

Memorandum

To: Representative Lively and the House Economic Committee

From: André Ourso, Administrator, Center for Public Health Protection

Date: 9/21/2020

Subject: Cannabis testing rules

Dear Chair Lively and Committee Members,

The Oregon Health Authority (OHA) is currently undergoing rulemaking related to cannabis testing standards and laboratory accreditation pursuant to statutory authority under ORS 475B.555 and 475B.565. OHA is seeking guidance from state agency partners and stakeholders on potentially requiring testing for microbiological and heavy metal contaminants in cannabis products. This rulemaking also includes housekeeping items related to testing and laboratory accreditation on Oregon Administrative Rules found in division 7 and 64. These rules apply to testing both medical and retail marijuana items. OHA formed a rules advisory committee (RAC) consisting of members that include an OLCC licensed producer, wholesaler, processors, cannabis testing laboratories, and members from the Oregon Cannabis Commission (OCC), OLCC, ODA, and ORELAP.

In January of 2019, the Secretary of State (SOS) published its audit report on Oregon's framework on regulating marijuana. In the report, the SOS made a recommendation that OHA perform a thorough study on the potential impacts and presence of microbiological and heavy metal contaminants in marijuana products, and to make an informed decision on adding them to testing requirements, potentially in consultation with a reference lab.

While OHA agreed with this recommendation, there are currently no resources to conduct such a study. Resources would need to be allocated for this study to occur. In the absence of dedicated resources to conduct a thorough study, OHA committed to reach out to other states with legalized marijuana to request their data related to testing for microbiological and heavy metal contaminants.

OHA completed a review of cannabis testing rules from seven states and found that they all required testing for heavy metals and microbiological contaminants in addition to pesticides, residual solvents, and potency. Oregon appeared to be the only state with a regulated adult use system that did not require testing for heavy metals and microbiological contaminants.

In addition, since other states require testing for heavy metals and microbiological contaminants, two Oregon cannabis testing laboratories currently perform this testing on hemp that is exported from Oregon to other states. Both labs are serving as members of the RAC providing their expertise on testing and

sharing their testing data. A summary of testing data from these two labs show that heavy metals are being detected in hemp, but the presence of microbiological contaminants are low.

OHA shared this research and testing data with the RAC for their consideration. The RAC expressed the importance of this testing for public health and safety but has concerns with the short amount of time to review the industry-wide effects of requiring additional testing including additional testing costs. OHA understands that there would be a fiscal impact if additional testing is required and recognizes the large impact this will have on the industry.

In response to these concerns OHA will be closing the current rulemaking related to heavy metal and microbiological contaminants and moving forward with minor housekeeping rule changes for the RAC's consideration. OHA will form a workgroup with the same RAC members and additional members from the industry to fully investigate the impact of microbiological and heavy metal contaminant testing, including potential testing cost solutions, and ensuring quality and safety of the end products. OHA will consider holding a RAC in late spring of 2021 to implement the findings of this workgroup. Please let me know if you have any questions or concerns.

