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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OLCC 4-2024

CHAPTER 845

OREGON LIQUOR AND CANNABIS COMMISSION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: This rule details the procedures and requirements for presumptive testing of hemp plants.

EFFECTIVE DATE: 05/17/2024 THROUGH 11/12/2024

AGENCY APPROVED DATE: 05/16/2024

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NEED FOR THE RULE(S):

The passage of 2024 House Bill 4121 (2024 Oregon Laws Chapter 16) requires the Oregon Liquor and Cannabis Commission (OLCC) to develop by rule a methodology to distinguish marijuana plants from hemp plants, including criteria for mature and immature plants. This section of the bill became operative March 20, 2024. This rule meets the need by establishing criteria for presumptive testing.

JUSTIFICATION OF TEMPORARY FILING:

These rules require immediate action due to the passage of House Bill 4121 in the 2024 legislative session. The bill has an emergency clause that requires the agency to take action. Failure to act promptly to implement Section 2 of the bill will result in serious prejudice to the public interest. It is crucial for the Oregon Department of Agriculture (ODA) to be able to expeditiously determine whether cannabis plants at a licensed hemp grow are marijuana.

Over the course of the past several years, the OLCC and ODA have worked together to improve the regulation of hemp and hemp products. In 2021, the Oregon Legislature passed House Bill 3000 (2021 Oregon Laws Chapter 542, Section 41a), which led to the OLCC adopting a presumptive testing rule similar to the one proposed in this package. During the hearings on House Bill 3000, the legislature heard testimony about widespread illegal cultivation of marijuana at licensed hemp grows. Data from the first two years of inspections conducted under the presumptive testing rule showed that there were significant issues at hemp grows, and that the incidence of these issues decreased substantially in the year following the adoption of the presumptive testing rule.

If this rule is not adopted prior to the 2024 grow season, the OLCC believes that illegal cultivation of marijuana at hemp grow sites will increase in the absence of presumptive testing. The OLCC believes that illegal cultivation and distribution of marijuana presents a significant risk to public health and safety. It also results in unfair competition with regulated businesses that cultivate and distribute marijuana under legalization measures adopted in their states and poses a significant risk of reputational damage to the hemp industry in general. Additionally, illegal production of marijuana has been associated with human trafficking and violations of environmental law. These factors constitute a serious prejudice to the public interest and to the interest of the parties concerned.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2024 House Bill 4121 (2024 Oregon Laws Chapter 16)

Temporary Administrative Order OLCC-8-2021

Permanent Administrative Order OLCC 21-2021

Presumptive Marijuana Testing - HB 3000 (02/2023)

ADOPT: 845-026-4110

RULE TITLE: Presumptive Testing

RULE SUMMARY: This rule details the procedures and requirements for presumptive testing of hemp crops.

RULE TEXT:

(1) For the purpose of this rule:

(a) "Crop" has the meaning given that term in OAR 603-048-0010.

(b) "Composite Sample" means cuttings from at least five cannabis plants removing the top five to eight inches and compositing in one receptacle for purposes of testing.

(c) "Grow site" has the meaning given that term in OAR 603-048-0010.

(d) "Presumptive test" means testing in accordance with this rule.

(e) "Production area" has the meaning given that term in OAR 603-048-0010.

(2) For the purposes of this rule:

(a) The number of production areas at a grow site is determined by a representative of the State Department of Agriculture or the Oregon Liquor and Cannabis Commission who is on-site at the time of the sampling. The representative may consider documents submitted by the licensee associated with the grow site and the number of production areas at the site actively producing cannabis at the time of the sampling.

(b) It is within the discretion of a representative of the State Department of Agriculture or the Oregon Liquor and Cannabis Commission who is on-site at the time of the sampling to determine what qualifies as different areas of the grow site.

(3) In addition to any sampling conducted under OAR 603-048-0600, a representative of the State Department of Agriculture or the Oregon Liquor and Cannabis Commission may sample from an industrial hemp grow site licensed under ORS 571.281 for the purposes of conducting a presumptive test.

(4) To conduct sampling for a presumptive test:

(a) A minimum of three composite samples from mature cannabis plants or a minimum of three composite samples from immature cannabis plants must be collected. Each composite sample must be taken from a different production area, or if the grow site has less than three production areas with growing cannabis, each composite sample must be taken from three different areas of the grow site;

(b) Grow sites with multiple production areas must have a composite sample collected from at least one out of every 10 separate production areas; and

(c) Sampling is not required to be representative of the crop, grow site, or production area.

(5) All cannabis plants at a grow site are presumptively marijuana for purposes of Section 2 of 2024 Oregon Laws Chapter 16 if sampling at the grow site meets any of the following criteria:

(a) At least 50 percent of composite samples taken from mature cannabis plants test at or above five percent total delta-9-THC;

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

(c) At least 50 percent of composite samples taken from immature cannabis plants test at or above a 5:1 ratio of total THC to total CBD, with total CBD calculated as described in OAR 333-064-0100, and the total THC concentration of each composite sample exceeds 0.3 percent;

(d) At least 50 percent of composite samples taken from immature cannabis plants test at or above one percent total

delta-9-THC; or

(e) The average total delta-9-THC among the composite samples taken from immature cannabis plants tests at or above one percent total delta-9-THC.

STATUTORY/OTHER AUTHORITY: ORS 475C.017, 2024 OL Ch. 16 Sec. 2

STATUTES/OTHER IMPLEMENTED: 2024 OL Ch. 16 Sec. 2