



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OLCC 4-2023

CHAPTER 845

OREGON LIQUOR AND CANNABIS COMMISSION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amend rules to require proof of tax compliance from Department of Revenue for marijuana retailers.

EFFECTIVE DATE: 06/16/2023 THROUGH 12/12/2023

AGENCY APPROVED DATE: 06/15/2023

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NEED FOR THE RULE(S):

According to the Oregon Department of Revenue, the delinquency rate of the marijuana retail tax that cannabis retailer licenses owe on marijuana sales is 9%. This has resulted in approximately \$18.7 million in potential lost revenue for various Oregon programs [cities & counties, public health & safety programs]. Currently, OLCC's cannabis regulations do not require proof of compliance with tax obligations prior to renewal, changes of ownership, additions of license holders, and/or new applications for retail licenses. This is distinct from several other Oregon occupational licenses, including Lottery and Department of Human Services Child Care licensing, which do require such proofs of tax compliance. The lack of verification of tax compliance has permitted retailer licenses to use unremitted tax payments as a de facto loan, thereby expanding operations and undercutting competitors' prices at the expense of taxpayers. Per Governor Kotek's directive of May 16, 2023, OLCC and DOR are directed to immediately take steps to require proof of tax compliance for retailers as part of the renewal, change of ownership, addition of license holders, and/or new licensure process. Requiring proof of tax compliance before such licensing actions may be approved will ensure only those up-to-date on tax obligations, or making timely payments under a Department of Revenue-approved payment plan, will be permitted to operate in the cannabis industry. Such a requirement would also prompt action on outstanding tax obligations by cannabis retailer licensees in order to come into compliance and remain licensed, thereby narrowing the delinquency gap of cannabis taxes and of other taxes owed by these licensees.

Because OLCC regulations currently allow renewal of a cannabis retail license within ninety (90) days of expiration, and for late renewals up to thirty (30) days after expiration, adoption of a temporary rule that sets standards for retailer licensees to demonstrate tax compliance within these established expiration timeframes is necessary.

JUSTIFICATION OF TEMPORARY FILING:

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s): Failure to immediately amend these rules will result in insufficient mechanisms for OLCC to implement proof of tax compliance requirements within established timeframes for retailer license renewals.

(2) Who would suffer these consequences: Various state of Oregon programs that rely on cannabis retailers to be compliant with tax obligations will be prejudiced by failing to adopt requirements to show proof of tax compliance.

Retailer licensees would be prejudiced by delaying adoption of a temporary rule because it would result in insufficient notice of the change in requirements to demonstrate tax compliance within the timeframes already established in administrative rule for retail license renewals.

(3) Why or how failure to immediately take rulemaking action would cause these consequences: Failure to adopt a temporary rule that gives retail licensees a ninety (90) day period to start compliance has a high potential to disrupt the renewal, change of ownership, addition of license holders, and/or new application processes, which will adversely impact retail operations and generation of tax revenue for the State or Oregon.

(4) How the temporary action will avoid or mitigate those consequences: Adoption of a temporary rule requiring proof of tax compliance for all cannabis retail renewals, changes of ownership, addition of license holders, and/or new applications on or after September 13, 2023 will provide sufficient notice and onramp for licensees to comply with new tax compliance requirements, within established renewal timeframes, with minimal disruption to business operations and ongoing revenue generating for the state of Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OLCC - Rulemaking file (Available upon request)

RULES:

845-025-1015, 845-025-1030, 845-025-1132, 845-025-1165, 845-025-1170, 845-025-1190

AMEND: 845-025-1015

RULE TITLE: Definitions

RULE SUMMARY: This rule sets the definitions for terms used in Division 25 and Division 26 rules.

RULE TEXT:

For the purposes of OAR 845-025-1000 to 845-025-8590 and OAR 845-026-0100 to 845-026-7070, unless otherwise specified, the following definitions apply:

- (1) "Added substance" means any component or ingredient added to usable marijuana, cannabinoid concentrate, or cannabinoid extract during or after processing that is present in the final cannabinoid product, including but not limited to flavors, non-marijuana derived terpenes, and any substances used to change the viscosity or consistency of the cannabinoid product.
- (2) "Adulterated" means to make a marijuana item or hemp item impure by adding foreign or inferior ingredients or substances. A marijuana item or hemp item may be considered to be adulterated if:
 - (a) In the Commission's judgment, it bears or contains any poisonous or deleterious substance in a quantity rendering the marijuana item or hemp item injurious in a manner that may pose a risk to human health, including but not limited to tobacco or nicotine;
 - (b) It bears or contains any added poisonous or deleterious substance exceeding a safe tolerance if such tolerance has been established;
 - (c) It consists in whole or in part of any filthy, putrid, or decomposed substance, or otherwise is unfit for human consumption;
 - (d) It is processed, prepared, packaged, or is held under improper time-temperature conditions or under other conditions increasing the probability of contamination with excessive microorganisms or physical contaminants;
 - (e) It is processed, prepared, packaged, or held under insanitary conditions increasing the probability of contamination or cross-contamination;
 - (f) It is held or packaged in containers composed, in whole or in part, of any poisonous or deleterious substance

rendering the contents potentially injurious to health;

(g) Any substance has been substituted wholly or in part therefor;

(h) Damage or inferiority has been concealed in any manner; or

(i) Any substance has been added thereto or mixed or packaged therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(3)(a) "Artificially derived cannabinoid" means a chemical substance that is created by a chemical reaction that changes the molecular structure of any chemical substance derived from the plant Cannabis family Cannabaceae.

(b) "Artificially derived cannabinoid" does not include:

(A) A naturally occurring chemical substance that is separated from the plant Cannabis family Cannabaceae by a chemical or mechanical extraction process;

(B) Cannabinoids that are produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst; or

(C) Any other chemical substance identified by the Commission, in consultation with the authority and the department, by rule.

(4) "Assign and affix a UID tag" means to designate a UID number to a marijuana item in CTS and to also physically attach the corresponding UID tag to a marijuana plant or a receptacle holding a marijuana item.

(5) "Attractive to minors" means packaging, labeling and advertising that features:

(a) Cartoons;

(b) A design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;

(c) Symbols or celebrities that are commonly used to market products to minors;

(d) Images of minors; or

(e) Words that refer to products that are commonly associated with minors or marketed by minors.

(6) "Authority" means the Oregon Health Authority.

(7) "Business day" means Monday through Friday excluding legal holidays.

(8) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana or industrial hemp.

(9) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(c) A chemical extraction process using the solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(d) Any other process identified by the Commission, in consultation with the Authority, by rule.

(10) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract, or dried marijuana leaves or flowers have been incorporated.

(11) "Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane, or propane;

(b) A chemical extraction process using the solvent carbon dioxide, if the process uses high heat or pressure; or

(c) Any other process identified by the Commission, in consultation with the authority, by rule.

(12) "Cannabinoid product"

(a) Means: a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers;

(b) Includes:

(A) Usable marijuana, cannabinoid extracts, or cannabinoid concentrates that have been combined with an added substance; or

(B) Any combination of usable marijuana, cannabinoid extracts, or cannabinoid concentrates.

(c) Does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate by itself;

(C) A cannabinoid extract by itself; or

(D) Industrial hemp, as defined in ORS 571.269.

(13) "Cannabinoid tincture" means a liquid cannabinoid product packaged in a container of four fluid ounces or less that consists of either:

(a) A non-potable solution consisting of at least 25 percent non-denatured alcohol, in addition to cannabinoid concentrate, extract, or usable marijuana, and perhaps other ingredients intended for human consumption or ingestion, that is exempt from the Liquor Control Act under ORS 471.035; or

(b) A non-potable solution comprised of glycerin, plant-based oil, or concentrated syrup; cannabinoid concentrate, extract, or usable marijuana; and other ingredients that does not contain any added sweeteners and is intended for human consumption or ingestion.

(14) "Cannabinol" or "CBN" means 6,6,9-trimethyl-3-pentyl-6H-benzo[c]chromen-1-ol, Chemical Abstracts Service Number 521-35-7.

(15) "Cannabis Tracking System" or "CTS" means the system for tracking the transfer of marijuana items and other information as authorized by ORS 475C.117.

(16) "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature which may exhibit the following criteria:

(a) The use of comically exaggerated features;

(b) The attribution of human characteristics to animals, plants, or other objects, or the similar use of anthropomorphic technique; or

(c) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

(17) "Certificate of tax compliance" for the purposes of OAR 845-025-1000 to 845-025-8590 and OAR 845-026-0100 to 845-026-7070, unless otherwise specified, the following definition means a certificate issued by the Oregon Department of Revenue in accordance with OAR 150-305-0304 but does not include a written statement described in OAR 150-305-0304(4).

(18) "Commission" means the Oregon Liquor and Cannabis Commission.

(19) "Commission-certified hemp grower" means a hemp grower certified by the Commission under OAR 845-025-2700 to deliver industrial hemp to processors or wholesalers.

(20) "Commission-certified hemp handler" means a hemp handler certified by the Commission under OAR 845-025-2705 to deliver industrial hemp or hemp items to processors, wholesalers, or retailers.

(21) "Commissioner" means a member of the Oregon Liquor and Cannabis Commission.

(22) "Common ownership"

(a) Means any commonality between individuals or legal entities named as applicants or persons with a financial interest in a license or business proposed to be licensed that have a financial interest or management responsibilities for an additional license or licenses.

(b) Does not mean the leasing of the property to another licensee at a commercially reasonable rate if there is no other financial interest in the other licensed business.

(23) "Compliance test" means a laboratory test required by OAR chapter 333, division 7 or OAR 845-025-5800 to 845-025-5850 conducted by a laboratory licensee to allow the transfer or sale of a marijuana item, hemp item, or industrial hemp.

(24) "Compliance transaction" means a single covert, on-site visit in which a Commission authorized representative poses as an authorized representative of a licensee or a consumer and attempts to purchase or purchases a marijuana item from a licensee, or attempts to sell or sells a marijuana item to a licensee.

(25) "Consumer" means a person who purchases, acquires, owns, holds, or uses marijuana items other than for the

purpose of resale.

(26) "Container"

(a) Means a sealed, hard or soft-bodied receptacle in which a marijuana item is placed and any outer receptacle intended to display a marijuana item for ultimate sale to a consumer.

(b) Does not mean:

(A) Inner wrapping or lining;

(B) An exit package; or

(C) A shipping container used to transfer marijuana items or hemp items in bulk from one licensee or registrant to another.

(27) "Contractor" means a person, other than a licensee representative, who temporarily visits the licensed premises to perform a service, maintenance, or repair.

(28) "CTS administrator" means a CTS user who may add, edit or disable access for other CTS users.

(29) "CTS user" means an individual with online access to CTS.

(30) "Date of harvest" means the day the last mature marijuana plant in the harvest lot was harvested.

(31) "Delta-8-tetrahydrocannabinol" or "delta-8-THC" means (6aR, 10aR)-6,6,9-trimethyl-3-pentyl-6a,7,10,10a-tetrahydro-6H-benzo[c]chromen-1-ol, Chemical Abstracts Service Number 5957-75-5.

(32) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means (6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol, Chemical Abstracts Service Number 1972-08-3.

(33) "Delta-9-tetrahydrocannabinolic acid" or "delta-9-THCA" means (6aR,10aR)-1-hydroxy-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromene-2-carboxylic acid, Chemical Abstracts Service Number 23978-85-0.

(34) "Designated primary caregiver" has the meaning given that term in ORS 475C.777.

(35) "Elementary school"

(a) Means a learning institution containing any combination of grades kindergarten through 8.

(b) Does not mean a learning institution that includes only pre-kindergarten, kindergarten, or a combination of pre-kindergarten and kindergarten.

(36)(a) "Financial consideration" means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions, or donations.

(b) "Financial consideration" does not include marijuana, cannabinoid products, or cannabinoid concentrates that are delivered within the scope of and in compliance with ORS 475C.305.

(37) "Financial interest" means having an interest in an applicant, licensee, or laboratory licensee, such that the performance of the business causes, or is capable of causing, an individual, or a legal entity with which the individual is affiliated, to benefit or suffer financially.

(a) Financial interest includes but is not limited to:

(A) Receiving, as an employee or agent, out-of-the-ordinary compensation, either in the form of overcompensation or under compensation;

(B) Lending money, real property, or personal property to an applicant, licensee, or laboratory licensee for use in the business that constitutes a substantial portion of the business cost or is lent at a commercially unreasonable rate;

(C) Giving money, real property, or personal property to an applicant, licensee, or laboratory licensee for use in the business;

(D) Being the spouse or domestic partner of an applicant, licensee, or laboratory licensee. For purposes of this subsection, "domestic partners" includes adults who share the same regular and permanent address and would be financially impacted by the success or failure of the business as well as adults who qualify for a "domestic partnership" as defined under ORS 106.310; or

(E) Having an ownership interest as described in OAR 845-025-1045.

(b) Financial interest does not include any investment that the investor does not control in nature, amount, or timing.

(38) "Flowering" means a marijuana plant that has formed a mass of pistils measuring greater than two centimeters wide at its widest point.

(39) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient under ORS 475C.792.

(40)(a) "Harvest" means the physical act of cutting or picking flowers or leaves from a marijuana plant or removing mature marijuana plants from the soil or other growing media.

(b) "Harvest" does not include pruning or removing waste material from a marijuana plant remaining in soil or other growing media.

(41) "Harvest lot" has the meaning given that term in OAR 333-007-0310.

(42) "Harvested industrial hemp"

(a) Means industrial hemp that has been harvested, including:

(A) Industrial hemp that has not been processed in any form; and

(B) Industrial hemp that has been minimally processed, for purposes of transfer or storage including chopping, separating, or drying.

(b) Does not mean:

(A) Usable hemp as defined in OAR 603-048-2310;

(B) An industrial hemp commodity or product as defined in OAR 603-048-0010;

(C) Living industrial hemp plants; or

(D) Industrial hemp seed:

(i) That is part of a crop, as that term is defined in ORS 571.269;

(ii) That is retained by a hemp grower for future planting;

(iii) That is agricultural hemp seed;

(iv) That is for processing into or for use as agricultural hemp seed; or

(v) That has been processed in a manner or to an extent that the Cannabis seed is incapable of germination.

(43) "Hemp cannabinoid product"

(a) Means a hemp edible or any other industrial hemp commodity or product intended for human consumption or use, including a hemp topical or hemp transdermal patch, that contains cannabinoids from industrial hemp or the dried leaves or flowers of hemp.

(b) Includes:

(A) Usable hemp, industrial hemp extracts, or industrial hemp concentrates that have been combined with an added substance; or

(B) Any combination of usable hemp, industrial hemp extracts, or industrial hemp concentrates.

(c) Does not include:

(A) Usable hemp by itself;

(B) Hemp stalk by itself;

(C) A hemp concentrate or extract by itself;

(D) Hemp seed incapable of germination by itself;

(E) Other products derived only from hemp seeds incapable of germination that may include other non-hemp ingredients; or

(F) A cannabinoid product.

(44) "Hemp edible"

(a) Means a food or potable liquid into which industrial hemp, an industrial hemp concentrate, an industrial hemp extract, or the dried leaves or flowers of hemp have been incorporated.

(b) Does not mean:

(A) Hemp seed incapable of germination by itself;

(B) Other products derived only from hemp seeds incapable of germination that may include other non-hemp ingredients; or

(C) A cannabinoid edible.

(45) "Hemp grower" means a person or entity that is a "grower" as that term is defined in OAR 603-048-0010 and is

licensed with the Oregon Department of Agriculture under ORS 571.281 to grow industrial hemp.

(46) "Hemp handler" means a person or entity that is a "handler" as that term is defined in OAR 603-048-0010 and is licensed with the Oregon Department of Agriculture under ORS 571.281 to handle industrial hemp.

(47) "Hemp item"

(a) Means:

(A) Usable hemp as defined in OAR 603-048-2310;

(B) Hemp stalk as defined in OAR 603-048-2310;

(C) A hemp cannabinoid product; or

(D) A hemp concentrate or extract as defined in OAR 603-048-2310.

(b) Does not mean:

(A) 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;

(B) Industrial hemp seed processed such that it is incapable of germination and processed such that is suitable for human consumption; or

(C) Industrial hemp seed pressed or otherwise processed into oil.

(48) "Immature marijuana plant" means a marijuana plant that is not flowering.

(49) "Industrial hemp" has the meaning given that term in ORS 571.269.

(50) "Industrial hemp-derived vapor item" means an industrial hemp concentrate or industrial hemp extract, as those terms are defined in ORS 571.269, whether alone or combined with non-cannabis additives that is intended for use in an inhalant delivery system.

(51) "Inhalable cannabinoid product" means a cannabinoid product or hemp cannabinoid product that is intended for human inhalation.

(52) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.

(53) "Intended for human consumption" means intended for a human to eat, drink, or otherwise put in the mouth but does not mean intended for human inhalation or human use.

(54) "Intended for human use" means intended to be used by applying it to a person's skin or hair, inhalation, or otherwise consuming the product except through the mouth.

(55) "Inventory tracking" means activities and documentation processes to track marijuana items from seed to sale, including establishing an accurate record from one marijuana item to another, in the cannabis tracking system.

(56) "Invited guests" means family member and business associates of the licensee, not members of the general public.

(57) "Laboratory licensee" or "Laboratory" means a laboratory in this state licensed under ORS 475C.548 and includes each applicant listed on an application that the Commission has approved and each person who is added to the license as described in OAR 845-025-1165.

(58) "License year" means the period of time for which a license is issued.

(a) For a producer, processor, wholesaler, retailer, or laboratory license, the license year is a one year period beginning on the effective date of the license, or that same period of time for each subsequent year.

(b) For a research certificate the license year is a three year period beginning on the effective date of the license, or that same period of time for each subsequent three year period.

(59) "Licensee" means any person who holds a license issued under ORS 475C.065, 475C.085, 475C.093, or 475C.097 and includes each applicant listed on an application that the Commission has approved and each person who is added to the license as described in OAR 845-025-1165.

(60) "Licensee of record" means a licensee listed on the license certificate as a license holder for a producer, processor, wholesaler, retailer, or laboratory license. There will be more than one licensee of record for the same license if:

(a) The business is operated as a joint venture or other similar arrangement between two or more persons; or

(b) A person who qualifies as an applicant for the license has no direct or indirect ownership or control of any other licensee of record on the same license.

(61) "Licensee representative" means an owner, director, officer, manager, employee, agent, or other representative of a

licensee or laboratory licensee, to the extent that the person acts in a representative capacity.

(62) "Limit of quantification" or "LOQ" means the minimum levels, concentrations, or quantities of a target variable, for example, an analyte that can be reported by a laboratory with a specified degree of confidence.

(63) "Limited access area" means a building, room, or other contiguous area on a licensed premises where a marijuana item is present, but does not include a consumer sales area on a licensed retailer premises.

(64) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae. "Marijuana" does not include:

(a) Industrial hemp, as defined in ORS 571.269; or

(b) Prescription drugs, as that term is defined in ORS 689.005, including those containing one or more cannabinoids, that are approved by the United State Food and Drug Administration and dispensed by a pharmacy, as defined in ORS 689.005.

(65) "Marijuana flowers" means the flowers of the plant genus Cannabis within the plant family Cannabaceae.

(66) "Marijuana items" means marijuana, cannabinoid products, cannabinoid concentrates, and cannabinoid extracts.

(67) "Marijuana leaves" means the leaves of the plant genus Cannabis within the plant family Cannabaceae.

(68) "Marijuana processor" means a person who processes marijuana items in this state.

(69) "Marijuana producer" means a person who produces marijuana in this state.

(70) "Marijuana retailer" means a person who sells marijuana items to a consumer in this state.

(71) "Marijuana wholesaler" means a person who purchases marijuana items in this state for resale to a person other than a consumer.

(72) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(73) "Medical grade cannabinoid product, cannabinoid concentrate, or cannabinoid extract" means a cannabinoid product, cannabinoid concentrate, or cannabinoid extract that has a concentration of tetrahydrocannabinol that is permitted under ORS 475C.620 for consumers who hold a valid registry identification card issued under ORS 475C.783.

(74) "Micro-wholesaler" means a marijuana wholesaler licensed by the Commission that only purchases or receives seeds, immature marijuana plants, or usable marijuana from a micro tier I or micro tier II producer.

(75) "Minor" means any person under 21 years of age.

(76) "Non-cannabis additive" means a substance or group of substances that are derived from a source other than marijuana or industrial hemp.

(a) "Non-cannabis additive" includes but is not limited to purified compounds, essential oils, oleoresins, essences or extractives, protein hydrolysates, distillates, or isolates.

(b) "Non-cannabis additive" does not include plant material that is in the whole, broken, or ground form.

(77) "Non-profit dispensary" means a medical marijuana dispensary registered under ORS 475C.833, owned by a nonprofit corporation organized under ORS chapter 65, and that is in compliance with the Authority's rules governing non-profit dispensaries in OAR chapter 333, division 8.

(78) "Non-toxic" means not causing illness, disability or death to persons who are exposed.

(79) "ORELAP" means the Oregon Environmental Laboratory Accreditation Program administered by the Authority pursuant to ORS 438.605 to 438.620.

(80) "Patient" has the same meaning as "registry identification cardholder."

(81) "Permittee" means any person who holds a Marijuana Workers Permit.

(82) "Person" has the meaning given that term in ORS 174.100.

(83) "Person Responsible for a Marijuana Grow Site" or "PRMG" has the meaning given that term in OAR 333-008-0010.

(84) "Points of ingress and egress" means any point that may be reasonably used by an individual to enter into an area and includes but is not limited to doors, gates, windows, crawlspace access points, and openings whether or not those points are secured by a locked door, window, or means capable of being unlocked or unsealed by a key, code, or other method intended to allow access.

(85) "Premises" or "licensed premises"

(a) Means all areas of a location licensed under sections ORS 475C.005 to 475C.525 or 475C.548 and includes:

(A) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(B) All areas outside a building that the Commission has specifically licensed for the production, processing, wholesale sale, or retail sale of marijuana items; and

(b) Does not include a primary residence.

(86) "Primary residence" means real property inhabited for the majority of a calendar year by an owner, renter, or tenant, including manufactured homes and vehicles used as domiciles.

(87) "Principal officer" includes the president, any vice president with responsibility over the operation of a licensed business, the secretary, the treasurer, or any other officer designated by the Commission.

(88) "Process lot" means:

(a) Any amount of cannabinoid concentrate, cannabinoid extract, industrial hemp concentrate, or industrial hemp extract of the same type and processed using the same extraction methods, standard operating procedures, and batches from the same or different harvest lots; or

(b) Any amount of cannabinoid product or hemp cannabinoid product of the same type and processed using the same ingredients, standard operating procedures, and batches from the same or different harvest lots or process lots of cannabinoid concentrate, cannabinoid extract, industrial hemp concentrate, or industrial hemp extract.

(89) "Processes"

(a) Means the processing, compounding, or conversion of:

(A) Marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts; or

(B) Pursuant to ORS 571.336, industrial hemp or industrial hemp commodities or products into hemp items.

(b) Does not include packaging or labeling.

(90) "Producer" means a marijuana producer licensed by the Commission.

(91) "Produces"

(a) Means the manufacture, planting, propagation, cultivation, growing, or harvesting of marijuana.

(b) Does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or

(B) The cultivation and growing of an immature marijuana plant by a marijuana wholesaler or marijuana retailer if the marijuana wholesaler or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(92) "Propagate" means to grow immature marijuana plants or to breed or produce seeds.

(93) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in connection with public passenger transportation.

(94) "Registry identification cardholder" or has the meaning given that term in ORS 475C.777.

(95) "Regulatory specialist" means a full-time employee of the Commission who is authorized to act as an agent of the Commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations, and otherwise enforcing ORS chapter 471, ORS 474.005 to 474.095, 474.115, 475C.005 to 475C.525, 475C.540 to 475C.586 and 475C.600 to 475C.644, Commission rules, and any other statutes the Commission considers related to regulating liquor or marijuana.

(96) "Retailer" means a marijuana retailer licensed by the Commission.

(97) "Sampling laboratory" means a laboratory that only has an ORELAP accredited scope item for sampling under ORS 438.605 to 438.620 and is not accredited to perform cannabis testing.

(98) "Secondary school" means a learning institution containing any combination of grades 9 through 12 and includes

junior high schools that have 9th grade.

(99) "Security plan" means a plan as described by OAR 845-025-1030, 845-025-1400, and 845-025-1405 that fully describes how an applicant will comply with applicable laws and rules regarding security.

(100) "Shipping container" means any container or wrapping used solely for the transport of a marijuana items in bulk to a marijuana licensee as permitted in these rules.

(101) "These rules" means OAR chapter 845, division 25.

(102) "Tissue culture plantlet" or "plantlet" means plant cells or tissues introduced into a culture from nodal cutting and cultivated under sterile conditions. A tissue culture plantlet from a marijuana plant is an immature marijuana plant.

(103) "Total delta-9-tetrahydrocannabinol" or "total delta-9-THC" means the sum of the concentration or mass of delta-9-THCA multiplied by 0.877 plus the concentration or mass of delta-9-THC.

(104) "UID number" means the 24-digit number on the UID tag.

(105) "UID tag" means a unique identification tag ordered and received from the Commission's designated vendor for CTS for the purpose of tracking marijuana items in CTS.

(106) "Usable hemp"

(a) Means the flowers and leaves of industrial hemp intended for human consumption that does not fall within meaning of industrial hemp concentrate or industrial hemp extract as those terms are defined in ORS 571.269, hemp edible, or hemp cannabinoid product.

(b) Includes, for purposes of these rules, pre-rolled hemp as long as the pre-roll consists of only dried hemp leaves and flowers, an unflavored rolling paper and a filter or tip.

(107) "Usable Marijuana"

(a) Means the dried leaves and flowers of marijuana and includes pre-rolled marijuana as long as the pre-roll consists of only dried marijuana leaves and flowers, an unflavored rolling paper, and a filter or tip.

(b) Does not include:

(A) The seeds, stalks, and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

(108) "Wholesaler" means a marijuana wholesaler licensed by the Commission.

STATUTORY/OTHER AUTHORITY: ORS 475C.017

STATUTES/OTHER IMPLEMENTED: ORS 475C.017, ORS 475C.009

AMEND: 845-025-1030

RULE TITLE: Application Process

RULE SUMMARY: This rule details the application process for a marijuana producer, processor, wholesaler, retail, or laboratory license.

RULE TEXT:

- (1) A person may submit an application to the Commission, on a form prescribed by the Commission, for a marijuana producer, processor, wholesaler, retail, or laboratory license.
- (2) An application for a license and all documentation required in the application instructions and any requirements of this rule must be submitted in a manner specified by the Commission. The application fee specified in OAR 845-025-1060 must also be paid in a manner specified by the Commission.
- (3) An application must include the following:
 - (a) The names and other required information for all individuals and legal entities who are applicants as described in OAR 845-025-1045.
 - (b) Any forms required by the Commission and any information identified in the form that is required to be submitted;
 - (c) A map or sketch of the premises proposed for licensure, including the defined boundaries of the premises, the location of any primary residence located on the same tax lot as the licensed premises, and a scaled floor or plot plan sketch of all enclosed areas with clear identification of walls, all areas of ingress and egress, and all limited access areas;
 - (d) An operating plan in a form prescribed by the Commission that demonstrates at a minimum, how the applicant's proposed premises and business will comply with the applicable laws and rules regarding:
 - (A) Security;
 - (B) Employee qualifications and training;
 - (C) Transportation of product;
 - (D) Preventing minors from entering the licensed premises; and
 - (E) Preventing minors from obtaining or attempting to obtain marijuana items.
 - (e) For producers:
 - (A) The proposed production tier and producer type as described in OAR 845-025-2040.
 - (B) A report describing the applicant's electricity and water usage, on a form prescribed by the Commission.
 - (i) For initial licensure, the report must describe the estimated electricity and water usage taking into account all portions of the premises and expected requirements of the operation for the next twelve months.
 - (ii) For renewal, the report must describe the actual electricity and water usage for the previous year taking into account all portions of the premises.
 - (C) An attestation that the applicant has a legal source of water.
 - (D) If the applicant is not the owner of the premises proposed to be licensed, a form, prescribed by the Commission, signed by the owner of the premises that states the owner consents to the production of marijuana on the premises.
 - (f) For processors, on a form prescribed by the Commission, the proposed endorsements as described in OAR 845-025-3210.
 - (g) For retailers, a certificate of tax compliance for each applicant, as described in OAR 845-025-1045(3) and (4). The certificate must have been issued within 90 calendar days of date the initial application was submitted.
- (4) In addition to submitting the application form and the items described in section (3) of this rule, the Commission may require the following to be submitted:
 - (a) For applicants:
 - (A) information or fingerprints in order to perform a criminal background check in accordance with OAR 845-025-1080.
 - (B) Any forms required by the Commission and any information identified in the form that is required to be submitted.
 - (b) The names and other required information for all individuals and legal entities with a financial interest in the business.
 - (c) For an individual identified as a person with a financial interest:

- (A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080; and
- (B) Any forms required by the Commission and any information identified in the form that is required to be submitted.
- (d) For a legal entity that is identified as having a financial interest:
 - (A) Information or fingerprints for any individual within the legal entity for a criminal background check in accordance with OAR 845-025-1080; and
 - (B) Any forms required by the Commission and any information identified in the form that is required to be submitted.
- (e) Proof of the right to occupy the premises proposed for licensure.
- (f) For producers:
 - (A) A designation of the proposed canopy area within the licensed premises.
 - (B) Proof that the applicant has a legal source of water as evidenced by:
 - (i) A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department;
 - (ii) A statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or
 - (iii) Proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.
- (g) Any additional information if there is a reason to believe that the information is needed to determine the merits of the license application.
- (5) The Commission must review an application to determine if it is complete. An application may be considered incomplete if an application form is not complete, the full application and license fee has not been paid, or some or all of the additional information required under these rules is not submitted.
- (6) An application will be considered incomplete if all certificates of tax compliance are not submitted with the application as described in section (3)(g) of this rule.
- (7) An applicant may submit a written request for reconsideration of a decision that an application is incomplete. Such a request must be received by the Commission within ten days of the date the incomplete notice was sent to the applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

STATUTORY/OTHER AUTHORITY: ORS 475C.017, ORS 475C.033

STATUTES/OTHER IMPLEMENTED: ORS 475C.033, 475C.037, 475C.049, 475C.065, 475C.085, 475C.093, 475C.097, 475C.548

AMEND: 845-025-1132

RULE TITLE: Prohibited Changes to License Applications

RULE SUMMARY: This rule clarifies prohibited changes to license applications.

RULE TEXT:

(1) The Commission will not allow changes of ownership of an application after submission of an application for licensure or renewal for licensure.

(2) For purposes of this rule, "change of ownership" is defined as:

(a) Adding or replacing an applicant who will be a licensee of record; or

(b) A business changing its ownership structure such that natural persons who did not previously hold a direct or indirect interest in the business will collectively hold a direct or indirect interest of 51 percent or greater.

(3) Until March 31, 2024, an applicant that submitted an application for a producer license under ORS 475C.065, a processor license under ORS 475C.085, a wholesaler license under ORS 475C.093, or a retailer license under ORS 475C.097 on or before January 1, 2022 may not change the location of the proposed licensed premises for which the application was submitted.

STATUTORY/OTHER AUTHORITY: ORS 475C.017, 2022 OL Ch. 108 Sec. 1

STATUTES/OTHER IMPLEMENTED: 2022 OL Ch. 108 Sec. 1

AMEND: 845-025-1165

RULE TITLE: Change of Business Structure

RULE SUMMARY: This rule details requirements for changes of business structure; and specifies violation category.

RULE TEXT:

(1) For the purposes of this rule, "change of business structure":

(a) Means a change in a licensee's or laboratory licensee's ownership structure by adding an individual or legal entity who meets the qualifications of an applicant as described in OAR 845-025-1045 or by removing an individual or legal entity that is a licensee or laboratory licensee.

(b) Does not mean a "change of ownership" as described in OAR 845-025-1170.

(2) Until March 31, 2023:

(a) A licensee or laboratory licensee that undergoes a change of business structure must, prior to making the change, submit:

(A) A form prescribed by the Commission; and

(B) Any information identified in the form to be submitted to the Commission.

(b) The Commission must review the form and other information submitted under subsection (a) of this section.

(c) If the Commission determines that the addition of an individual or legal entity who meets the qualifications of an applicant as described in OAR 845-025-1045 would result in an initial or renewal application denial under OAR 845-025-1115, or serve as the basis of a license suspension or revocation, the licensee may remove that individual or legal entity from the business. If the licensee does not remove that individual or legal entity from the business, the Commission shall propose license suspension or revocation under OAR 845-025-1115.

(d) Notwithstanding subsection (a) of this section, a licensee or laboratory licensee does not need to notify the Commission prior to the following changes occurring, but must notify the Commission within 60 calendar days of the following change occurring:

(A) A shareholder of a publicly traded corporation acquiring or accumulating twenty percent or more of the voting stock; or

(B) A publicly traded corporation adding or removing principal officers.

(3) On or after April 1, 2023:

(a) A licensee or laboratory licensee proposing a change of business structure must, prior to making the change, submit in a manner prescribed by the Commission:

(A) A form prescribed by the Commission;

(B) For a retailer proposing a change of business structure by adding an individual or legal entity who meets the qualifications of an applicant as described in OAR 845-025-1045(3) and (4), a certificate of tax compliance for each proposed new applicant, issued within 90 calendar days of date the form required in paragraph (A) of this subsection is submitted; and

(C) Any other information identified in the form to be submitted to the Commission.

(b) The Commission must review the form and other information submitted under subsection (a) of this section.

(A) If the Commission determines that the submission appears to be complete, the Commission will notify the licensee or laboratory licensee that the change is conditionally approved.

(B) If the Commission does not notify the licensee or laboratory licensee that the submission is incomplete within five business days of receiving the submission, the change is conditionally approved.

(C) If the retailer has not submitted the information required in section (3)(a)(B) of this rule the change request is deemed incomplete and must be resubmitted.

(c) Notwithstanding subsection (a) of this section:

(A) A licensee or laboratory licensee must notify the Commission within 60 calendar days, but does not need to notify the Commission prior to making the following changes:

(i) A shareholder of a publicly traded corporation acquiring or accumulating twenty percent or more of the voting stock;

or

(ii) A publicly traded corporation adding or removing principal officers.

(B) Except as provided in subsection (3)(d) of this rule, the changes described in paragraph (A) of this subsection are considered conditionally approved if, within 60 calendar days of the changes occurring, the licensee or laboratory licensee submits:

(i) A form prescribed by the Commission; and

(ii) For a retailer proposing a change of business structure by adding an individual or legal entity who meets the qualifications of an applicant as described in OAR 845-025-1045(3) and (4), a certificate of tax compliance for each proposed new applicant, issued within 90 calendar days of date the form required in paragraph (A) of this subsection is submitted; and

(iii) Any information identified in the form to be submitted to the Commission.

(C) The Commission must review the form and other information submitted under paragraph (B) of this subsection. If the Commission determines that the submission does not include all information required by paragraph (B) of this subsection, the Commission will notify the licensee or laboratory licensee.

(d) If a retailer does not submit a change of business structure notice with the information required under section (3)(c)(B)(ii) of this rule within 60 calendar days of the changes occurring, the notice is deemed incomplete and is not conditionally approved.

(e) The Commission may withdraw the conditional approval and deny a change requested under subsections (a) or (c) of this section if:

(A) The requested change constitutes a "change of ownership" as described in OAR 845-025-1170; or

(B) The Commission has reason to believe that the addition of an individual or legal entity who meets the qualifications of an applicant as described in OAR 845-025-1045 would result in an initial or renewal application denial under OAR 845-025-1115, or serve as the basis of a license suspension or revocation; or

(C) The Commission determines that the form or information submitted under subsection (3)(a) or paragraph (3)(c)(B) of this rule are incomplete; or

(D) The form or information submitted under subsection (3)(a) or paragraph (3)(c)(B) of this rule contains false or misleading information; or

(E) The licensee fails to pay the fee specified in OAR 845-025-1060(8)(a) within 30 days if the Commission requires a criminal background check for any persons that the licensee or laboratory licensee requests to add to the license.

(f) If the Commission denies a change requested under this rule, the licensee or laboratory licensee has a right to a hearing under the procedures of ORS chapter 183.

(g) If the Commission determines that there is no basis to deny a change requested under this rule, the Commission shall notify the applicant in writing that the change has been approved.

(4) Violations. Failure to notify the Commission of changes in business structure as described in this rule is a Category III violation.

STATUTORY/OTHER AUTHORITY: ORS 475C.017

STATUTES/OTHER IMPLEMENTED: ORS 475C.037, 475C.189, 475C.548

AMEND: 845-025-1170

RULE TITLE: Change of Ownership

RULE SUMMARY: This rule details requirements for change of ownership; allows change of ownership to occur at a different location than the current licensed premises; and specifies violation category.

RULE TEXT:

(1) For the purposes of this rule, "change of ownership":

(a) Means a licensee or laboratory licensee proposes to:

(A) Add a licensee of record;

(B) Replace a current licensee of record; or

(C) Change its ownership structure such that natural persons who did not hold a direct or indirect interest in the business at the start of the license year will collectively hold a direct or indirect interest of 51 percent or greater.

(b) Does not mean a "change of business structure" as described in OAR 845-025-1165.

(2) To submit a change of ownership request:

(a) The proposed licensee or laboratory licensee must submit a new application in accordance with OAR 845-035-1030;

(b) Within 14 calendar days of the date the application described in subsection (a) of this section is submitted, the current licensee or laboratory licensee must submit a completed change of ownership notification form, as prescribed by the Commission, signed by the current licensee or laboratory licensee.

(c) On and after June 16, 2023, for a change of ownership for a retail license, a certificate of tax compliance issued within 90 calendar days of the date the change of ownership request was submitted, must be submitted for:

(A) Each current licensee, as that is defined in OAR 845-025-1015.

(B) Each new applicant, as that term is described in OAR 845-025-1045(3) and (4).

(3) The Commission shall review a change of ownership application in accordance with OAR 845-025-1090 and 845-025-1115.

(4) A change of ownership application must comply with the timeframes described in OAR 845-025-1135 to complete the application process.

(5) The Commission may refuse to process a change of ownership application if the change of ownership notification form is submitted by:

(a) A person other than the licensee or licensee representative of the licensed business for which the change of ownership is proposed; or

(b) A business that is not currently licensed.

(6) On and after June 16, 2023, the Commission will deem a change of ownership application that does not include all of the information required under section (2)(c) of this rule to be incomplete.

(7) Submission of a change of ownership request under this rule does not confer the privileges of a licensee to the applicant until the license is issued.

(8) Violations. Allowing a person other than the licensee to operate the licensed business before the Commission approves the change of ownership application is a Category I violation.

STATUTORY/OTHER AUTHORITY: ORS 475C.017, 475C.033, 475C.185

STATUTES/OTHER IMPLEMENTED: ORS 475C.037, 475C.045, 475C.548

AMEND: 845-025-1190

RULE TITLE: License Renewal

RULE SUMMARY: This rule details license renewals; specifies annual renewal process when a previous renewal is pending a decision; and conforms language to conventions.

RULE TEXT:

(1) Renewal Applications. A licensee must annually submit a renewal application and the applicable fees regardless of whether the Commission has acted on a previous renewal application. A research certificate holder must submit a renewal application and the applicable renewal fees every three years, regardless of whether the Commission has acted on a previous renewal.

(a) Any licensee who and timely applies as described in subsection (2) of this rule with the Commission on or before the license expiration date may continue to operate, pending a decision by the Commission.

(b) Any licensee who fails to annually and timely apply as described in subsection (2) of this rule on or before the license expiration date must stop engaging in any licensed activity when the license expires.

(c) If the licensee annually applies as described in subsection (2) of this rule within 30 days after the license expiration date, the licensee may resume operation pending a decision by the Commission on the renewal application.

(d) The Commission will not accept a renewal application that is received more than 30 days after the license expiration date. In this circumstance, a person:

(A) May submit a new application, including the application fee, license fee, documents, and information required by the Commission; and

(B) Must not engage in any licensed activity unless and until granted a new license by the Commission.

(e) A person who engages in any activity that would require a license but who is not licensed or who is not otherwise authorized to operate under this rule may be subject to administrative and criminal sanctions.

(f) For purposes of this rule "license expiration date" means:

(A) The date of expiration on a license; or

(B) If the Commission has not acted on a pending license renewal application, the date the pending license would expire if the application had been approved.

(2) For purposes of this rule, in order for a renewal application to be considered submitted all of the following must be received by the Commission:

(a) A fully completed renewal application signed by an applicant;

(b) The appropriate renewal application and license and renewal fees described in OAR 845-025-1060 and 845-025-1070; and

(c) For marijuana retailers, a certificate of tax compliance issued within 90 calendar days of the license expiration date for each applicant as that term is described in OAR 845-025-1045(3) and (4).

(3) For licenses that expire on or after September 15, 2023, an applicant submitting a renewal application must include the information required by section (2)(c) of this rule for the application to be considered submitted.

(4) The Commission may require a licensee with a pending renewal application to submit forms, documents, and information described in OAR 845-025-1030 in order to complete an investigation of a renewal application. Failure to submit fees, forms, documents or information requested by the Commission under this subsection within a time period prescribed by the Commission may result in denial of the renewal application.

(5) If the Commission approves a renewal application, the Commission must notify the licensee in writing that the renewal application has been approved and provide the licensee with proof of licensure that includes a unique license number, the effective date of the license, date of expiration, and a description of premises for which the license was issued. The renewed license is effective for a license year beginning the date following the license expiration date for the previous license year.

(6) An applicant may submit a written request for reconsideration of a decision that an application is incomplete. Such a request must be received by the Commission within ten days of the date the incomplete notice was sent to the

applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(7) Except as provided in OAR 845-025-1060(6), the Commission will refund a renewal license fee to an applicant whose application is not timely submitted and whose license expires, within 180 calendar days of when the license renewal fee was paid.

STATUTORY/OTHER AUTHORITY: ORS 475C.017, 475C.065, 475C.085, 475C.093, 475C.097, 475C.548

STATUTES/OTHER IMPLEMENTED: ORS 475C.033