




United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400


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May 28, 2019

MEMORANDUM

SUBJECT: EXECUTIVE SUMMARY OF NEW HEMP AUTHORITIES

On December 20, 2018, President Trump signed into law the Agriculture Improvement Act of 2018, Pub. L. 115-334 (2018 Farm Bill). The 2018 Farm Bill legalized hemp production for all purposes within the parameters laid out in the statute.

The Office of the General Counsel (OGC) has issued the attached legal opinion to address questions regarding several of the hemp-related provisions of the 2018 Farm Bill, including: a phase-out of the industrial hemp pilot authority in the Agricultural Act of 2014 (2014 Farm Bill) (**Section 7605**); an amendment to the Agricultural Marketing Act of 1946 to allow States and Indian tribes to regulate hemp production or follow a Department of Agriculture (USDA) plan regulating hemp production (**Section 10113**); a provision ensuring the free flow of hemp in interstate commerce (**Section 10114**); and the removal of hemp from the Controlled Substances Act (**Section 12619**).

The key conclusions of the OGC legal opinion are the following:

1. As of the enactment of the 2018 Farm Bill on December 20, 2018, hemp has been removed from schedule I of the Controlled Substances Act and is no longer a controlled substance.
2. After USDA publishes regulations implementing the new hemp production provisions of the 2018 Farm Bill contained in the Agricultural Marketing Act of 1946, States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under a State or Tribal plan or under a license issued under the USDA plan.
3. States and Indian tribes also may not prohibit the interstate transportation or shipment of hemp lawfully produced under the 2014 Farm Bill.
4. A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under the Agricultural Marketing Act of 1946. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill **before December 20, 2018**, and whose conviction also occurred before that date.

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With the enactment of the 2018 Farm Bill, hemp may be grown only (1) with a valid USDA-issued license, (2) under a USDA-approved State or Tribal plan, or (3) under the 2014 Farm Bill industrial hemp pilot authority. That pilot authority will expire one year after USDA establishes a plan for issuing USDA licenses under the provisions of the 2018 Farm Bill.

It is important for the public to recognize that the 2018 Farm Bill preserves the authority of States and Indian tribes to enact and enforce laws regulating the **production** of hemp that are more stringent than Federal law. Thus, while a State or an Indian tribe cannot block the shipment of hemp through that State or Tribal territory, it may continue to enforce State or Tribal laws prohibiting the growing of hemp in that State or Tribal territory.

It is also important to emphasize that the 2018 Farm Bill does not affect or modify the authority of the Secretary of Health and Human Services or Commissioner of Food and Drugs to regulate hemp under applicable U.S. Food and Drug Administration (FDA) laws.

USDA expects to issue regulations implementing the new hemp production authorities in 2019.

Attachment



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MEMORANDUM FOR SONNY PERDUE
SECRETARY OF AGRICULTURE

SUBJECT: LEGAL OPINION ON CERTAIN PROVISIONS OF THE
AGRICULTURE IMPROVEMENT ACT OF 2018 RELATING TO
HEMP

This memorandum provides my legal opinion on certain provisions of the Agriculture Improvement Act of 2018 ("2018 Farm Bill"), Pub. L. No. 115-334, relating to hemp.

As explained below, this memorandum concludes the following:

1. As of the enactment of the 2018 Farm Bill on December 20, 2018, hemp has been removed from schedule I of the Controlled Substances Act ("CSA") and is no longer a controlled substance. Hemp is defined under the 2018 Farm Bill to include any cannabis plant, or derivative thereof, that contains not more than 0.3 percent delta-9 tetrahydrocannabinol ("THC") on a dry-weight basis.
2. After the Department of Agriculture ("USDA" or "Department") publishes regulations implementing the hemp production provisions of the 2018 Farm Bill contained in subtitle G of the Agricultural Marketing Act of 1946 ("AMA"), States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under a State or Tribal plan or under a license issued under the Departmental plan.
3. States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under the Agricultural Act of 2014 ("2014 Farm Bill").
4. A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under subtitle G of the AMA. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

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This memorandum also emphasizes two important aspects of the 2018 Farm Bill provisions relating to hemp. First, the 2018 Farm Bill preserves the authority of States and Indian tribes to enact and enforce laws regulating the **production** (but not the interstate transportation or shipment) of hemp that are more stringent than Federal law. For example, a State law prohibiting the growth or cultivation of hemp may continue to be enforced by that State. Second, the 2018 Farm Bill does not affect or modify the authority of the Secretary of Health and Human Services or Commissioner of Food and Drugs under applicable U.S. Food and Drug Administration laws.

I. BACKGROUND

The 2018 Farm Bill, Pub. L. No. 115-334, enacted on December 20, 2018, includes several provisions relating to hemp.¹ This legal opinion focuses on sections 7605, 10113, 10114, and 12619, summarized below.

- **Section 7605** amends section 7606 of the 2014 Farm Bill (7 U.S.C. § 5940), which authorizes institutions of higher education or State departments of agriculture to grow or cultivate industrial hemp under certain conditions — namely, if the hemp is grown or cultivated for research purposes in a State that allows hemp production. Among other things, section 7605 amends 2014 Farm Bill § 7606 to require the Secretary of Agriculture (“Secretary”) to conduct a study of these hemp research programs and submit a report to Congress. Section 7605 also repeals 2014 Farm Bill § 7606, effective one year after the date on which the Secretary establishes a plan under section 297C of the AMA.²
- **Section 10113** amends the AMA by adding a new subtitle G (sections 297A through 297E) (7 U.S.C. §§ 1639o – 1639s) relating to hemp production. Under this new authority, a State or Indian tribe that wishes to have primary regulatory authority over the production of hemp in that State or territory of that Indian tribe may submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. *See* AMA § 297B. For States or Indian tribes that do not have approved plans, the Secretary is directed to establish a Departmental plan concerning the monitoring and regulation of hemp production in those areas. *See* AMA § 297C. The

¹ The 2014 Farm Bill defines “**industrial hemp**” as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. § 5940(a)(2). The 2018 Farm Bill added a new, slightly different definition of “**hemp**” in section 297A of the AMA, defined as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” 7 U.S.C. § 1639o(1). Both definitions require a THC concentration of not more than 0.3 percent for a *Cannabis sativa* L. plant to be considered hemp versus marijuana. For purposes of this legal opinion, I use the terms “**hemp**” and “**industrial hemp**” interchangeably.

² The Conference Report accompanying the 2018 Farm Bill explains the effect of the repeal as follows: “The provision also repeals the hemp research pilot programs one year after the Secretary publishes a final regulation allowing for full-scale commercial production of hemp as provided in section 297C of the [AMA].” H.R. REP. NO. 115-1072, at 699 (2018).

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Secretary is also required to promulgate regulations and guidelines implementing subtitle G. *See* AMA § 297D. The new authority also provides definitions (*see* AMA § 297A) and an authorization of appropriations (*see* AMA § 297E).

- **Section 10114** (7 U.S.C. § 1639o note) is a freestanding provision stating that nothing in title X of the 2018 Farm Bill prohibits the interstate commerce of hemp or hemp products. Section 10114 also provides that States and Indian tribes shall not prohibit the interstate transportation or shipment of hemp or hemp products produced in accordance with subtitle G through the State or territory of the Indian tribe.
- **Section 12619** amends the CSA to exclude hemp from the CSA definition of marijuana. Section 12619 also amends the CSA to exclude THC in hemp from Schedule I.³

In passing the 2018 Farm Bill, Congress legalized hemp production for all purposes within the parameters of the statute but reserved to the States and Indian tribes authority to enact and enforce more stringent laws regulating production of hemp.

II. ANALYSIS

A. As of the Enactment of the 2018 Farm Bill on December 20, 2018, Hemp Has Been Removed from Schedule I of the Controlled Substances Act and Is No Longer a Controlled Substance.

CSA § 102(6) defines “controlled substance” to mean “a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title. . . .” 21 U.S.C. § 802(6). Marijuana⁴ is a controlled substance listed in schedule I of the CSA. *See* CSA § 202(c)(10), schedule I (21 U.S.C. § 812(c), Schedule I (c)(10)); 21 C.F.R. § 1308.11(d)(23).

The 2018 Farm Bill amended the CSA in two ways.

- First, 2018 Farm Bill § 12619(a) amended the CSA definition of marijuana to exclude hemp. Before enactment of the 2018 Farm Bill, CSA § 102(16) (21 U.S.C. § 802(16)) defined marijuana as follows:

(16) The term ‘marihuana’ means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake,

³ For additional background on hemp production prior to enactment of the 2018 Farm Bill, *see* Congressional Research Service, “Hemp as an Agricultural Commodity” (RL32725) (updated July 9, 2018), *available at* <https://crsreports.congress.gov/product/pdf/RL/RL32725>.

⁴ This opinion uses the common spelling of “marijuana” except when quoting the CSA, which uses the “marihuana” spelling.

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or the sterilized seed of such plant which is incapable of germination.

As amended by the 2018 Farm Bill, the CSA definition of marijuana now reads:

(A) Subject to subparagraph (B), the term ‘marihuana’ means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term ‘marihuana’ does not include—

(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

- Second, 2018 Farm Bill § 12619(b) amended the CSA to exclude THC in hemp from the term “tetrahydrocannabinols” in schedule I. As amended by the 2018 Farm Bill, CSA § 202(c)(17), schedule I (21 U.S.C. § 812(c)(17), schedule I) now reads:

Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946).

By amending the definition of marijuana to exclude hemp as defined in AMA § 297A, Congress has removed hemp from schedule I and removed it entirely from the CSA. In other words, hemp is no longer a controlled substance. Also, by amending schedule I to exclude THC in hemp, Congress has likewise removed THC in hemp from the CSA.

It is important to note that this decontrolling of hemp (and THC in hemp) is self-executing. Although the CSA implementing regulations must be updated to reflect the 2018 Farm Bill amendments to the CSA, neither the publication of those updated regulations nor any other action is necessary to execute this removal.

I address here two principal objections to the view that the decontrolling of hemp is self-executing. The first objection is that, because regulations have not been published under CSA § 201, the legislative changes to schedule I regarding hemp are not effective. This objection is not valid.

The typical process for amending the CSA schedules is through rulemaking. Under CSA § 201(a), the Attorney General “may by rule” add to, remove from, or transfer between the schedules, any drugs or other substances upon the making of certain findings. 21 U.S.C. § 811(a). However, the schedules also can be amended directly by Congress through changes to the statute; and Congress has done so several times.⁵

⁵ See, e.g., Pub. L. 112-144, § 1152 (amending schedule I to add cannabimimetic agents); Pub. L. 101-647, § 1902(a) (amending schedule III to add anabolic steroids).

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The second objection is that, because the legislative changes to schedule I regarding hemp are not yet reflected in 21 C.F.R. § 1308.11, the removal is not yet effective. This objection also is not valid.

It is axiomatic that statutes trump regulations. See *Nat'l Family Planning & Reprod. Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 829 (D.C. Cir. 2006) (“[A] valid statute always prevails over a conflicting regulation[.]”). Congress established the five CSA schedules in statute, providing that “[s]uch schedules shall initially consist of the substances listed in this section.” 21 U.S.C. § 812(a).⁶ Congress further provided that “[t]he schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after October 27, 1970, and shall be updated and republished on an annual basis thereafter.” 21 U.S.C. § 812(a). The requirement to update and republish the schedules, however, is not a prerequisite to the effectiveness of the schedules “established by [the statute].” *Id.* In other words, where Congress itself amends the schedules to add or remove a controlled substance, the addition or removal of that controlled substance is effective immediately on enactment (absent some other effective date in the legislation); its addition to or removal from a schedule is not dependent on rulemaking.⁷

To illustrate, Congress amended the CSA in 2012 to add “cannabimimetic agents” to schedule I. That amendment was enacted as part of the Synthetic Drug Abuse Prevention Act of 2012 (Pub. L. 112-144, title XI, subtitle D), which was signed into law on July 9, 2012. Almost six months later, the Drug Enforcement Administration (“DEA”) published a final rule establishing the drug codes for the cannabimimetic agents added to schedule I by Congress and making other conforming changes to schedule I as codified in 21 C.F.R. § 1308.11. See 78 Fed. Reg. 664 (Jan. 4, 2013). In explaining why notice-and-comment rulemaking was unnecessary, DEA noted that “the placement of these 26 substances in Schedule I **has already been in effect since July 9, 2012.**” *Id.* at 665 (emphasis added). In other words, the legislative changes to schedule I were effective immediately upon enactment. The reflection of those changes in 21 C.F.R. § 1308.11, although required by 21 U.S.C. § 812(a), was not necessary for the execution of those changes to schedule I.

Accordingly, enactment of the 2018 Farm Bill accomplished the removal of hemp (and THC in hemp⁸) from the CSA. Conforming amendments to 21 C.F.R. § 1308.11, while required as part

⁶ “Marihuana” and “Tetrahydrocannabinols” were both included in the initial schedule I established by Congress in 1970.

⁷ Cf. *United States v. Huerta*, 547 F.2d 545, 547 (10th Cir. 1977) (“[F]ailure to publish the ‘updated’ schedules as required by Section 812(a) had no effect upon the validity of those substances initially listed in the five schedules.”); *United States v. Monroe*, 408 F. Supp. 270, 274 (N.D. Cal. 1976) (“Thus, while section 812(a) clearly orders the controlled substance schedules to be republished, it is clear that Congress did not intend republication to serve as a reissuance of the schedules, which if done improperly would cause those schedules to lapse and expire. . . . [T]he requirement that the schedules, once ‘updated,’ be ‘republished’ was solely for the purpose of establishing one list which would reflect all substances which were currently subject to the Act’s provisions. . . .”).

⁸ Schedule I, as published in 21 C.F.R. § 1308.11, includes a definition of “tetrahydrocannabinols” in paragraph (d)(31) that does not appear in the CSA. Notwithstanding the presence of that definition in the current regulations, I

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of DEA's continuing obligation to publish updated schedules, are not necessary to execute the 2018 Farm Bill changes to schedule I.⁹

B. After the Department of Agriculture Publishes Regulations Implementing the Hemp Production Provisions of the 2018 Farm Bill Contained in Subtitle G of the Agricultural Marketing Act of 1946, States and Indian Tribes May Not Prohibit the Interstate Transportation or Shipment of Hemp Lawfully Produced Under a State or Tribal Plan or Under a License Issued Under the Departmental Plan.

AMA § 297D(a)(1)(A) directs the Secretary to issue regulations and guidelines "as expeditiously as possible" to implement subtitle G of the AMA. 7 U.S.C. § 1639r(a)(1)(A). These regulations will address the approval of State and Tribal plans under AMA § 297B and the issuance of licenses under the Departmental plan under AMA § 297C. As explained below, once these regulations are published, States and Indian tribes may not prohibit the transportation or shipment of hemp (including hemp products) produced in accordance with an approved State or Tribal plan or produced under a license issued under the Departmental plan.

Transportation of hemp is addressed in 2018 Farm Bill § 10114.¹⁰ Subsection (a) provides:

(a) RULE OF CONSTRUCTION.—Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (as added by section 10113)) or hemp products.

7 U.S.C. § 1639o note. This provision states that nothing in title X of the 2018 Farm Bill

am of the opinion that THC in hemp is excluded from THC as a schedule I controlled substance under the CSA by virtue of the 2018 Farm Bill amendments.

⁹ Schedule I, as reflected in 21 C.F.R. § 1308.11, includes a separate listing of "marihuana extract" in paragraph (d)(58). Marijuana extract is not reflected in schedule I in the statute because it was added after 1970 by regulation under CSA § 201. The term "marihuana extract" is defined in regulation as "an extract containing one or more cannabinoids that has been derived from any plant of the genus *Cannabis*, other than the separated resin (whether crude or purified) obtained from the plant." The 2018 Farm Bill amended the definition of "marihuana" to exclude hemp, but because the regulatory definition of "marihuana extract" in schedule I does not use the words "marihuana" or "tetrahydrocannabinols" to define the term, a question arises whether **hemp extract** is still considered to be listed as a schedule I controlled substance. While the issue is not further addressed in this opinion, I think that the revised statutory definition of "marihuana" has effectively removed hemp extract from schedule I, and that reflecting such in 21 C.F.R. § 1308.11(d)(58) would be merely a conforming amendment.

¹⁰ Hemp transportation is also addressed in annual appropriations acts, which restrict Federal appropriated funds from being used to prohibit the transportation of hemp. However, those provisions are limited in scope because they address only hemp produced under the 2014 Farm Bill authority, and they address only Federal government actions. That is, while the provisions prohibit Federal actors from blocking the transportation of so-called "2014 Farm Bill hemp," they do not restrict State action in that regard. See Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2019, Pub. L. 116-6, div. B, § 728 (prohibiting funds made available by that Act or any other Act from being used in contravention of 2014 Farm Bill § 7606 or "to prohibit the transportation, processing, sale, or use of industrial hemp, or seeds of such plant, that is grown or cultivated in accordance with [2014 Farm Bill § 7606], within or outside the State in which the industrial hemp is grown or cultivated"). See also Commerce, Justice, Science, and Related Agencies Appropriations Act, 2019, Pub. L. 116-6, div. C, § 536 ("None of the funds made available by this Act may be used in contravention of [2014 Farm Bill § 7606] by the Department of Justice or the Drug Enforcement Administration.").

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prohibits the interstate commerce of hemp. However, this provision, standing alone, does not have the effect of sanctioning the transportation of hemp in States or Tribal areas where such transportation is prohibited under State or Tribal law.

Subsection (b), however, specifically prohibits States and Indian tribes from prohibiting the transportation of hemp through that State or Tribal territory. Subsection (b) provides:

(b) TRANSPORTATION OF HEMP AND HEMP PRODUCTS.—No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.

7 U.S.C. § 1639o note. In effect, this provision preempts State law to the extent such State law prohibits the interstate transportation or shipment of hemp that has been produced in accordance with subtitle G of the AMA.

As a matter of constitutional law, “[t]he Supremacy Clause provides a clear rule that federal law ‘shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any [S]tate to the Contrary notwithstanding. . . .’ Under this principle, Congress has the power to preempt [S]tate law.” *Arizona v. United States*, 567 U.S. 387, 398-99 (2012) (citing U.S. Const. art. VI, cl. 2). “Under the doctrine of federal preemption, a federal law supersedes or supplants an inconsistent [S]tate law or regulation.” *United States v. Zadeh*, 820 F.3d 746, 751 (5th Cir. 2016).

Federal courts generally recognize three categories of preemption: (1) express preemption (where Congress “withdraw[s]” powers from the State through an “express preemption provision”);¹¹ (2) field preemption (where States are “precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance”);¹² and conflict preemption (where State laws are preempted when they conflict with Federal law, which includes situations “where ‘compliance with both federal and [S]tate regulations is a physical impossibility’” or situations “where the challenged [S]tate law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’”).¹³ *Arizona*, 567 U.S. at 399-400 (citations omitted); *see also Zadeh*, 820 F.3d at 751.

¹¹ *See, e.g.*, 7 U.S.C. § 1639i(b) (“(b) Federal preemption.—No State or a political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food or seed in interstate commerce any requirement relating to the labeling of whether a food (including food served in a restaurant or similar establishment) or seed is genetically engineered (which shall include such other similar terms as determined by the Secretary of Agriculture) or was developed or produced using genetic engineering, including any requirement for claims that a food or seed is or contains an ingredient that was developed or produced using genetic engineering.”).

¹² *See, e.g., Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 212 (“[T]he federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the [S]tates.”).

¹³ *See, e.g.*, 21 U.S.C. § 903 (“No provision of this subchapter shall be construed as indicating an intent on the part of Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is

Section 10114(b) of the 2018 Farm Bill satisfies the definition of conflict preemption because a State law prohibiting the interstate transportation or shipment of hemp or hemp products that have been produced in accordance with subtitle G of the AMA would be in direct conflict with section 10114(b), which provides that no State may prohibit such activity.¹⁴ Therefore, any such State law has been preempted by Congress. The same result applies to Indian tribes.¹⁵

In sum, once the implementing regulations are published, States and Indian tribes may not prohibit the shipment of hemp lawfully produced under an approved State or Tribal plan or under a license issued under the Departmental plan.

C. States and Indian Tribes May Not Prohibit the Interstate Transportation or Shipment of Hemp Lawfully Produced Under the Agricultural Act of 2014.

Because the 2018 Farm Bill does not immediately repeal the hemp pilot authority in 2014 Farm Bill § 7606 — and because the publication of regulations implementing the hemp production provisions of the 2018 Farm Bill will likely not occur until later in 2019 — the question arises whether States and Indian tribes are prohibited from blocking the interstate transportation or shipment of hemp (including hemp products) lawfully produced under the 2014 Farm Bill. The answer depends on the meaning of the phrase “in accordance with subtitle G of the Agricultural Marketing Act of 1946” in 2018 Farm Bill § 10114(b) (7 U.S.C. § 1639o note). Only hemp produced in accordance with subtitle G is covered by the preemption provision discussed above. As explained below, it is my opinion that the answer to this question is yes, by operation of AMA § 297B(f).

AMA § 297B(f) states the legal effect of the provisions authorizing States and Indian tribes to develop plans for exercising primary regulatory authority over the production of hemp within that State or territory of the Indian tribe. Specifically, section 297B(f) provides:

(f) EFFECT.—Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe—

(1) for which a State or Tribal plan is not approved under this section, if the production of hemp is in accordance with section 297C or other Federal laws (including regulations); and

(2) if the production of hemp is not otherwise prohibited by the State or Indian tribe.

a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.”).

¹⁴ Alternatively, section 10114(b) might be considered an express preemption provision because the statute expressly withdraws the power of a State to prohibit the transportation or shipment of hemp or hemp products through the State.

¹⁵ AMA § 297B(a)(3) contains an anti-preemption provision stating that nothing in § 297B(a) “preempts or limits any law of a State or Indian tribe” that “regulates the production of hemp” and “is more stringent than [subtitle G].” 7 U.S.C. § 1639p(a)(3). However, that anti-preemption provision is limited to the production of hemp — not the transportation or shipment of hemp — and thus does not conflict with 2018 Farm Bill § 10114(b).

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7 U.S.C. § 1639p(f) (emphasis added).

This provision addresses the production of hemp in a State or Tribal territory for which the State or tribe does not have an approved plan under AMA § 297B. This provision acknowledges that, in such a scenario, the production of hemp in that State or Tribal territory is still permissible if it is produced **either** in accordance with the Departmental plan under AMA § 297C **or** in accordance with other Federal laws, and the State or tribe does not otherwise prohibit its production.

The plain language of subtitle G of the AMA, as added by the 2018 Farm Bill, thus clearly contemplates a scenario in which hemp is neither produced under an approved 297B plan nor under a license issued under the Department's 297C plan, but is still legally produced under "other Federal laws." It is my opinion that "other Federal laws" encompasses 2014 Farm Bill § 7606.¹⁶

To my knowledge, before enactment of 2014 Farm Bill § 7606, the CSA was the only Federal law that authorized the production of hemp. Indeed, the production of hemp — as the "manufacture" of a schedule I controlled substance — was generally prohibited under the CSA except to the extent authorized under a registration or waiver under the CSA. *See* 21 U.S.C. §§ 802(15), 802(22), 822, and 823; 21 C.F.R. part 1301. Given (1) the removal of hemp as a controlled substance under the CSA, (2) the delayed repeal of the 2014 Farm Bill § 7606 authority, and (3) the enactment of the new hemp production authorities in subtitle G of the AMA, it is my opinion that "other Federal laws" refers to the provisions of 2014 Farm Bill § 7606, which are still in effect. Such an interpretation gives immediate effect to the phrase "other Federal laws." It is a "cardinal principle of interpretation that courts must give effect, if possible, to every clause and word of a statute." *See, e.g., Loughrin v. United States*, 573 U.S. 351, 358 (2014) (internal quotations and citations omitted).

Therefore, reading AMA § 297B(f) in harmony with 2018 Farm Bill § 10114(b), if the hemp is legally produced in accordance with 2014 Farm Bill § 7606 ("other Federal law"), then, by virtue of AMA § 297B(f), its production is not prohibited. Such hemp would have been produced "in accordance with subtitle G," which specifically addresses just such a scenario, as AMA § 297B(f) is part of subtitle G. Accordingly, under 2018 Farm Bill § 10114(b), a State or Indian

¹⁶ That Congress envisioned such a scenario is apparent given the language in 2018 Farm Bill § 7605(b) delaying the repeal of 2014 Farm Bill § 7606 until 12 months after the Secretary establishes the 297C plan. Accordingly, this interpretation is not precluded by AMA § 297C(c)(1), which provides: "[i]n the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, it shall be unlawful to produce hemp in that State or the territory of that Indian tribe without a license issued by the Secretary under subsection (b)." Given the reference to "or other Federal laws" in AMA § 297B(f)(1) — and the fact that 2014 Farm Bill § 7606 is still in effect — it would be an absurd reading of AMA § 297C(c)(1) to conclude that hemp produced in accordance with Federal law (2014 Farm Bill § 7606) is, at the same time, unlawful without a separate license issued by the Secretary under the 297C plan. As courts have long recognized, statutory interpretations that "produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

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tribe may not prohibit the transportation or shipment of so-called “2014 Farm Bill hemp” through that State or Tribal territory.¹⁷

Recent Developments

I acknowledge that this conclusion is in tension with a recent decision in a case in the District of Idaho, but it also is consistent with a recent decision in a case in the Southern District of West Virginia. Neither court addressed the “other Federal laws” language in AMA § 297B(f)(1), which I find conclusive.

In *Big Sky Scientific LLC v. Idaho State Police*, Case No. 19-CV-00040 (D. Idaho), a magistrate judge found that a shipment of Oregon hemp bound for Colorado and interdicted by Idaho State Police could not have been produced “in accordance with subtitle G” because the State of origin does not yet have an approved plan under AMA § 297B and the Secretary has not yet established a plan under AMA § 297C.¹⁸ The magistrate acknowledged Oregon law authorizing the cultivation of hemp, noting the plaintiff’s assertion that the hemp was produced by a grower licensed by the Oregon Department of Agriculture (and, thus, presumably in compliance with 2014 Farm Bill § 7606 requirements).¹⁹ However, in denying the plaintiff’s motion for a preliminary injunction, the magistrate concluded that, in enacting the 2018 Farm Bill, Congress intended to “create a regulatory framework around the production and interstate transportation of hemp for purposes of federal law, and that framework is to be contained in the federal (or compliant [S]tate or [T]ribal) plan for production of hemp found in the 2018 Farm Bill.”²⁰ Although the 2018 Farm Bill allows hemp to be transported across State lines, the magistrate found those interstate commerce protections apply only to hemp produced under regulations promulgated under the authority of the 2018 Farm Bill.²¹ Therefore, because those regulations do not yet exist, the interdicted hemp is subject to Idaho law prohibiting its transportation.

USDA is not a party in the *Big Sky* case, and this office does not concur with the reasoning of the magistrate regarding the shipment of hemp lawfully produced under the 2014 Farm Bill. In

¹⁷ This conclusion seems to be supported in the legislative history as well. In explaining the effect of the preemption provision, the Conference Report states: “While [S]tates and Indian tribes may limit the production and sale of hemp and hemp products within their borders, the Managers, in Sec. 10112 [sic], agreed to not allow [S]tates and Indian tribes to limit the transportation or shipment of hemp or hemp products through the [S]tate or Indian territory.” H.R. REP. NO. 115-1072, at 738 (2018). Notably, the Managers referred to hemp generally, not merely hemp produced under a plan developed under subtitle G of the AMA.

¹⁸ See *Big Sky*, ECF Doc. #32, Memorandum Decision and Order Re: Plaintiff’s Motion for Preliminary Injunction; see also ECF Doc. #6, Memorandum Decision and Order Re: Plaintiff’s Emergency Motion for Temporary Restraining Order and Preliminary Injunction and Plaintiff’s Motion to File Overlength Brief (available at 2019 WL 438336 (Feb. 2, 2019)).

¹⁹ *Big Sky*, ECF Doc. #32, at 5, 7-8.

²⁰ *Id.* at 3.

²¹ *Id.* at 19-26.

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interpreting the statutory language, the magistrate correctly noted the well-recognized principle of statutory construction that statutes should not be interpreted “in a manner that renders other provisions of the same statute inconsistent, meaningless, or superfluous.”²² However, seemingly ignoring that guiding principle of interpretation, the magistrate did not address the effect of the “other Federal laws” language in AMA § 297B(f) or attempt to give that language any meaning. The Idaho court failed to read the statute as a whole and did not consider the “other Federal laws” clause that I find conclusive. Given the preliminary nature of the magistrate’s ruling, I find his opinion denying a preliminary injunction unpersuasive.²³

Conversely, the interpretation of 2018 Farm Bill § 10114 advanced by this legal opinion is consistent with a decision issued in the Southern District of West Virginia. In *United States v. Mallory*, Case No. 18-CV-1289 (S.D. W. Va.), the Department of Justice filed a civil action to seize hemp allegedly grown in violation of the CSA and also outside the scope of the 2014 Farm Bill. At issue in that case was hemp purportedly grown by a producer licensed by the State of West Virginia under a 2014 Farm Bill § 7606 pilot program, where the hemp seeds were shipped from a Kentucky supplier licensed by the Commonwealth of Kentucky under a 2014 Farm Bill § 7606 pilot program. The court relied on a combination of laws — the 2014 Farm Bill, the appropriations acts provisions,²⁴ and the 2018 Farm Bill — to dissolve a preliminary injunction against the defendant²⁵ and to dismiss entirely the government’s case.²⁶ In dissolving the preliminary injunction, the court permitted the defendants to transport the hemp product across State lines to Pennsylvania for processing and sale.²⁷

Although the *Mallory* court did not have occasion to address any State attempts to block the transportation of hemp, the court did reference 2018 Farm Bill § 10114, noting that it “expressly allows hemp, its seeds, and hemp-derived products to be transported across State lines.”²⁸ The district judge’s opinion addressed hemp produced under 2014 Farm Bill § 7606 and not hemp produced under State, Tribal, or Departmental plans. The conclusion reached by the *Mallory* court is consistent with my interpretation that States cannot block the shipment of hemp, whether

²² *Id.* at 21-22 (citing *Padash v. I.N.S.*, 258 F.3d 1161, 1170-71 (9th Cir. 2004)). The magistrate continued:

It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. . . . It is our duty to give effect, if possible, to every clause and word of a statute.

Id. at 23 (internal quotations and citations omitted).

²³ Indeed, the magistrate’s ruling is under appeal. See *Big Sky Sci. LLC v. Bennetts*, Case No. 19-35138 (9th Cir.).

²⁴ See *supra* footnote 10.

²⁵ *Mallory*, ECF Doc. #60, Memorandum Opinion and Order, 2019 WL 252530 (S.D. W. Va. Jan. 17, 2019).

²⁶ *Mallory*, ECF Doc. #72, Memorandum Opinion and Order, 2019 WL 1061677 (S.D. W. Va. Mar. 6, 2019).

²⁷ *Mallory*, ECF Doc. #60, 2019 WL 252530, at *3.

²⁸ *Mallory*, ECF Doc. #72, 2019 WL 1061677, at *6.

that hemp is produced under the 2014 Farm Bill or under a State, Tribal, or Departmental plan under the 2018 Farm Bill. It is also a final judgment of the Southern District of West Virginia court, and not a preliminary ruling as with the District of Idaho magistrate's opinion.²⁹

In matters of statutory interpretation, the text of the statute governs. One must read that text in its entirety and give every word meaning. The reference to "other Federal laws" must be given meaning, and that language clearly refers to the Federal law that currently authorizes the production of hemp — 2014 Farm Bill § 7606. Therefore, hemp produced under that pilot authority is hemp produced in accordance with subtitle G of the AMA. States and Indian tribes may not prohibit the transportation or shipment of such hemp through that State or Tribal territory.

D. The 2018 Farm Bill Places Restrictions on the Production of Hemp by Certain Felons.

The 2018 Farm Bill added a new provision addressing the ability of convicted felons to produce hemp. The 2014 Farm Bill is silent on the issue. AMA § 297B(e)(3)(B) (hereafter, "Felony provision"), as added by the 2018 Farm Bill, provides:

(B) FELONY.—

(i) IN GENERAL.—Except as provided in clause (ii), any person convicted of a felony relating to a controlled substance under State or Federal law before, on, or after the date of enactment of this subtitle shall be ineligible, during the 10-year period following the date of the conviction—

(I) to participate in the program established under this section or section 297C; and

(II) to produce hemp under any regulations or guidelines issued under section 297D(a).

(ii) EXCEPTION.—Clause (i) shall not apply to any person growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before the date of enactment of this subtitle.

7 U.S.C. § 1639p(e)(3)(B) (emphasis added). The references to "the date of enactment of this subtitle" are to subtitle G of the AMA, as added by section 10113 of 2018 Farm Bill. Therefore, the "date of enactment of this subtitle" is the date of enactment of the 2018 Farm Bill — December 20, 2018.

In explaining the Felony provision, the Conference Report notes:

Any person convicted of a felony relating to a controlled substance shall be ineligible to participate under the [S]tate or [T]ribal plan for a 10-year period following the date of the conviction. However, this prohibition shall not apply to producers who have been lawfully participating in a [S]tate hemp pilot program as authorized by the Agricultural Act of 2014, prior to enactment of this subtitle. Subsequent felony convictions after the date of enactment of this subtitle will trigger a 10-year

²⁹ *Mallory*, ECF Doc. #72, 2019 WL 1061677, at *9 (denying the United States' motion to amend and granting the defendants' motion to dismiss). *Big Sky*, ECF Doc. #32, at 28 (denying the plaintiff's motion for preliminary injunction and noting that the court will separately issue an order setting a scheduling conference to govern the case going forward).

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nonparticipation period regardless of whether the producer participated in the pilot program authorized in 2014.

H.R. REP. NO. 115-1072, at 737 (2018).

In sum, a person convicted of a State or Federal felony relating to a controlled substance — regardless of when that conviction occurred — is ineligible to produce hemp under subtitle G of the AMA for a period of 10 years following the date of the conviction. An exception exists in clause (ii) of the Felony provision that applies to a person who was lawfully producing hemp under the 2014 Farm Bill **before December 20, 2018**, and who had been convicted of a felony relating to a controlled substance before that date. States and Indian tribes now have a responsibility to determine whether a person wishing to produce hemp in that State or Tribal territory has any Federal or State felony convictions relating to controlled substances that would make that person ineligible to produce hemp.

III. OTHER ISSUES

There are two additional important aspects of this issue that should be emphasized.

First, the 2018 Farm Bill preserves the authority of States and Indian tribes to enact and enforce laws regulating the production of hemp that are more stringent than Federal law. *See* AMA § 297B(a)(3) (7 U.S.C. § 1639p(a)(3)) (“Nothing in this subsection preempts or limits any law of a State or Indian tribe that . . . (i) regulates the production of hemp; and (ii) is more stringent than this subtitle.”). For example, a State may continue to prohibit the growth or cultivation of hemp in that State.³⁰ As discussed above, however, while a State or Indian tribe may prohibit the production of hemp, it may not prohibit the interstate shipment of hemp that has been produced in accordance with Federal law.

Second, the 2018 Farm Bill does not affect or modify the authority of the Secretary of Health and Human Services (“HHS Secretary”) or Commissioner of Food and Drugs (“FDA Commissioner”) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) and section 351 of the Public Health Service Act (42 U.S.C. § 262). *See* AMA § 297D(c) (7 U.S.C. § 1639r(c)). While AMA § 297D(b) provides that the Secretary of Agriculture shall have “sole authority” to issue Federal regulations and guidelines that relate to the production of hemp, this authority is subject to the authority of the HHS Secretary and FDA Commissioner to promulgate Federal regulations and guidelines under those FDA laws. 7 U.S.C. § 1639r(b).

³⁰ Certain states continue to prohibit the cultivation of hemp. *See* National Conference of State Legislatures, “State Industrial Hemp Statutes,” available at <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx#state> (updated Feb. 1, 2019).

IV. CONCLUSION

I have analyzed the hemp provisions enacted as part of the 2018 Farm Bill and reach the following conclusions:

1. As of the enactment of the 2018 Farm Bill on December 20, 2018, hemp has been removed from schedule I of the CSA and is no longer a controlled substance.
2. After USDA publishes regulations implementing the hemp production provisions of the 2018 Farm Bill contained in subtitle G of the AMA, States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under a State or Tribal plan or under a license issued under the Departmental plan.
3. States and Indian tribes may not prohibit the interstate transportation or shipment of hemp lawfully produced under the 2014 Farm Bill.
4. A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under subtitle G of the AMA. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

The 2018 Farm Bill preserves the authority of States and Indian tribes to enact and enforce laws regulating the production of hemp that are more stringent than Federal law. Additionally, the 2018 Farm Bill does not affect or modify the authority of the HHS Secretary or FDA Commissioner to regulate hemp under applicable FDA laws.



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Department of Agriculture

Chapter 603

Division 48

INDUSTRIAL HEMP

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

(7) "Department" means the Oregon Department of Agriculture.

(8) "Food" means:

(a) Articles used for food or drink, including ice, for human consumption or food for dogs and cats;

(b) Chewing gum;

(c) Dietary supplements; and

(d) Articles used for components of any such article.

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

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

(11) "Handler" means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed.

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

(13) "Harvest Lot":

(a) Means a quantity of industrial hemp harvested in a distinct timeframe that is:

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

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

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

(14) "Harvest Lot Identifier" means a unique numerical identifier that begins with the name of the grow site, then the year of harvest, and then a unique number to identify the harvest lot. If a harvest lot is subsequently split into one or more lots for purposes of testing in OAR 603-048-2300 to 603-048-2480 or for purposes of retesting in accordance with OAR 603-048-0630(3), a unique letter shall be added to the end of the original harvest lot identifier to identify the split lots.

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

(16) "Industrial hemp":

(a) Means all non-seed parts and varieties of the Cannabis plant, whether growing or not, that contain an average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(b) Means any Cannabis seed:

(A) That is part of a crop;

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

(C) That is agricultural hemp seed;

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

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

(c) Does not mean:

(A) Industrial hemp commodities or products; or

(B) Marijuana, as that is defined in ORS 475B.015.

(17) Industrial Hemp Commodity or Product:

(a) Means an item processed by a handler containing any industrial hemp or containing any chemical compounds derived from industrial hemp, including CBD derived from industrial hemp.

(b) Includes:

(A) Hemp concentrates or extracts as defined in OAR 603-048-2310;

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

(C) Hemp tincture as defined in OAR 603-048-2310;

(D) Hemp topical as defined in OAR 603-048-2310;

(E) Hemp transdermal patch as defined in OAR 603-048-2310;

(F) Industrial hemp processed through retting or other processing such that it is suitable fiber for textiles, rope, paper, hempcrete, or other building or fiber materials;

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

(H) Industrial hemp seed pressed or otherwise processed into oil;

(c) Does not include:

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

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

(C) Industrial hemp that has been minimally processed and meets all testing requirements for hemp items under OAR 603-048-2300 to 603-048-2500 where used or intended to be used for processing into a hemp concentrate or extract as defined in OAR 603-048-2310;

(D) Agricultural hemp seed.

(18) "Laboratory" means a laboratory that is licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority under ORS 475B.565.

(19) "OLCC" means the Oregon Liquor Control Commission.

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

(21) "Production area" means the area at a grow site where industrial hemp is produced or is intended to be produced and may include fields, greenhouses, or other buildings.

(22) "Process lot identifier" means a unique numerical identifier that begins with the last seven numbers of the handler's registration number or the name of the handler, then the year of processing, and then a unique number to identify the process lot.

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

(24) "Process lot" means:

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

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

(25) "Retest" or "Retesting" means the laboratory process of retesting a retained file sample for THC content after the sample failed initial testing for THC content. A retest does not include or permit taking a new sample from the harvest lot.

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

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

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

Statutory/Other Authority: ORS 561.90, ORS 571.300-571.348 & OL 2018, Ch.116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch.116

History:

DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019

DOA 7-2019, temporary amend filed 03/01/2019, effective 03/01/2019 through 08/27/2019

DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018

DOA 14-2018, amend filed 04/03/2018, effective 04/03/2018

DOA 22-2017, temporary amend filed 12/19/2017, effective 12/19/2017 through 04/03/2018

DOA 18-2017, temporary amend filed 11/09/2017, effective 11/09/2017 through 04/03/2018

DOA 15-2017, temporary amend filed 10/06/2017, effective 10/06/2017 through 04/03/2018

DOA 13-2017, f. & cert. ef. 8-30-17

DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16
DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0100

Registration, generally

- (1) Industrial hemp is an agricultural product subject to regulation by the Department.
- (2) Only a registrant may produce industrial hemp, except as provided in Oregon Laws 2018, Chapter 116, Section 20.
- (3) Registrations:
 - (a) Apply only to the individual or entity identified on an application that is approved by the Department.
 - (b) Are a personal privilege and may not be transferred.
 - (c) May not be sold or transferred.
- (4) For transfers and sales within Oregon, a registrant may sell or transfer industrial hemp or agricultural hemp seed to:
 - (a) Another registrant; or
 - (b) An OLCC licensee in accordance with ORS 571.336, OR Laws 2018, Chapter 116, Section 15 and 15a, and rules adopted thereunder.
- (6) Restriction on industrial hemp product sales:
 - (a) For the purposes of this section, "consumer" means a person who purchases, acquires, owns, holds or uses industrial hemp products other than for the purpose of resale.
 - (b) A registrant may not sell an industrial hemp product that contains more than 0.3 percent total THC to a consumer unless licensed as a retailer by OLCC.
- (7) Registration and compliance with these rules does not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

DOA 13-2017, f. & cert. ef. 8-30-17

DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0125

Grower Registration

- (1) Only a grower registered with the Department may produce industrial hemp.
- (2) Industrial hemp may only be produced at grow sites registered with the Department.
- (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, 571.300-571.348 & 633.511-633.996

Statutes/Other Implemented: ORS 571.300-571.348

History:

[DOA 27-2018, adopt filed 11/29/2018, effective 12/03/2018](#)

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 845-025-03285 from the OLCC may be registered by reciprocity with the Department as a handler in accordance with OAR 603-048-0225(8). A marijuana processor registered by reciprocity:
 - (a) Is deemed to be in compliance with the recordkeeping requirements in OAR 603-048-0500 if the marijuana processor tracks all industrial hemp and industrial hemp products and commodities in the Cannabis Tracking System as required by OAR Chapter 845, Division 25.
 - (b) Is deemed to be in compliance with testing requirements for hemp items if the marijuana processor tests all hemp items as required in OAR Chapter 845, Division 25

Statutory/Other Authority: ORS 561.190, ORS 571.300-571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019](#), amend filed 05/15/2019, effective 05/15/2019

[DOA 27-2018](#), adopt filed 11/29/2018, effective 12/03/2018

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.
- (2) Renewal Application. A registrant with a current valid registration may renew the registration by submitting a renewal application no later than December 30 of the current registration year.
- (3) The Department shall review and act on applications in the order they are received. An individual is not registered with the Department until the Department has approved the registration and notified the registrant of registration.
- (4) To apply for a grower registration, an applicant must submit to the Department:
 - (a) A complete grower registration application on a form provided by the Department;
 - (b) A complete grow site registration application on a form provided by the Department for each grow site; and
 - (c) All applicable fees as described in OAR 603-048-0700.
- (5) A person seeking to produce or process agricultural hemp seed must separately apply for and obtain an agricultural hemp seed producer registration as described in OAR 603-048-0300.
- (6) A grower registration application must include all of the following information:
 - (a) The name, legal type of registrant (individual, corporation, etc.), and contact information of the applicant;
 - (b) The address of each grow site; and
 - (c) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application, including but not limited to:
 - (A) The intended use of the industrial hemp (flower, seed, and/or fiber); and
 - (B) The intended number of acres or square feet to be cultivated.
 - (d) Any other information or forms required by the Department.
- (7) Each grow site registration application must include all of the following information:
 - (a) The address of the grow site;
 - (b) If industrial hemp is grown or is intended to be grown in a field:
 - (A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field;
 - (B) The number of square feet or acres of each cultivated field; and
 - (C) A map of the production area showing clear boundaries of the production area;
 - (c) If industrial hemp is grown or is intended to be grown in a greenhouse or other building:
 - (A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building;
 - (B) The approximate dimension or square feet of the greenhouse or other building; and
 - (D) A map of the production area showing clear boundaries of the production area.
- (8) To add a grow site to an existing registration, the registered grower must submit to the Department:
 - (a) A complete grow site registration form as described in section (6) of this rule.
 - (b) All applicable fees as described in OAR 603-048-0700(2)(a).
- (9) In addition to the requirements in sections (4) to (7), all applicants for registration must acknowledge and agree that:
 - (a) Any information provided to the Department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant or registrant;
 - (b) The Department may enter any field, facility or greenhouse used for the production or handling of industrial hemp or agricultural hemp seed and may take samples of industrial hemp or agricultural hemp seed as necessary for the administration of the Department's laws.
 - (c) All fees lawfully due to the Department will be timely paid.
 - (d) The information provided is true and correct and that applicant's signature is an attestation of that fact.
- (10) Incomplete Applications.
 - (a) If an applicant does not provide all of the information required by rule or pay the applicable fee, the Department shall reject the application as incomplete.
 - (b) If an applicant fails to provide all of the information required, the Department shall notify the applicant of the missing information and allow the applicant 30 calendar days to submit the missing information.
 - (c) The Department may verify the information submitted, verify any accompanying documentation submitted with an application, or request additional information from the applicant. If an applicant fails to submit information necessary for the Department to verify information on the application or accompanying documentation, the Department shall reject the application as incomplete.
 - (d) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a year, the application fee may be applied to a new application.
- (11) Denial.
 - (a) The Department must deny an initial or renewal application if the applicant fails to satisfy any of the requirements for initial registration.

- (b) The Department may deny an initial or renewal application if:
- (A) The applicant violated or has a history of noncompliance with:
 - (i) A provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116),
 - (ii) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);
 - (iii) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or a rule adopted thereunder;
 - (iv) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations.
 - (B) The application contains false, misleading, or incorrect information

Statutory/Other Authority: ORS 561.190, 569.445, 571.300-571.348, 633.511-633.996 & OL 2018, Ch.116

Statutes/Other Implemented: ORS 571.300-571.315 & OL 2018, Ch.116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

[DOA 14-2018, amend filed 04/03/2018, effective 04/03/2018](#)

DOA 13-2017, f. & cert. ef. 8-30-17

DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 1-2016(Temp), f. & cert. ef. 1-29-16 thru 7-26-16

DOA 3-2015, f. & cert. ef. 1-29-15

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.
- (2) Renewal Application. A registrant with a current valid registration may renew the registration by submitting a renewal application to the Department by no later than December 30 of the current registration year.
- (3) The Department shall review and act on applications in the order they are received. An individual is not registered with the Department until the Department has approved the registration and notified the registrant of registration.
- (4) To apply for a handler registration, an applicant must submit to the Department:
 - (a) A complete application to the Department on forms provided by the Department; and
 - (b) All applicable fees as described in OAR 603-048-0700.
- (5) A person seeking to produce or process agricultural hemp seed must separately apply for and obtain an agricultural hemp seed producer registration as described in OAR 603-048-0300.
- (6) An application for a handler registration must:
 - (a) Include all of the following information:
 - (A) The name, legal type of registrant (individual, corporation, etc.), and contact information of the applicant;
 - (B) The name and address of applicant's handling site;
 - (C) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application.
 - (b) Include a completed copy of the ODA land use compatibility statement for each hemp operation location signed by the local county or government.
 - (c) Include any other information or forms required by the Department.
- (7) In addition to the requirements in sections (4) to (6), all applicants for registration must acknowledge and agree that:
 - (a) Any information provided to the Department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant or registrant;
 - (b) The Department may enter any field, facility or greenhouse used for the production or handling of industrial hemp or agricultural hemp seed and may take samples of industrial hemp or agricultural hemp seed as necessary for the administration of the Department's laws.
 - (c) All fees lawfully due to the Department will be timely paid.
 - (e) Registration and compliance with these industrial hemp rules may not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities, or from possible criminal prosecution under the laws of other states.
- (8) Incomplete Applications.
 - (a) If an applicant does not provide all of the information required in subsection (6) of this rule or pay the applicable fee, the Department shall reject the application as incomplete.
 - (b) If an applicant fails to provide all of the information required, the Department shall notify the applicant of the missing information and allow the applicant thirty calendar days to submit the missing information.
 - (c) The Department may verify the information submitted, verify any accompanying documentation submitted with an application, or request additional information from the applicant. If an applicant fails to submit information necessary for the Department to verify information on the application or accompanying documentation, the Department shall reject the application as incomplete.
 - (d) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a year, the application fee may be applied to a new application.
- (9) Denial.

- (a) The Department must deny an initial or renewal application if:
 - (A) The LUCS submitted states that the proposed land use is prohibited in the applicable zone; or
 - (B) The applicant fails to satisfy any of the requirements for initial registration.
- (b) The Department may deny an initial or renewal application if:
 - (A) The applicant violated or has a history of noncompliance with:
 - (i) A provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116),
 - (ii) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);
 - (iii) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or a rule adopted thereunder;
 - (iv) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations.
 - (B) The application contains false, misleading, or incorrect information.
- (10) Registration by Reciprocity. On and after January 1, 2020, a marijuana processor licensed under ORS 475B.090 with a hemp endorsement as described in OAR 845-025-03285 from the OLCC may apply for registration by submitting to the Department:
 - (a) A complete reciprocity handler registration application on forms provided by the Department;
 - (b) A copy of the marijuana processor's current license and hemp endorsement;
 - (c) All applicable fees as described in OAR 603-048-0700; and
 - (d) Any other forms or documents required by the Department.

Statutory/Other Authority: ORS 561.190, 571.300-571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.315 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 27-2018, adopt filed 11/29/2018, effective 12/03/2018](#)

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.
- (3) A registered grower or handler seeking to produce or process agricultural hemp seed must register with the Department, on forms provided by the Department, as an agricultural hemp seed producer unless:
 - (a) A registered grower retains agricultural hemp seed only for the purpose of personally propagating industrial hemp for the grower's own use in future years;
 - (b) A registered grower produces Cannabis seeds that are incapable of germination; or
 - (c) A registered handler processes agricultural hemp seed in such a manner that the seeds are incapable of germination.
- (4) An application to produce agricultural hemp seed must include all of the following information:
 - (a) The name, legal type of registrant (individual, corporation, etc.), and contact information of the applicant;
 - (b) The name and address of the applicant's agricultural hemp seed operation(s);
 - (c) If industrial hemp is grown in a field:
 - (A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate center of the growing field;
 - (B) The number of square feet or acres of each cultivated field; and
 - (C) A map of the production area showing clear boundaries of the production area;
 - (d) If industrial hemp is grown in a greenhouse or other building:
 - (A) The global positioning system (GPS) coordinates provided in decimal of degrees and taken at the approximate entrance of the greenhouse or other building;
 - (B) The approximate dimension or square feet of the greenhouse or other building; and
 - (D) A map of the production area showing clear boundaries of the production area.
 - (e) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application.
 - (f) Any other information or forms required by the Department.
- (5) An application to process agricultural hemp seed must include all of the following information:
 - (a) The name legal type of registrant (individual, corporation, etc.) and contact information of the applicant;
 - (b) The name and address of applicant's facility used for processing industrial hemp agricultural seed.
 - (c) Other information for purposes of studying the growth, cultivation, and marketing of industrial hemp as specified by the Department in the application.
 - (d) Any other information or forms required by the Department.
- (6) A registered grower may retain agricultural hemp seed without registering as an agricultural hemp seed producer for the purpose of personally propagating industrial hemp in future years, except that a registered grower may not:
 - (a) Retain seed from a harvest lot for future planting that failed pre-harvest THC testing as described in OAR 603-048-0600 and 603-048-0630.
 - (b) Sell or transfer agricultural hemp seed for the purpose of planting without first obtaining a registration for

agricultural hemp seed.

(7) An applicant for registration must acknowledge and agree that:

- (a) Any information provided to the Department may be publicly disclosed and may be provided to law enforcement agencies without notice to the applicant or registrant;
- (b) The Department may enter any field, facility, greenhouse, or other building used for the production or processing of industrial hemp and may take samples of industrial hemp, industrial hemp commodities or products, or agricultural hemp seed as necessary for the administration of the Department's laws.
- (c) All fees lawfully due to the Department will be timely paid.
- (d) The information provided is true and correct and that applicant's signature is an attestation of that fact.
- (e) Registration and compliance with industrial hemp rules does not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities.

(8) Incomplete Applications.

- (a) If an applicant does not provide all of the information required in subsection (5) of this rule or pay the applicable fee, the Department shall reject the application as incomplete.
- (b) If an applicant fails to provide all of the information required, the Department shall notify the applicant of the missing information and allow the applicant 30 calendar days to submit the missing information.
- (c) The Department may verify the information submitted, verify any accompanying documentation submitted with an application, or request additional information from the applicant. If an applicant fails to submit information necessary for the Department to verify information on the application or accompanying documentation, the Department shall reject the application as incomplete.
- (d) An applicant whose application is rejected as incomplete may reapply at any time. If the individual reapplies within a year, the application fee may be applied to a new application.

(9) Denial.

- (a) The Department must deny an initial or renewal application if the applicant is not registered as a grower or handler.
- (b) The Department may deny an initial or renewal application if:
 - (A) The applicant violated or has a history of noncompliance with:
 - (i) A provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116),
 - (ii) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116);
 - (iii) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or a rule adopted thereunder; or
 - (iv) Any statutory law or Department rule related to agricultural activities other than industrial hemp operations.
 - (b) The application contains false, misleading, or incorrect information.

(10) Registrations are valid for a one-year term beginning January 1 of each calendar year.

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

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[DOA 14-2018, amend filed 04/03/2018, effective 04/03/2018](#)

DOA 13-2017, f. & cert. ef. 8-30-17

DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 3-2015, f. & cert. ef. 1-29-15

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.
- (3) On forms provided by Department, a registrant must report to the Department:
 - (a) Changes to the name, address, or telephone number of the registrant within 10 calendar days of the change;
 - (b) Changes in location of a production area at a grow site or the addition of a production area at a grow site prior to producing at a production area not registered with the Department.
- (4) Changes in Business Structure or Ownership. A registrant that proposes to change its business structure or ownership structure must submit a complete Change in Business or Ownership on a form provided by the Department to the Department, prior to making such a change.
 - (a) The Department shall approve the change if the change would not result in an initial or renewal application denial or revocation under these rules.
 - (b) If the registrant proceeds with the change without an approved Change in Business or Ownership form, the registrant must surrender the registration in writing or the Department shall propose to revoke the registration.

- (c) The Department may refuse to accept a Change in Business or Ownership form for a change in business structure or financial interest if the registration is expiring in less than 90 calendar days, the registrant is under investigation by the Department, or has been issued a Notice by the Department following an alleged violation and the alleged violation has not been resolved.
- (d) If a registrant has a change in ownership that is 51% or greater, a new application and application fees must be submitted.
- (5) On and after January 1, 2020, registrants must pay the change fee described in OAR 603-048-0700 for each change form submitted under section (2)(b), (3), or (4)(a) of this rule.
- (6) Growers must ensure that all laboratory THC test results for all harvest lots are timely reported to the Department and that any failed test report is immediately reported to the Department as required by these rules.
- (7) For purposes of studying the growth, cultivation, and marketing of industrial hemp prior to expiration of the registration year or prior to applying to renew registration, whichever comes first:
 - (a) Growers shall report to the Department on forms provided by the Department:
 - (A) Amount of industrial hemp grown (in acres or square feet);
 - (B) Number of pounds harvested; and
 - (C) Any other information as specified on the forms by the Department.
 - (b) Handlers shall report to the Department on forms provided by the Department:
 - (A) Type of industrial hemp commodities and products produced;
 - (B) The amount of industrial hemp commodities and products produced per type; and
 - (C) Any other information as specified on the forms by the Department.

Statutory/Other Authority: ORS 561.190, 571.300 - 571.378 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

[DOA 14-2018, amend filed 04/03/2018, effective 04/03/2018](#)

[DOA 23-2017, temporary amend filed 12/19/2017, effective 12/19/2017 through 04/03/2018](#)

[DOA 15-2017, temporary amend filed 10/06/2017, effective 10/06/2017 through 04/03/2018](#)

[DOA 13-2017, f. & cert. ef. 8-30-17](#)

[DOA 7-2017\(Temp\), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17](#)

[DOA 19-2016, f. & cert. ef. 10-28-16](#)

[DOA 11-2016\(Temp\), f. & cert. ef. 5-3-16 thru 10-29-16](#)

[DOA 3-2015, f. & cert. ef. 1-29-15](#)

603-048-0500

Record Keeping Requirements

- (1) Registrants must maintain records required under this rule for no less than three (3) years after the total disposition of each harvest or process lot, as identified by harvest or process lot identifier, or unique identifier assigned pursuant to this rule.
- (2) For purposes of identifying industrial hemp and industrial hemp products and commodities for record keeping:
 - (a) Growers must assign each harvest lot of industrial hemp produced by the grower a harvest lot identifier as that term is defined in 603-048-0010.
 - (b) Handlers must assign a process lot identifier as that term is defined in 603-048-0010 to any industrial hemp commodities or products made by the handler.
 - (c) Registrants must assign a unique identifier to all industrial hemp received from outside Oregon.
 - (d) Handlers must assign a unique identifier to all industrial hemp commodities or products received from outside Oregon.
- (3) Grower Recordkeeping. A grower must create and maintain records for any receipt or transfer of industrial hemp that includes the following information:
 - (a) For each harvest lot of industrial hemp received from a person within Oregon or transferred to a person in Oregon, as permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules:
 - (A) The name and address of the person transferring the harvest lot to the grower or receiving the harvest lot from the grower, including the registration number of the person;
 - (B) The harvest lot identifier for each harvest lot received or transferred;
 - (C) The date of receipt or transfer;
 - (D) The amount of industrial hemp received or transferred in pounds;
 - (E) All test reports for each harvest lot received or transferred;
 - (F) If transferred to an OLCC licensee, the UID number(s), as that term is defined in OAR 845-025-1015, assigned to the harvest lot(s).
 - (b) For industrial hemp received from outside of Oregon, or transferred outside of Oregon, to the extent such receipt or transfer is permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules:
 - (A) The name and address of the person transferring the industrial hemp to the grower or receiving industrial hemp from the grower;
 - (B) The unique identifier for the industrial hemp received;

- (C) The date of receipt;
- (D) The amount of industrial hemp received in pounds;
- (E) All test reports for industrial hemp received;
- (4) Handler Recordkeeping for Industrial Hemp. A handler must create and maintain records for the receipt or transfer of industrial hemp that includes the following information:
 - (a) For each harvest lot of industrial hemp received from a person within Oregon or transferred to a person in Oregon, as permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules:
 - (A) The name and address of the person transferring the harvest lot to the handler or receiving the harvest lot from the handler, including the a registration number of the person;
 - (B) The harvest lot identifier for each harvest lot received or transferred;
 - (C) The date of receipt or transfer;
 - (D) The amount of industrial hemp received or transferred in pounds;
 - (E) All test reports for each harvest lot received or transferred;
 - (F) If transferred to an OLCC licensee, the UID number(s), as that term is defined in OAR 845-025-1015, assigned to the harvest lot(s).
 - (b) For industrial hemp received from outside of Oregon or transferred outside of Oregon, to the extent such receipt or transfer is permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules:
 - (A) The name and address of the person transferring the industrial hemp to the handler or receiving industrial hemp from the handler;
 - (B) The unique identifier for the industrial hemp received;
 - (C) The date of receipt;
 - (D) The amount of industrial hemp received in pounds;
 - (E) All test reports for industrial hemp received;
- (5) Handler Recordkeeping for Industrial Hemp Commodities and Products. A handler must create and maintain records for the receipt or transfer of industrial hemp commodities and products, to the extent such receipt is permitted under ORS 571.300 to 571.348, as amended by Oregon Laws 2018, Chapter 116, and these rules that includes the following information:
 - (a) The name and address of the person transferring the commodities or products to the handler or receiving the commodities or products from the handler, including the a registration number if the person is registered;
 - (b) The process lot identifier or unique identifier for the commodities or products received or transferred;
 - (c) The date of receipt or transfer;
 - (d) The amount in units or pounds of the commodity or product received or transferred;
 - (e) All test reports for the commodities or products received or transferred;
 - (f) If transferred to an OLCC licensee, the UID number(s), as that term is defined in OAR 845-025-1015, assigned to commodities or products transferred.
- (6) Handler Recordkeeping for Disposition of Items Received and Transferred. A handler must create and maintain disposition information for all industrial hemp or hemp commodity or product received or transferred that includes the following information:
 - (a) Identification of the harvest lot by harvest lot identifier or identification of the industrial hemp by unique identifier;
 - (b) Identification of the process lot by process lot identifier or identification of the hemp commodity or product by unique identifier;
 - (c) Whether the harvest lot, process lot, industrial hemp or hemp commodity or product was transferred without processing;
 - (d) If processed:
 - (A) The process lot identifier;
 - (B) The method of processing;
 - (C) The type of industrial hemp commodity or product created from the industrial hemp or hemp commodity or product; and
 - (D) The amount in units or pounds of the industrial hemp commodity or product created from the industrial hemp or hemp commodity or product

Statutory/Other Authority: ORS 561.190, ORS 571.300-571.348 & OL 2018, Ch.116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch.116

History:

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DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0550

Transport Requirements

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.

Statutory/Other Authority: ORS 561.190, 571.300-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348, OL 2018, Ch. 116

History:

[DOA 27-2018, adopt filed 11/29/2018, effective 12/03/2018](#)

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 laboratories must test for and report total THC are in effect on and after January 1, 2020. Prior to January 1, 2020, a harvest lot may not exceed 0.3 percent THC and laboratories must test for and report THC.

(2) Required Sampling and Testing:

(a) A grower must ensure that the grower's entire crop is timely sampled and tested according to these rules.

(b) Harvest lots must be sampled and tested separately and may not be combined. At the discretion of the grower, industrial hemp grown in a contiguous field or growing area may be subdivided into separate harvest lots for sampling and testing consistent with these rules. Sampling must be conducted and testing must be reported using the harvest lot identifier described in OAR 603-048-0500(2).

(c) A grower must arrange for and ensure the sampling of a harvest lot no more than twenty-eight (28) calendar days prior to harvest for the purpose of ensuring that the harvest lot does not exceed permissible THC concentration levels on a dry weight basis.

(d) If a purpose of the harvest lot is to produce flower, the grower must arrange for sampling such that flowers are present at the time of sampling. In this case, only plants with flowers shall be sampled.

(3) To be sufficient to meet required THC testing under these rules all sampling and testing must be performed by the Department or a laboratory.

(4) If a grower uses a laboratory to perform testing and sampling the grower must ensure that the laboratory:

(a) Retains all documentation of sampling and testing for at least three years and can provide such documentation to the Department upon request.

(b) Complies with sample or matrix spike recovery requirements and Relative Percent Difference requirements as described in Exhibit B.

(c) Can demonstrate that its limit of quantification (LOQ) for THC is at or below 0.3 percent THC.

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

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

(f) On and after January 1, 2020, tests for and reports the total THC content of the harvest lot calculated in accordance with OAR 333-064-0100(4).

(5) To request sampling and testing, prior to sampling a grower must submit to the laboratory, or the Department, a completed sampling request form provided by the Department that includes:

(a) A written sampling request for THC analysis for each harvest lot, as identified by the harvest lot identifier, for which the grower is requesting sampling and testing and the total number of harvest lots to be sampled and tested;

(b) A description of the location of the production area of each harvest lot, as identified by the harvest lot identifier, including the GPS coordinates or address of the harvest lot; and

(c) A written description and visual depiction of each harvest lot to be sampled and tested such that the production area for each harvest lot is apparent from a visual inspection of the premises and easily discernible from other harvest lots.

(6) To be sufficient to meet the requirement for sampling under these rules, sampling of a harvest lot must:

(a) Occur after the laboratory or Department personnel fully complete the sampling form provided by the Department onsite at the production area.

(b) Produce a sample that is representative of the harvest lot.

(c) Be conducted:

(A) In accordance with the Department's Sampling Protocol prescribed in Exhibit A and incorporated by reference.

(B) Such that a sufficient sample size is taken and retained for analysis of all requested tests, any requested retest, and any quality control performed by the testing laboratory for these tests.

(7) To be sufficient to meet the required THC testing under these rules a grower must ensure that:

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

(b) All test results are reported by the laboratory electronically to the Department at HempTestReports@oda.state.or.us using the forms provided by the Department, and include for each sample tested:

(A) Grower's name and registration number;

(B) Harvest lot identifier;

(C) Sample date;

(D) Sample size by weight;

(E) Testing date;

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

(G) On and after January 1, 2020, total THC percentage to the second decimal point only calculated in accordance with

OAR 333-064-0100(4);

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

(I) Clear identification of the harvest lot by harvest lot identifier that corresponds to the sample and the location of the corresponding harvest lot's production area;

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

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

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

(A) The laboratory sends the failed test report electronically to the Department at HempTestReports@oda.state.or.us using the forms provided by the Department within 24 hours of the failed test report.

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

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

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

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

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

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

(9) For testing done on and after January 1, 2020, a sample fails testing if the test report indicates that the sample contains total THC content calculated in accordance with OAR 333-064-0100(4) of 0.35 percent or greater on a dry weight basis. If a sample from a harvest lot fails required THC testing under these rules the harvest lot fails required THC testing.

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

(11) Invalid Sampling or Testing:

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

(b) A sample that does not meet all of the requirements and standards of these rules is invalid. The harvest lot corresponding to an invalid sample fails to satisfy the required THC testing under these rules.

(c) The Department may detain, seize, embargo, and dispose of the harvest lot that fails THC testing under this rule as provided under OAR 603-048-0900.

(12) The Department may, at its discretion, agree to conduct sampling and testing for a registered grower. Prior to conducting the sampling and testing the grower must pay fees as described in OAR 603-048-0700 for each harvest lot requested to be sampled and tested.

(13) In addition to the testing required by this section the Department may inspect any industrial hemp and take a representative sample for testing for THC content. The Department may detain, seize, embargo, and dispose of any industrial hemp that fails THC testing as described in sections (8) and (9) of this rule.

Statutory/Other Authority: ORS 561.190, ORS 571.300-571.348 & OL 2018, Ch.116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch. 116, Sec. 28

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DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 1-2016(Temp), f. & cert. ef. 1-29-16 thru 7-26-16

DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0630

Failed Pre-Harvest Testing; Retesting

(1) If a sample tested under OAR 603-048-0600 fails an initial test, a grower may pursue retesting at the grower's own cost pursuant to sections (2) and (3) of this rule.

(2) Retesting of Failed Samples. If a sample tested under OAR 603-048-0600 fails an initial test, the laboratory that did the testing, or the Department if the Department did the testing, may retest the sample pursuant to the Testing Protocol, Exhibit B. If the sample passes, the sample must be retested by another laboratory or the Department and again pass testing to confirm the result in order for the harvest lot to pass testing.

- (a) If a grower wishes to have a sample retested, the grower must request a retest within seven (7) calendar days from the date the notice of the failed test was sent to the grower. The retest must be completed within 30 calendar days from the date the retest was requested.
- (b) To request retesting, the grower must provide the laboratory, or the Department, with the following on a form provided by the Department:
 - (A) A written request for retesting for each sample the grower requests be retested; and
 - (B) Notification that the sample is being retested because of the failed test and the failed test results.
- (c) If a grower has requested a retest in accordance with subsection (2)(a) and (b) of this rule and the sample passes upon retest, the grower has seven (7) calendar days from the date the notice of the passed test is sent to request that another laboratory, or the Department, retest the remaining file sample and confirm that the sample contains less than 0.35 percent THC or total THC, calculated in accordance with OAR 333-064-0100(4), as specified in OAR 603-048-0600(8) and (9). To be sufficient under this rule, the initial laboratory must coordinate with the second laboratory or the Department to provide the remaining file sample for retesting. The retesting must be completed within 30 calendar days from the date the retesting was requested.
- (d) If a grower has requested an initial or secondary retest and the test report indicates that the sample contains exceeds 0.35 percent THC as specified in OAR 603-048-0600(8) and (9), the sample fails testing and no further testing is permitted under this subsection.
- (e) Reporting:
 - (A) A grower must report electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided the Department any initial or secondary request for retest of a sample.
 - (B) A grower must ensure that a laboratory reports electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided by the Department the testing results of the initial or secondary retest.
- (3) Retesting of Failed Samples for Production Area. If a sample tested under OAR 603-048-0600 fails an initial test, a grower may seek resampling and retesting of the production area if:
 - (a) The original plants in the production area associated with the failed test remain standing and growing in the production area.
 - (b) The grower requests the resampling within seven (7) calendar days from the date the notice of the failed test was sent to the grower.
 - (c) The grower subdivides the production area into separate harvest lots for resampling and retesting in accordance with OAR 603-048-0600.
 - (d) The grower properly identifies the subdivided harvest lots in accordance with OAR 603-048-0100(14).
 - (e) The grower provides the laboratory or the Department with the following on a form provided by the Department:
 - (A) A written request for resampling for each harvest lot the grower requests be resampled that includes all of the information required in OAR 603-048-0600(5); and
 - (B) Notification that the harvest lot is being resampled because of the failed test and the failed test results.
 - (f) The resampling occurs within ten (10) calendar days of the request for resampling and the test results are reported within 30 calendar days of the request for resampling.
- (4) If the harvest lot fails testing after resampling conducted under section (3) of this rule, the grower may pursue retesting pursuant to section (2) of this rule, but may not pursue retesting under section (3) of this rule.
- (5) Reporting:
 - (a) A grower must report electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the form provided by the Department any requests for resampling under this subsection.
 - (b) A grower must ensure that the laboratory reports electronically to the Department within 24 hours, at HempTestReports@oda.state.or.us using the forms provided by the Department the testing results of any resampling under this subsection.
 - (6) The Department may detain, seize, embargo the harvest lot corresponding to a sample, as provided under ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183, if the sample failed a test under OAR 603-048-0600.
 - (7) The Department may detain, seize, embargo, and dispose of the harvest lot corresponding to a sample, as provided under ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183, if the sample:
 - (a) Was not sampled and tested in compliance with all of the requirements and standards of these rules;
 - (b) Fails a test under OAR 603-048-0600 and the grower does not timely request a retest or resampling or informs the Department that retest or resampling will not be requested;
 - (c) Fails any retesting under section (2) of this rule and the grower:
 - (A) Does not timely request resampling;
 - (B) Informs the Department that resampling will not be requested; or
 - (C) Is no longer eligible for resampling;
 - (d) Fails any testing conducted under section (3) of this rule and the grower does not timely request a retest or informs the Department that retest will not be requested;
 - (e) Passes initial retesting but the grower fails to timely request secondary retesting to confirm the passed test result as described in section (2)(c) of this rule.
 - (f) Fails a test under OAR 603-048-0600 and the retained file sample lacks sufficient volume of harvest lot material to allow for the first and second retesting described in section (2)(c) of this rule and the grower:
 - (A) Does not timely request resampling;
 - (B) Informs the Department that resampling will not be requested; or

- (C) Is no longer eligible for resampling.
- (g) Fails a test under OAR 603-048-0600 and the harvest lot does not pass re-testing in accordance with these rules.
- (8) If a sample passes the first and second retest described in section (2)(c) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules.
- (9) If a sample passes testing after resampling conducted under section (3) of this rule, the sample and corresponding harvest lot satisfies THC testing required by these rules. Any harvest lots that are not retested or that fail testing after resampling shall be disposed of in accordance with ORS 561.605 to 561.620 and subject to the provisions of ORS Chapter 183.
- (8) If the amount of the harvest lot material collected for purposes of sampling is not sufficient to allow for the first and second retesting described in section (2)(c) of this rule, the sample and corresponding harvest lot fails to satisfy these rules.

Statutory/Other Authority: ORS 561.190, 561.605-561.620, ORS 571.300-571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 7-2019, temporary amend filed 03/01/2019, effective 03/01/2019 through 08/27/2019](#)

[DOA 27-2018, adopt filed 11/29/2018, effective 12/03/2018](#)

603-048-0650

Industrial Hemp Inspection and Record Reviews

- (1) The Department, as it deems necessary in the enforcement and carrying out its laws may, during normal business hours, inspect premises, machinery, equipment and facilities of registrants and inspect, any crop during any growth phase, and take a representative composite sample for field analysis.
- (2) Upon not less than three days' notice, the Department may subject registrant records to inspection or audit during normal business hours. The Department may make an inspection or audit for the purpose of ensuring compliance with:
- (a) A provision of ORS 571.300 to 571.348 or OR Laws 2018, Ch. 116;
- (b) A rule adopted under a provision of ORS 571.300 to 571.348 or OR Laws 2018, Ch. 116; or
- (c) An order issued by the Department pursuant to a provision of ORS 571.300 to 571.348 or OR Laws 2018, Ch. 116, or rule adopted under a provision of ORS 571.300 to 571.348 or OR Laws 2018, Ch. 116.

Statutory/Other Authority: ORS 561.190, 571.300 - 571.348, OL 2018, Ch. 116 & ORS 561.190, ORS 571.300-571.348

Statutes/Other Implemented: ORS 571.300 - 571.348, OL 2018 & Ch. 116

History:

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

[DOA 13-2017, f. & cert. ef. 8-30-17](#)

[DOA 7-2017\(Temp\), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17](#)

[DOA 19-2016, f. & cert. ef. 10-28-16](#)

[DOA 11-2016\(Temp\), f. & cert. ef. 5-3-16 thru 10-29-16](#)

603-048-0700

Registration Fees

- (1) Registration Fees. At the time of application an applicant must pay the following fees beginning with the 2020 registration year:
- (a) A fee of \$250.00 for a grower registration application.
- (b) A fee of \$500.00 for each grow site registration application.
- (c) A fee of \$1,300 for each handler registration application;
- (d) A fee of \$500 for each hemp handler registration by reciprocity application; and
- (e) A fee of \$500.00 for an agricultural hemp seed producer registration.
- (2) Change Fees. For each change described in OAR 603-048-0400(2)(b), (3)(b) or (4), the registrant must pay a \$125.00 change fee.
- (3) Sampling and Testing Fee. The fee for pre-harvest THC sampling and testing by the Department as described in OAR 603-048-0600 includes:
- (a) Sampling Fee:
- (A) A charge for a minimum of four hours of service at a rate of \$92 per hour;
- (B) Travel time at the rate of \$92 per hour;
- (C) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services;
- (D) Overtime Charges: For all services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus \$30.00 per hour for all time involved figured to the nearest one-half hour:

- (i) After eight hours (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;
 - (ii) At any time on Saturdays or Sundays; and
 - (iii) At any time on any day which is declared by law to be a holiday for state employees.
- (E) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours; and
- (b) Laboratory Testing Fee: \$375 per harvest lot.
- (4) These fees apply to:
- (a) Any application for registration starting with the 2020 registration year.
 - (b) Any change request described in OAR 603-048-0400(2)(b), (3) or (4) submitted on or after January 1, 2020.
 - (c) Any sampling or testing conducted by the Department on or after May 15, 2019.

Statutory/Other Authority: ORS 561.190, 571.300 - 571.315 & OL 2018, Ch. 116

Statutes/Other Implemented: 571.300 - 571.315 & OL 2018, Ch. 116, Sec. 28

History:

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DOA 13-2017, f. & cert. ef. 8-30-17

DOA 11-2017, f. & cert. ef. 7-13-17

DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 2-2017(Temp), f. & cert. ef. 1-18-17 thru 7-16-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 3-2015, f. & cert. ef. 1-29-15

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 571.300 to 571.348, OR Laws 2018, Ch. 116, a rule adopted pursuant thereto, or order issued by the Department under ORS 571.300 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 571.300 to 571.348 or OR Laws 2018, Ch.116;

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

(c) An order issued by the Department for violation of a provision of ORS 571.300 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.

Statutory/Other Authority: ORS 561.190, 569.445, 571.300 - 571.348, OL 2018 & Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348, OL 2018, Ch. 116 & Sec. 12

History:

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

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DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0900

Detainment, Seizure, Embargo, and Disposal

If a harvest lot is subject to detainment, seizure, embargo, or disposal pursuant to ORS 571.300 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 propriety 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)(c), 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 603-048-0600 and the grower does not timely request a retest or resampling or informs the Department that retest or resampling will not be requested;
 - (c) Fails any retesting under section (2) of this rule and the grower:
 - (A) Does not timely request resampling;
 - (B) Informs the Department that resampling will not be requested; or
 - (C) Is no longer eligible for resampling;
 - (d) Fails any testing conducted under section (3) of this rule and the grower does not timely request a retest or informs the Department that retest will not be requested;
 - (e) Passes initial retesting but the grower fails to timely request secondary retesting to confirm the passed test result as described in section (1)(c) of this rule.
 - (f) Fails a test under OAR 603-048-0600 and the retained file sample lacks sufficient volume of harvest lot material to allow for the first and second retesting described in OAR 603-048-0630(1)(c) and the grower:
 - (A) Does not timely request resampling;
 - (B) Informs the Department that resampling will not be requested; or
 - (C) Is no longer eligible for resampling.
 - (g) Fails a test under OAR 603-048-0600 and the harvest lot is not successfully remediated in accordance with these rules.

Statutory/Other Authority: ORS 561.190, 561.605 – 561.630, 571.300 - 571.348, OL 2018 & Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348, OL 2018 & Ch. 116

History:

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

[DOA 14-2018, amend filed 04/03/2018, effective 04/03/2018](#)

[DOA 25-2017, temporary amend filed 12/20/2017, effective 12/20/2017 through 04/03/2018](#)

[DOA 24-2017, temporary amend filed 12/19/2017, effective 12/19/2017 through 04/03/2018](#)

[DOA 15-2017, temporary amend filed 10/06/2017, effective 10/06/2017 through 04/03/2018](#)

[DOA 13-2017, f. & cert. ef. 8-30-17](#)

[DOA 7-2017\(Temp\), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17](#)

[DOA 19-2016, f. & cert. ef. 10-28-16](#)

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16
 DOA 3-2015, f. & cert. ef. 1-29-15

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 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch.116)
 - (b) A rule adopted under a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch.116); or
 - (c) An order issued by the Department pursuant to a provision of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch.116) or a rule adopted thereunder.
- (2) The Department may impose a civil penalty based on the classification of the violation. The civil penalty amount for each classification is as follows:
 - (a) Class 1 violation, \$2,500;
 - (b) Class 2 violation, \$1000;
 - (c) Class 3 violation, \$500.
- (3) The civil penalty amount for each classification are guidelines. If the Department finds one or more mitigating or aggravating circumstances, it may assess a lesser or greater amount.
- (4) Common violations are classified as follows:
 - (a) Class 1 violations include:
 - (A) Failing to register with the Department;
 - (B) Providing false or misleading information to the Department;
 - (C) Falsifying information or records required to be maintained by the Department;
 - (D) Failing to test a hemp item in accordance with OAR 603-048-2300 through 603-048-2480 prior to sale, transfer, or attempt to sale or transfer;
 - (E) Failing to test a harvest lot in accordance with 603-048-0600;
 - (F) Altering or falsifying a laboratory test report or result;
 - (G) Selling or attempting to sell a hemp item that fails to meet testing requirements required by OAR 603-048-2000 through 603-048-2480;
 - (H) Selling, transferring, attempting to transfer or sell, processing or attempting to process a harvest lot that:
 - (i) Has not been sampled and tested under OAR 603-048-0600;
 - (ii) Failed testing as described in OAR 603-048-0630(4) and (6);
 - (iii) Was invalidly tested as described in OAR 603-048-0600(8).
 - (I) Growing or handling hemp with:
 - (i) On or after January 1, 2020, total THC calculated in accordance with OAR 333-064-0100(4) that exceeds 3 percent on a dry weight basis; or
 - (ii) Prior to January 1, 2020, THC that exceeds 3 percent on a dry weight basis.
 - (J) Repeat violations of Class 2 or Class 3 violations.
 - (K) Any other violation of ORS 571.300 to ORS 571.348 (as amended by OR Laws 2018, Ch. 116) or OAR 603-048-0100 to 603-048-2500 that may cause an immediate threat to the public health or safety.
 - (b) Class 2 violations include, but are not limited to:
 - (A) Failing to ensure test reports for the THC content of each harvest lot is timely reported to the Department as required by 603-048-0400.
 - (B) Failing upon request to timely provide the Department with laboratory test results that verify compliance with these rules.
 - (C) Any other uncategorized violation.
 - (c) Class 3 violations include but are not limited to:
 - (A) Failure to keep or provide information or records as required by the Department;
 - (B) Growing or handling hemp with:
 - (i) On or after January 1, 2020, total THC calculated in accordance with OAR 333-064-0100(4) that exceeds 0.3 percent on a dry weight basis but does not exceed 3 percent total THC; or
 - (ii) Prior to January 1, 2020, THC that exceeds 0.3 percent on a dry weight basis but does not exceed 3 percent THC; 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 571.300-571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 7-2019, temporary amend filed 03/01/2019, effective 03/01/2019 through 08/27/2019](#)

[DOA 27-2018, amend filed 11/29/2018, effective 12/03/2018](#)

[DOA 14-2018, amend filed 04/03/2018, effective 04/03/2018](#)

[DOA 25-2017, temporary amend filed 12/20/2017, effective 12/20/2017 through 04/03/2018](#)

[DOA 24-2017, temporary amend filed 12/19/2017, effective 12/19/2017 through 04/03/2018](#)

[DOA 15-2017, temporary amend filed 10/06/2017, effective 10/06/2017 through 04/03/2018](#)

[DOA 13-2017, f. & cert. ef. 8-30-17](#)

DOA 7-2017(Temp), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17

DOA 19-2016, f. & cert. ef. 10-28-16

DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16

DOA 3-2015, f. & cert. ef. 1-29-15

603-048-1100

Registrants Certified or Licensed by OLCC

(1) Registrants certified by OLCC under ORS 571.336 must comply with all applicable OLCC rules.

(2) Registrants licensed by OLCC under ORS 475B.070, 475B.090, 475B.100, or 475B.105 must comply with all applicable OLCC rules.

Statutory/Other Authority: ORS 561.190, 571.300-571.348, OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348, OL 2018, Ch. 116, Sec. 15

History:

[DOA 27-2018, adopt filed 11/29/2018, effective 12/03/2018](#)

603-048-1500

Retail Sale Requirements; Restrictions

(1) For the purposes of this section, "consumer" means a person who purchases, acquires, owns, holds or uses industrial hemp products other than for the purpose of resale.

(2) A person may not sell an industrial hemp commodity or product to a consumer unless the industrial hemp used to process the commodity or product complied with the laws and regulations for the jurisdiction where the hemp was grown to ensure compliance with the 0.3 percent THC limit.

(3) A person may not sell a hemp item to a consumer unless:

(a) The hemp item is tested in accordance with OAR 603-048-2300 to 603-048-2500; or

(b) The person obtains and maintains documentation that any hemp commodity or product used to make the hemp item was tested as required by subsection (3)(a) of this rule and the documentation demonstrates that the hemp item does not contain more than 0.3 percent total THC.

(4) Testing may only be conducted by

(a) A laboratory licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority under ORS 475B.565; or

(b) A laboratory accredited to the same or more stringent standards as laboratories described in section (3)(a) of this rule if the hemp item was processed outside the state of Oregon.

(4) Section (3) of this rule does not apply to growers or handlers. Growers and handlers must comply with OAR 603-048-2300 to 603-048-2500 to sell or transfer a hemp item.

(6) Restriction on industrial hemp product sales: A person may not sell an industrial hemp product that contains more than 0.3 percent total THC to a consumer unless licensed as a retailer by OLCC.

(7) Compliance with these rules does not protect a person from possible criminal prosecution under federal law or other sanctions by federal entities.

Statutory/Other Authority: ORS 561.190 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch. 116, Sec. 11, 16

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 27-2018, adopt filed 11/29/2018, effective 12/03/2018](#)

603-048-2300

Testing of Industrial Hemp for Human Consumption and Hemp Items:

(1) A grower or handler may not sell or transfer industrial hemp for human consumption or a hemp item unless it is first tested by a laboratory as required by these rules.

(2) Violations of these rules may result in the suspension or revocation of a registrant's registration or the imposition of civil penalties, or both. Violations include:

(a) Failure to test industrial hemp for human consumption or a hemp item in accordance with these rules;

(b) Selling, transferring, or attempting to sell or transfer industrial hemp for human consumption or a hemp item that fails to meet testing requirements required by these rules;

(c) Failure to maintain a copy of all required test reports as required by OAR 603-048-0500; and

(d) Failure to report failed test results to the Department electronically to HempTestReports@oda.state.or.us using the forms provided by the Department within 24 hours after receipt of failed result.

(e) Altering or falsifying a laboratory test report or result.

(3) These rules require industrial hemp for human consumption and hemp items to be sampled, tested, and reported in a manner consistent with the Authority's marijuana sampling and testing rules in OAR 333-007-0300 to 333-007-0500 and OAR 333-064. In applying those rules:

- (a) Industrial hemp for human consumption and hemp items are treated as their marijuana equivalents as described in OAR 603-048-2310;
- (b) References to "licensee or registrant" or "processor or processing site" should be read as "grower" or "handler";
- (c) References to "Authority or the Commission" should be read as "Department"; and
- (d) References to "consumer or patient" should be read as "consumer" as that is defined in OAR 603-048-2310.
- (4) To be sufficient to meet the requirement for testing under these rules, a grower or handler must ensure through a testing agreement or contract with the laboratory that the laboratory:
 - (a) Samples industrial hemp for human consumption and hemp items according to OAR 333-007-0360 and OAR 333-064-0100;
 - (b) Tests industrial hemp for human consumption and hemp items according to OAR 333-007-0390 to 333-007-0440 and 333-064-0100;
 - (c) Keeps records in accordance with OAR 333-064-0100.
 - (d) Reports all failed tests to the Department electronically to HempTestReports@oda.state.or.us using the forms provided by the Department consistent with reporting requirements under OAR 333-064-0110;
 - (e) Provides the handler with test reports that meet the requirements in OAR 333-064-0110.
 - (f) Provides test reports that clearly identify the process lot identifier.
 - (g) Meets the proficiency testing requirements in OAR 333-064-0120.
 - (h) Can demonstrate that its limit of quantification (LOQ) for THC is at or below 0.3 percent THC.

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.315 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.315 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

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[DOA 7-2017\(Temp\), f. 3-14-17, cert. ef. 3-15-17 thru 9-10-17](#)

603-048-2305

Purpose

The purpose of OAR 603-048-2300 to 603-048-2480 is to establish minimum testing standards for industrial hemp for human consumption and hemp items. OAR 603-048-2300 to 603-048-2480 apply to any sampling or testing conducted on or after March 1, 2019.

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

History:

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603-048-2310

Definitions

As used in OAR 603-048-2300 to 603-048-2500, the following definitions apply:

- (1) "Authority" means the Oregon Health Authority.
- (2) "Batch" means:
 - (a) A quantity of hemp, usable hemp or hemp stalk from a harvest lot; or
 - (b) A quantity of hemp concentrate or extract or hemp cannabinoid product from a process lot.
- (3) "Cannabinoid" means any of the chemical compounds that are the active constituents of the cannabis plant.
- (4) "Cannabinoid capsule"
 - (a) Means a small, soluble pill, tablet, or container that contains liquid or powdered hemp cannabinoid product, hemp concentrate, or hemp extract and is intended for human ingestion.
 - (b) For sampling and testing purposes is equivalent to a cannabinoid capsule as that is defined in OAR 333-007-0310.
 - (c) Does not mean a cannabinoid suppository.
- (5) "CBD" means cannabidiol, Chemical Abstracts Service Number 13956-29-1.
- (6) "CBDA" means cannabidiolic acid, Chemical Abstracts Service Number 1244-58-2.
- (7) "Cannabis Tracking System" or "CTS" means the Oregon Liquor Control Commission's system for tracking the transfer of hemp and marijuana items and other information as authorized by ORS 475B.177 and Oregon Laws 2018, Chapter 116, Section 15.
- (8) "Chain of custody procedures" means procedures employed by laboratory personnel using a chain of custody form to record the possession of samples from the time of sampling through the retention time specified by the Department.
- (9) "Consumer" includes:

- (a) A person who purchases, acquires, owns, holds or uses hemp items other than for the purpose of resale; and
- (b) A person who purchases, receives, or otherwise uses hemp items who is not a registered handler or a marijuana processor, wholesaler or retailer licensed by OLCC.
- (10) Consumption means to ingest, inhale or topically apply to the skin or hair.
- (11) "Control study" means a study performed on items of unknown homogeneity to assure required uniformity of item accomplished through sampling and testing as described in OAR 603-048-2440.
- (12) "Field duplicate sample" means sample increments taken in an identical manner to sample increments taken from the primary sample and representative of the same hemp item being sampled that is prepared and analyzed separately from the primary sample.
- (13) "Finished hemp concentrate or extract" means a hemp concentrate or extract that is in its final form ready for packaging for sale or transfer to a consumer.
- (14) "Finished cannabinoid hemp product" means a cannabinoid hemp product that is in its final form ready for packaging for sale or transfer to a consumer and includes all ingredients whether or not the ingredients contain cannabinoids.
- (15) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in whole or in part for human consumption, chewing gum and includes beverages.
- (16) "Cannabinoid hemp product"
 - (a) Means a hemp edible or any other product intended for human consumption including a hemp topical or hemp transdermal patch, that contains cannabinoids from industrial hemp or the dried leaves or flowers of hemp; or
 - (b) Usable hemp, hemp extracts and hemp concentrates that have been combined with an added substance.
 - (c) Cannabinoid hemp product does not include usable hemp by itself, hemp stalk by itself, a hemp concentrate or extract by itself, hemp seed incapable of germination by itself, or other products derived only from hemp seeds incapable of germination that may include other non-hemp ingredients.
 - (d) For sampling and testing purposes is equivalent to a cannabinoid product as that is defined in OAR 333-007-0310.
- (17) "Hemp concentrate or extract"
 - (a) Means a substance obtained by separating cannabinoids from industrial hemp leaves, flowers, or stalk by a mechanical, chemical or other process.
 - (b) For sampling and testing purposes is equivalent to a cannabinoid concentrate or edible as that is defined in OAR 333-007-0310.
- (18) "Hemp edible"
 - (a) Means a food or potable liquid into which industrial hemp, a hemp concentrate, a hemp extract, or the dried leaves or flowers of hemp have been incorporated.
 - (b) Does not mean hemp seed incapable of germination by itself or other products derived only from hemp seeds incapable of germination that may include other non-hemp ingredients.
 - (c) For sampling and testing purposes is equivalent to a cannabinoid edible as that is defined in OAR 333-007-0310.
- (19) "Hemp item"
 - (a) Means usable hemp, hemp stalk, a hemp cannabinoid product, or a hemp concentrate or extract.
 - (b) For sampling and testing purposes is equivalent to a marijuana item as that is defined in OAR 333-007-0310.
- (20) "Hemp stalk"
 - (a) Means the stalk of industrial hemp intended for human consumption.
 - (b) For sampling and testing purposes is equivalent to usable marijuana as that is defined in OAR 333-007-0310.
- (21) "Hemp tincture"
 - (a) Means a
 - (A) Liquid hemp cannabinoid product packaged in a container of four fluid ounces or less that consists of either:
 - (a) A non-potable solution of at least 25 percent non-denatured alcohol, in addition to a hemp concentrate, hemp extract, or usable hemp and perhaps other ingredients intended for human consumption that is exempt from the Liquor Control Act under ORS 471.035; or
 - (B) A non-potable solution comprised of glycerin, plant-based oil, or concentrated syrup; hemp concentrate or extract or usable marijuana, and perhaps other ingredients that does not contain any added sweeteners and is intended for human consumption or ingestion.
 - (b) For sampling and testing purposes is equivalent to a cannabinoid tincture as that is defined in OAR 333-007-0310.
- (22) "Hemp topical"
 - (a) Means a substance intended to be applied to skin or hair that contains a hemp cannabinoid product, hemp concentrate or extract and for purposes of testing includes a hemp transdermal patch.
 - (b) For sampling and testing purposes is equivalent to a cannabinoid topical as that is defined in OAR 333-007-0310.
- (23) "Hemp transdermal patch"
 - (a) Means an adhesive substance applied to human skin that contains a hemp cannabinoid product, hemp concentrate or extract for absorption into the bloodstream.
 - (b) For sampling and testing purposes is equivalent to a cannabinoid transdermal patch as that is defined in OAR 333-007-0310.
- (24) "High heat" means a temperature exceeding 180 degrees Fahrenheit.
- (25) "Homogeneous" means a hemp cannabinoid product, hemp concentrate or extract has uniform composition and properties throughout each process lot.
- (26) "Industrial hemp for human consumption" means all non-seed parts and varieties of the Cannabis plant, whether growing or not, that pre-harvest contained an average tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis, and is intended to be processed and used for human consumption.

- (27) "Marijuana testing rules" means Authority testing rules for marijuana items found in OAR Chapter 333, Divisions 7 and 64, and all referenced tables and exhibits.
- (28) "ORELAP" means the Oregon Environmental Laboratory Accreditation Program administered by the Authority pursuant to ORS 438.605 to 438.620.
- (29) "Process lot" means:
- (a) Any amount of hemp concentrate or extract of the same type and processed using the same extraction methods, standard operating procedures and batches from the same or a different harvest lot; or
 - (b) Any amount of a hemp cannabinoid product of the same type and processed using the same ingredients, standard operating procedures and batches from the same or a different harvest lot or process lot of hemp concentrate or extract.
- (30) "Relative percentage difference" or "RPD" means the comparison of two quantities while taking into account the size of what is being compared as calculated under OAR 333-064-0100.
- (31) "Relative standard deviation" or "RSD" means the standard deviation expressed as a percentage of the mean recovery as calculated under OAR 333-064-0100.
- (32) "Remediation":
- (a) Means a process or technique applied to a hemp item to remove pesticides or solvents.
 - (b) Does not include dilution.
- (33) "Sample" means an amount of a hemp item collected by laboratory personnel from a grower or handler and provided to a laboratory for testing.
- (34) "Sample increment" means an amount of a hemp item collected by laboratory personnel from a grower or handler that may be combined into a sample for purposes of testing or, in the case of a control study, is tested individually.
- (35) "Sterilization" means the removal of all microorganisms and other pathogens from a hemp item by treating it with approved chemicals or subjecting it to high heat.
- (36) "Test batch" means a group of samples from a batch submitted collectively to a laboratory for testing purposes.
- (37) "Texture" means the feel, appearance, or consistency of a marijuana item.
- (38) "THC" means tetrahydrocannabinol and has the same Chemical Abstracts Service Number as delta-9 THC.
- (39) "THCA" means tetrahydrocannabinolic acid, Chemical Abstracts Service Number 23978-85-0.
- (40) "These rules" means OAR 603-048-2300 through 603-048-2500.
- (41) "TNI" means The NELAC (National Environmental Laboratory Accreditation Conference) Institute, a voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish consensus standards for accrediting environmental laboratories.
- (42) "TNI EL Standards" means the adopted 2009 TNI Environmental Lab Standards (© 2009 The NELAC Institute), which describe the elements of laboratory accreditation developed and established by the consensus principles of TNI and that meet the approval requirements of TNI procedures and policies.
- (43) "Unit of sale" means an amount of a hemp item commonly packaged for transfer or sale to a consumer or capable of being packaged for transfer or sale to a consumer..
- (44) "Usable hemp"
- (a) Means the flowers and leaves of industrial hemp intended for human consumption that does not fall within meaning hemp concentrate or extract, hemp edible, or hemp cannabinoid product.
 - (b) Includes, for purposes of these rules, pre-rolled hemp as long as the pre-roll consists of only dried hemp leaves and flowers, an unflavored rolling paper and a filter or tip.
 - (c) For sampling and testing purposes is equivalent to usable marijuana as that is defined in OAR 333-007-0310

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2315

Ordering Tests

- (1) A grower or handler must provide a laboratory, prior to the laboratory taking samples, with at a minimum the following information:
- (a) The handler's or grower's registration number.
 - (b) The name, address and contact information of the grower or handler.
 - (c) Whether the hemp items are subject to tracking in CTS.
 - (d) Identification as hemp and type of hemp item.
 - (e) Harvest lot identifier that is associated with the batch, if applicable.
 - (f) Process lot identifier that is associated with the batch, if applicable.
 - (g) Batches to be sampled.
 - (h) Total mass or volume of each batch to be sampled.
 - (i) For hemp cannabinoid products, the unit of sale.

- (j) Identification of the test or tests the laboratory is being requested to conduct.
- (k) Whether the test or tests being requested are compliance tests.
- (l) Whether the test or tests being requested are quality control or research and development tests.
- (m) Whether a batch is being re-sampled because of a failed test, the date the failed test result was received by the registrant and laboratory identification number of the laboratory that conducted the initial test.
- (n) Whether the hemp item has a certified control study or a control study is being requested.
- (o) Whether the hemp or hemp item was remediated, if remediation is permitted under OAR 603-048-2450.
- (2) If a handler is requesting a control study, the request must be submitted on a form prescribed by the Department, as specified in OAR 603-048-2440.
- (3) If the hemp or hemp item is being re-sampled after a failed test or has a certified control study, the grower or handler must provide the laboratory with documentation of the failed test or certified control study as applicable.
- (4) It is the responsibility of the grower or handler to order the tests necessary to comply with these rules.
- (5) A grower or handler may not order more than one compliance test for the same hemp or hemp item.
- (6) It is a violation of these rules for a grower or handler to:
 - (a) Fail to provide the information required in these rules to the laboratory; or
 - (b) Submit false or misleading information to a laboratory.

Statutory/Other Authority: ORS 561.190, 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.315 & OL 2018, Ch. 116

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603-048-2320

Compliance Testing Requirements for Industrial Hemp for Human Consumption and Usable Hemp

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

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2330

Compliance Testing Requirements for Hemp Concentrate or Extract

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

Statutory/Other Authority: ORS 561.190, 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.315 & OL 2016, Ch 71, Sec. 9

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603-048-2340**Compliance Testing Requirements for Hemp Cannabinoid Products**

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

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2350**Batch Requirements for Compliance Testing**

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

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2380**Site Requirements for Labeling, Storing, and Securing Pre-Tested Industrial Hemp for Human Consumption or Hemp Items; Recordkeeping**

- (1) After a laboratory has taken samples from a harvest or process lot batch, the grower or handler must:
 - (a) Label the batch with the following information:
 - (A) The grower or handler's registration number;
 - (B) The harvest or process lot identifier;
 - (C) The name and accreditation number of the laboratory that took samples and the name and accreditation number of the laboratory responsible for the testing, if different;
 - (D) The test batch or sample unique identification numbers supplied by the laboratory personnel;
 - (E) The date the samples were taken; and
 - (F) In bold, capital letters, no smaller than 12 point font, "ITEM NOT TESTED."
 - (b) Store and secure the batch in a manner that prevents the industrial hemp for human consumption or hemp item from being tampered with or transferred prior to test results being reported.
 - (c) Be able to easily locate a batch stored and secured under subsection (1)(b) of this rule and provide that location to the Department or a laboratory upon request.
- (2) If the samples pass testing, the batch of industrial hemp for human consumption or hemp items satisfies the testing required by ORS 571.330 and these rules.
- (3) If the samples do not pass testing, the handler must comply with OAR 603-048-2450.

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2440

Control Study

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

Statutory/Other Authority: ORS 561.190, ORS 571.300-571.348 & OL 2018, Ch. 116

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603-048-2450

Failed Test Samples

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

- (5) A grower or handler must, as applicable:
- (a) Have detailed procedures for sterilization processes to remove microbiological contaminants and for reducing the concentration of solvents.
 - (b) Document all sampling, testing, sterilization, remediation and destruction that are a result of failing a test under these rules.
 - (c) A grower or handler must report failed test results to the Department within 24 hours of receipt of the failed test report electronically to HempTestReports@oda.state.or.us using the forms provided by the Department.
 - (6) If a batch fails a test under these rules, the grower or handler must store, segregate, label, and may not remove the batch from the registered premises without permission from the Department in accordance with OAR 333-007-0450.

Statutory/Other Authority: ORS 561.190, ORS 571.300 - 571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2480

Additional Testing

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

Statutory/Other Authority: ORS 561.190, 571.300 - 571.348 & OL 2018, Ch. 116

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603-048-2500

Quality Control and Research and Development Testing

- (1) A person may request that a laboratory conduct testing for the purpose of assuring quality control or for research and development, except as provided in section (2) of this rule.
- (2) A person may not request that a laboratory conduct pesticide testing on industrial hemp or hemp items for the purpose of quality control or for research and development. A pesticide test on industrial hemp or hemp items is considered by the Department to be a compliance test. Test results may be used by the Department, including the Department's Pesticide Program, for enforcement of state pesticide laws and rules.
- (3) A person that submits industrial hemp or hemp items for quality control or research and development testing is not subject to OAR 603-048-2320 to 603-078-2470.
- (4) A laboratory result from a quality control or research and development test cannot be used as a compliance test result and industrial hemp or a hemp item that has only undergone a quality control or research and development test may not be transferred or sold, unless the hemp item has also passed required compliance testing.
- (5) Registrants must maintain and retain all quality control and research and development test results for at least two years and provide copies of such results upon request to the Department.

Statutory/Other Authority: ORS 561.190, ORS 571.300-571.348 & OL 2018, Ch. 116

Statutes/Other Implemented: ORS 571.300-571.348 & OL 2018, Ch. 116

History:

[DOA 12-2019, amend filed 05/15/2019, effective 05/15/2019](#)

[DOA 7-2019, temporary amend filed 03/01/2019, effective 03/01/2019 through 08/27/2019](#)

[DOA 14-2018, adopt filed 04/03/2018, effective 04/03/2018](#)

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Industrial Hemp Growers and Handlers

O.R.S. § 571.300

571.300. Definitions

Effective: April 13, 2018

Currentness

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

As used in ORS 571.300 to 571.348:

- (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) “Crop” means industrial hemp grown under a single registration.
- (3) “Grower” means a person, joint venture or cooperative that produces industrial hemp.
- (4) “Handler” means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed.
- (5) “Industrial hemp”:
 - (a) Except as provided in this paragraph, means all nonseed 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. The State Department of Agriculture, by rule, may adopt any higher average tetrahydrocannabinol concentration limit established in federal law.
 - (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 industrial hemp commodities or products.

(6) “Industrial hemp concentrate” means an industrial hemp product obtained by separating cannabinoids from industrial hemp by:

(a) A mechanical process;

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

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

(d) Any other process identified by the department by rule.

(7) “Industrial hemp extract” means an industrial hemp product obtained by separating cannabinoids from industrial hemp by:

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

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

(c) Any other process identified by the department by rule.

Credits

Added by Laws 2009, c. 897, § 1, eff. Jan. 1, 2010. Amended by Laws 2015, c. 503, § 1, eff. Jan. 1, 2016; Laws 2016, c. 71, § 1, eff. March 29, 2016; Laws 2017, c. 531, § 1, eff. Oct. 6, 2017, operative Jan. 1, 2018; Laws 2018, c. 116, § 27, eff. April 13, 2018.

O. R. S. § 571.300, OR ST § 571.300

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter

578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumbers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.303

571.303. Nature of industrial hemp

Currentness

- (1) Industrial hemp is an agricultural product that is subject to regulation by the State Department of Agriculture.
- (2) For purposes of ORS chapter 616, the department may not consider industrial hemp or industrial hemp commodities or products to be an adulterant.

Credits

Added by Laws 2016, c. 71, § 4, eff. March 29, 2016.

O. R. S. § 571.303, OR ST § 571.303

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumbers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.305

571.305. Authorization of industrial hemp activities; registration; records; inspections; fees

Effective: April 13, 2018

Currentness

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) To grow or handle industrial hemp, a person must be registered with the State Department of Agriculture as a grower or handler.

(2)(a) Only a grower or handler registered under this section may produce agricultural hemp seed. For a grower or handler to produce agricultural hemp seed, the grower or handler must be registered with the department as an agricultural hemp seed producer.

(b) Notwithstanding paragraph (a) of this subsection:

(A) A grower registered under this section that retains agricultural hemp seed for the purpose of personally propagating industrial hemp in a subsequent year is not required to register with the department as an agricultural hemp seed producer; and

(B) A grower or handler registered under this section that produces Cannabis seeds that are incapable of germination, or a handler registered under this section that processes Cannabis seeds that are incapable of germination into commodities or products, is not required to register with the department as an agricultural hemp seed producer.

(3) An applicant for registration under this section must submit to the department, in a form and manner prescribed by the department, the following information:

(a) The name and address of the applicant;

(b) The name and address of the industrial hemp operation of the applicant; and

(c) Any other information required by the department by rule.

(4) Registration under this section is valid for a one-year term, beginning on January 1. A grower, handler or agricultural hemp seed producer may renew a registration under this section in a form and manner prescribed by the department.

(5) A registration under this section is a personal privilege and is not transferable.

(6) A grower or handler registered under this section must keep records as required by the department by rule. Upon not less than three days' notice, the department may subject the records to inspection or audit during normal business hours. The department may make an inspection or audit for the purpose of ensuring compliance with:

(a) A provision of ORS 571.300 to 571.348;

(b) A rule adopted under a provision of ORS 571.300 to 571.348; or

(c) An order issued by the department pursuant to a provision of ORS 571.300 to 571.348 or a rule adopted under a provision of ORS 571.300 to 571.348.

(7) In addition to any inspection conducted pursuant to ORS 561.275, the department may inspect any crop during the crop's growth phase and take a representative composite sample for field analysis. If a crop contains an average tetrahydrocannabinol concentration exceeding 0.3 percent on a dry weight basis or a tetrahydrocannabinol concentration exceeding the concentration allowed under federal law, whichever is greater, the department may detain, seize or embargo the crop as provided under ORS 561.605 to 561.620, subject to any process established under section 9 of this 2018 Act.

(8) The department may charge growers, handlers and agricultural hemp seed producers application fees, registration and renewal of registration fees, administrative change fees and fees for other services in amounts reasonably calculated by the department to pay the cost of administering ORS 571.300 to 571.348. Moneys from fees charged under this subsection shall be deposited in the Industrial Hemp Fund established under section 30 of this 2018 Act.

(9) The department may adopt rules establishing public health and safety standards and industry best practices for growers and handlers registered under this section.

Credits

Added by Laws 2009, c. 897, § 2, eff. Jan. 1, 2010. Amended by Laws 2015, c. 503, § 2, eff. Jan. 1, 2016; Laws 2016, c. 71, § 2, eff. March 29, 2016; Laws 2018, c. 116, § 28, eff. April 13, 2018.

O. R. S. § 571.305, OR ST § 571.305

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.315

571.315. Revocation of or refusal to renew or issue registration

Currentness

(1) Subject to the provisions of ORS chapter 183, the State Department of Agriculture may revoke the registration of a grower, handler or agricultural hemp seed producer or refuse to register or renew the registration if a grower, handler or agricultural hemp seed producer violates:

- (a) A provision of ORS 571.300 to 571.348;
- (b) A rule adopted under a provision of ORS 571.300 to 571.348;
- (c) An order issued by the department pursuant to a provision of ORS 571.300 to 571.348 or a rule adopted under a provision of ORS 571.300 to 571.348; or
- (d) Any statutory law or department rule related to agricultural activities other than industrial hemp operations.

(2) The department may not discipline a grower, handler or agricultural hemp seed producer under this section on the basis that possessing, delivering and manufacturing industrial hemp are prohibited by federal law.

Credits

Added by Laws 2009, c. 897, § 3, eff. Jan. 1, 2010. Amended by Laws 2015, c. 1, § 80 (Measure 91, approved Nov. 4, 2014), eff. Dec. 4, 2014, operative July 1, 2015; Laws 2016, c. 71, § 10, eff. March 29, 2016.

O. R. S. § 571.315, OR ST § 571.315

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.318

571.318. Propagation method

Currentness

A grower registered under ORS 571.305 may use any propagation method, including planting seeds or starts or the use of clones or cuttings, to produce industrial hemp.

Credits

Added by Laws 2016, c. 71, § 5, eff. March 29, 2016.

O. R. S. § 571.318, OR ST § 571.318

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.321

571.321. Growers to provide location information

Currentness

A grower shall provide the State Department of Agriculture, in a time, form and manner prescribed by the department, with an accurate description and global positioning system coordinates of the property on which the grower's crop is or will be located.

Credits

Added by Laws 2016, c. 71, § 6, eff. March 29, 2016.

O. R. S. § 571.321, OR ST § 571.321

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumbers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.327

571.327. Duties of agricultural hemp seed producers; packaging requirements; information available to growers

Currentness

(1) An agricultural hemp seed producer registered under ORS 571.305:

(a) Must sell agricultural hemp seed in a manner that complies with any standard established by the Director of Agriculture under ORS 633.511 to 633.750; and

(b) May sell agricultural hemp seed only if the agricultural hemp seed meets any packaging or labeling requirement, or any quality standard, adopted by the director under subsection (2) of this section.

(2) The director may adopt rules establishing packaging requirements, labeling requirements and quality standards for agricultural hemp seed.

(3) The State Department of Agriculture shall make available to growers registered under ORS 571.305 information that identifies agricultural hemp seed producers registered under ORS 571.305 from whom the growers may purchase agricultural hemp seed.

Credits

Added by Laws 2016, c. 71, § 8, eff. March 29, 2016.

O. R. S. § 571.327, OR ST § 571.327

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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Industrial Hemp Growers and Handlers

O.R.S. § 571.330

571.330. Testing of industrial hemp commodities and products; exceptions

Effective: April 13, 2018

Currentness

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

- (1) For purposes of this section, “consumption” means to ingest, inhale or topically apply to the skin or hair.
- (2)(a) A laboratory licensed by the Oregon Liquor Control Commission under ORS 475B.560 and accredited by the Oregon Health Authority pursuant to ORS 475B.565 may test industrial hemp and industrial hemp commodities and products produced or processed by a grower, handler or agricultural hemp seed producer registered under ORS 571.305.
- (b) An accredited independent testing laboratory that has been approved by the authority or the State Department of Agriculture may test industrial hemp and industrial hemp commodities and products produced or processed by a grower, handler or agricultural hemp seed producer registered under ORS 571.305.
- (3) A grower or handler may not sell or transfer an industrial hemp commodity or product that is intended for human consumption unless the commodity or product is tested by a laboratory described in subsection (2) of this section to ensure that the commodity or product meets the requirements adopted by the Oregon Health Authority under ORS 475B.555 (1)(a) and (b) and (2) for testing marijuana items.
- (4) For purposes of this section, the department shall adopt rules:
- (a) Establishing protocols for the testing of industrial hemp commodities and products; and
- (b) Establishing procedures for determining batch sizes and for sampling industrial hemp commodities and products.
- (5) This section does not apply to:
- (a) Agricultural hemp seed;
- (b) Seeds of the plant genus Cannabis within the plant family Cannabaceae that are incapable of germination;

- (c) Products derived from seeds described in paragraph (b) of this subsection; or
- (d) Other parts of industrial hemp that the department identifies by rule as exempt.

Credits

Added by Laws 2016, c. 71, § 9, eff. March 29, 2016. Amended by Laws 2018, c. 116, § 11, eff. April 13, 2018.

O. R. S. § 571.330, OR ST § 571.330

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.333

571.333. Tetrahydrocannabinol concentration; standards for investigating and testing industrial hemp crop

Effective: April 13, 2018
Currentness

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) The State Department of Agriculture may enter into an agreement with the Oregon Health Authority for the purpose of developing standards for investigating and testing an industrial hemp crop to determine the average tetrahydrocannabinol concentration of the crop.

(2) In accordance with standards developed under subsection (1) of this section, a laboratory described in ORS 571.330 may test an industrial hemp crop for the purpose of determining the average tetrahydrocannabinol concentration of the crop. The laboratory must provide the test results to the department in a form and manner prescribed by the department.

Credits

Added by Laws 2016, c. 71, § 9a, eff. March 29, 2016. Amended by Laws 2018, c. 116, § 12, eff. April 13, 2018.

O. R. S. § 571.333, OR ST § 571.333

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.336

571.336. Industrial hemp; delivery; processing; annual fee

Currentness

(1) As used in this section, “licensee,” “marijuana,” “marijuana item” and “marijuana processor” have the meanings given those terms in ORS 475B.015.

(2) A grower registered under ORS 571.305 may deliver industrial hemp, and a handler registered under ORS 571.305 may deliver industrial hemp concentrates and industrial hemp extracts, to a marijuana processor that holds a license issued under ORS 475B.090, if:

(a) The grower or handler and the marijuana processor are registered with the Oregon Liquor Control Commission, in a form and manner prescribed by the commission, for the purpose of processing industrial hemp, industrial hemp concentrates and industrial hemp extracts;

(b) The marijuana processor is provided with the results of any test conducted on the industrial hemp, industrial hemp concentrate or industrial hemp extract pursuant to ORS 571.300 to 571.348 as a condition of the marijuana processor's receiving the industrial hemp, industrial hemp concentrate or industrial hemp extract;

(c) The marijuana processor keeps the results of any test that the marijuana processor receives pursuant to paragraph (b) of this subsection in a form and manner prescribed by the commission;

(d) The industrial hemp, industrial hemp concentrate or industrial hemp extract is tracked using the system developed and maintained under ORS 475B.177 when the industrial hemp, industrial hemp concentrate or industrial hemp extract is delivered to the premises of the marijuana processor; and

(e) The grower or handler and the marijuana processor meet any other requirement established by the commission by rule.

(3) Industrial hemp, industrial hemp concentrates and industrial hemp extracts may be processed by a marijuana processor registered under this section into any industrial hemp commodity or product or used by a marijuana processor registered under this section to supplement the processing of any marijuana item.

(4) An industrial hemp concentrate, industrial hemp extract, industrial hemp commodity or product or marijuana item processed pursuant to this section may be delivered by a marijuana processor registered under this section to a licensee as described in

ORS 475B.206, provided that the industrial hemp concentrate, industrial hemp extract, industrial hemp commodity or product or marijuana item meets any applicable requirement for marijuana items set forth in ORS 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655 and rules adopted under ORS 475B.010 to 475B.545, 475B.550 to 475B.590 and 475B.600 to 475B.655.

(5) The commission may impose an annual fee reasonably calculated to not exceed the cost of administering this section on growers registered under this section, handlers registered under this section and marijuana processors registered under this section. Fees collected under this section shall be deposited in the Marijuana Control and Regulation Fund established under ORS 475B.296. Moneys deposited in the fund pursuant to this subsection are continuously appropriated to the commission for the purpose of administering this section.

Credits

Added by Laws 2017, c. 531, § 3, eff. Oct. 6, 2017, operative Jan. 1, 2018.

O. R. S. § 571.336, OR ST § 571.336

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.339

571.339. Retail sale of industrial hemp

Effective: April 13, 2018

Currentness

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

A person may not make a retail sale of industrial hemp commodities or products in this state unless the industrial hemp commodities or products and the industrial hemp used to process the industrial hemp commodities or products meet the requirements for processing industrial hemp commodities or products or growing industrial hemp set forth in ORS 571.300 to 571.348 and rules adopted under ORS 571.300 to 571.348. This section does not apply to the retail sale of industrial hemp commodities or products by a marijuana retailer, as defined in ORS 475B.015, that holds a license issued under ORS 475B.105.

Credits

Added by Laws 2017, c. 531, § 4, eff. Oct. 6, 2017. Amended by Laws 2018, c. 116, § 16, eff. April 13, 2018.

O. R. S. § 571.339, OR ST § 571.339

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumpers, and other non-legislative revisions, have been incorporated.

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O.R.S. § 571.348

571.348. Civil penalties

Effective: April 13, 2018
Currentness

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) Subject to the provisions of ORS chapter 183, the State Department of Agriculture may impose a civil penalty not to exceed \$2,500 on a person for violating:

- (a) A provision of ORS 571.300 to 571.348;
 - (b) A rule adopted under a provision of ORS 571.300 to 571.348; or
 - (c) An order issued by the department pursuant to a provision of ORS 571.300 to 571.348 or a rule adopted under a provision of ORS 571.300 to 571.348.
- (2) The department may not discipline a person under this section on the basis that possessing, delivering and manufacturing industrial hemp are prohibited by federal law.
- (3) All moneys collected by the department under this section shall be deposited in the General Fund in the State Treasury to the credit of the Industrial Hemp Fund established under section 30 of this 2018 Act.

Credits

Added by Laws 2016, c. 71, § 12, eff. March 29, 2016. Amended by Laws 2018, c. 116, § 31, eff. April 13, 2018.

O. R. S. § 571.348, OR ST § 571.348

Current through laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day laws, through Chapter 578, effective September 29, 2019, and Chapter 401, effective October 1, 2019, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Non-legislative changes made by the Legislative Counsel Committee, consisting of codifications, renumbers, and other non-legislative revisions, have been incorporated.