails to satisfy these rules.¶

(11) Beginning January 1, 2021, the grower must ensure that any additional testing is reported by the laboratory to the United States Department of Agriculture. The test results report must contain the following information:¶

(a) Grower's registration number:¶

(b) Grower's name:¶

(c) Business address of the grower:¶

(d) Harvest lot identifier¶

(e) Name of the laboratory¶

(f) Date of the test and report¶

(g) Whether it is a retest:¶

(h) Test result.

Statutory/Other Authority: ORS 561.190, 561.605-561.620, ORS 571.30260-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.30260-571.348, OL 2018, Ch. 116

AMEND: 603-048-0800

RULE SUMMARY: • Updates enforcement abilities based on background checks and includes information about corrective action plans following USDA IFR

CHANGES TO RULE:

603-048-0800

Enforcement and Civil Penalty for Industrial Hemp Law Violation ¶¶

(1) In addition to any other liability or penalty provided by law, the Department may impose a civil penalty not to exceed \$2,500 on any person who violates any provision of ORS 571.30260 to 571.348, ~~OR Laws 2018, Ch. 116~~, a rule adopted pursuant thereto, or order issued by the Department under ORS 571.30260 to 571.348 ~~OR Laws 2018, Ch. 116~~ or a rule adopted pursuant thereto. ¶¶

(2) The Department shall issue a written notice to the person being assessed the penalty consistent with ORS Ch. 183. Any contested case to contest the civil penalty will be conducted pursuant to ORS Ch. 183. Each violation may be considered a separate and distinct offense. ¶¶

(3) Subject to the provisions of ORS Ch. 183, the Department may revoke the registration of a grower, handler or agricultural hemp seed producer or may refuse to register or renew the registration if a grower, handler or agricultural hemp seed producer violates: ¶¶

(a) A provision of ORS 571.30260 to 571.348 ~~or OR Laws 2018, Ch. 116~~; ¶¶

(b) A rule adopted under a provision of ORS 571.30260 to 571.348 ~~or OR Laws 2018, Ch. 116~~; ¶¶

(c) An order issued by the Department for violation of a provision of ORS 571.30260 to 571.348 ~~or OR Laws 2018, Ch. 116~~ or any rule adopted thereunder; ¶¶

(d) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations. ¶¶

(4) ~~Subject to the provisions of ORS Ch. 183, the Department may revoke the registration of a registrant for any reason that the Department may deny an initial or renewal application~~ Beginning January 1, 2021, subject to the provisions of ORS Ch. 183, the Department may revoke a grower's registration if the registrant, or any key participant if the registrant is a business entity, has been convicted, or is convicted, of a felony relating to a controlled substance within the last ten years unless the convicted individual was growing hemp lawfully under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 before October 31, 2019. ¶¶

(5) Subject to the provisions of ORS Ch. 183, the Department may revoke the registration of a registrant for any reason that the Department may deny an initial or renewal application. ¶¶

(6) Subject to the provisions of ORS Ch. 183, the Department may revoke or deny the registration of a grower who violates a provision of ORS 571.260 to 571.348, a rule or order adopted thereunder, or any statutory law or rule related to agricultural activities other than industrial hemp operations three times in a five-year period from the date of the third violation. ¶¶

(7) If the Department determines that a violation has occurred, the Department may offer the registrant the opportunity to submit a written corrective action plan. ¶¶

(a) The corrective action plan submitted must include a reasonable date by which the registrant shall correct the violation and periodic reporting to the Department on the registrant's compliance with the corrective action plan and these rules for at least two years from the date of the violation. ¶¶

(b) The Department shall determine if the corrective action plan is acceptable. If the plan of correction is not acceptable, the Department shall notify the registrant in writing and request that the corrective action plan be modified and resubmitted. ¶¶

(c) The Department shall conduct an inspection to determine if the corrective action plan has been implemented.

Statutory/Other Authority: ORS 561.190, 569.445, 571.30260 - 571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.30260 - 571.348, OL 2018, Ch. 116, Sec. 12

AMEND: 603-048-0900

RULE SUMMARY: • Updates statutory references

CHANGES TO RULE:

603-048-0900

Detainment, Seizure, Embargo, and Disposal ¶¶

If a harvest lot is subject to detainment, seizure, embargo, or disposal pursuant to ORS 571.302~~60~~ to 571.348 or ~~OR Laws 2018, Ch.116~~ or the rules adopted thereunder, the Department may detain, seize, embargo, or dispose of the harvest lot as provided in ORS 561.605 to 561.620 and consistent with these rules.¶¶

(1) The Department shall cause to be affixed to the harvest lot being detained, seized or embargoed a notice that the industrial hemp is being detained, seized or embargoed by the Department and warning all persons that the industrial hemp may not be moved from its current location without written permission from the Department.¶¶

(2) The Department shall notify in writing the owner or person in possession of the harvest lot that the harvest lot is being detained, seized or embargoed by the Department.¶¶

(a) If the person in possession of the harvest lot is not the owner, the Department shall make a reasonable effort to notify the owner.¶¶

(b) Such notification shall state the reason for the Department's action and notify the owner or person in possession of the right to a hearing as provided under ORS Ch. 183.¶¶

(c) A written request for hearing on the proprietary of the detention, seizure or embargo must be filed either by the owner or person in possession with the Department within 10 days of receiving actual notice of the action.¶¶

(d) Any hearing shall not be held sooner than 10 days after the request for hearing has been received by the Department, however if the industrial hemp subject to the Department's action is perishable, or if, in the opinion of the Department, other good and sufficient reason appears, the Department may, at the request of the owner or person in possession of such industrial hemp, be held at an earlier date.¶¶

(e) Any hearing shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings and shall be conducted pursuant to ORS Ch. 183.¶¶

(3) If a sample passes the first and second retesting described in OAR 603-048-0630~~(1)(e)~~, the sample and corresponding harvest lot satisfies THC testing required by these rules. After receiving and verifying the confirming test reports, the Department may release the detained harvest lot.¶¶

(4) The Department may order destruction of the harvest lot corresponding to a failed sample, subject to the grower or person in possession's right to a hearing as described in this rule, if the corresponding 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 603-048-060~~10~~ 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 (1)(c) of this rule.¶¶

(f) Fails a test under OAR 603-048-060~~10~~ and the retained file sample lacks sufficient volume of harvest lot material to allow for the first and second retesting described in OAR 603-048-0630~~(1)(e)~~ 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 603-048-060~~10~~ and the harvest lot is not successfully remediated in accordance with

these rules.

Statutory/Other Authority: ORS 561.190, 561.605 - 561.630, 571.~~30~~260 - 571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.~~30~~260 - 571.348, OL 2018, Ch. 116

AMEND: 603-048-1000

RULE SUMMARY: • Updates statutory references and clarifies some violations

CHANGES TO RULE:

603-048-1000

Violations and Penalties ¶

(1) The Department may impose a civil penalty not to exceed \$2,500 on a person for violating:¶

(a) A provision of ORS 571.30260 to ORS 571.348 (as amended by OR Laws 2018, Ch.116)¶

(b) A rule adopted under a provision of ORS 571.30260 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 571.30260 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 when required under ORS 571.260-571.348 or rules adopted thereunder;¶

(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~~ these rules;¶

(F) Altering or falsifying a laboratory test report or result;¶

(G) Selling or attempting to sell a hemp item that fails to meet testing requirements required by OAR 603-048-2000 through 603-048-2480;¶

(H) Selling, transferring, 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 in accordance these rules;~~¶

(ii) Failed testing under OAR 603-048-0610 and did not otherwise pass testing under OAR 603-048-0630(4) and (6);¶

~~(iii) Was invalidly tested as described in OAR 603-048-0610(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 571.32600 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) Failing to provide an accurate legal description of land where hemp is produced.¶¶

(D) On or after January 1, 2020, total THC calculated in accordance with OAR 333-064-0100(4) that exceeds 0.5 percent on a dry weight basis but does not exceed 3 percent total THC;¶¶

(D) Any other uncategorized violation.¶¶

(c) Class 3 violations include but are not limited to:¶¶

(A) Failure to keep or provide information or records as required by the Department;¶¶

(B) Growing or handling hemp with:¶¶

(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 ~~30.5~~ 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; and¶¶

(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.~~302~~60-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.~~302~~60-571.348, OL 2018, Ch. 116

ADOPT: 603-048-8000

RULE SUMMARY: New rule in case US Congress extends timeline for states to continue to operate under the 2014 Farm Bill

CHANGES TO RULE:

603-048-8000

Extension of 2014 Federal Farm Bill

If section 297C of the Agricultural Marketing Act of 1946, section 7606 of the Agricultural Act of 2014 or 7 U.S.C. 5940 is extended beyond October 31, 2020, the following provisions apply while the extension is effective:¶

(1) For grower applicants and registered growers:¶

(a) Applicants for grower registrations or growers applying to renew a grower registration are not required to submit a copy of a criminal history background check as required in OAR 603-048-0200(4)(d).¶

(b) Growers are not required to report a felony conviction to the Department as required in OAR 603-048-0400(2)(c).¶

(c) Growers are not required to submit a copy of a criminal history background check for applicable changes in business structure or ownership as required in OAR 603-048-0400(4)(e).¶

(d) Growers are not required to report to the U.S. Department of Agriculture Farm Service Agency as required in OAR 603-048-0400(8).¶

(2) For Pre-Harvest Sampling:¶

(a) OAR 603-048-0600(2) is suspended and replaced with (b)(A)-(C) of this rule.¶

(b) Timing of the sampling.¶

(A) 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.¶

(B) If the grower fails to complete harvest within twenty-eight (28) days of sample collection, the grower must arrange for and ensure the sampling of the unharvested area in accordance with these rules.¶

(C) 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) OAR 603-048-0200(11)(a)(B) is suspended.¶

(4) OAR 603-048-0800 is suspended.¶

(5) For registered handlers: 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, handlers must 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, 569.445, ORS 571.260-.348

Statutes/Other Implemented: ORS 571.260-.348