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To: Cannabis Testing Facilities
From: Director John Hudak, Office of Cannabis Policy
Date: October 16, 2023
Subject: Frequently Asked Questions about Adult Use Cannabis Testing

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This guidance is provided by the Office of Cannabis Policy (OCP) in response to inquiries from cannabis testing facilities and adult use licensees regarding testing requirements and collection of samples for mandatory testing.

Frequently Asked Questions from Adult Use Licensees

Question: If a licensee purchased distillate for use in their cannabis products that was not tested for pesticides, can they send in a sample from the purchased portion to be tested for pesticides? Should they base their sample size on the amount that was purchased, or on the original production batch size from the original producer of the distillate?

Answer: Yes, the licensee may submit a sample from the purchased portion for pesticides testing. That test sample should be based on the portion of distillate they have in their facility, not on the original batch size from the producer. The pesticide testing results will apply to all future cannabis products made from this portion of distillate by the licensee.

Question: If the original producer was able to test their original batch of distillate for pesticides, would that test result apply to any product that they previously sold from that batch?

Answer: Test results on the original batch from the producer would not be applicable to upstream production batches that have been created from that original batch.

Question: If a cannabis flower or concentrate product was submitted for all required testing except one test (e.g., metals) at one testing facility, could a sample of that product then be sent to a second testing facility for its final remaining test to complete that sample?

Answer: Due to the complexities of the testing system, OCP has a general policy that samples cannot be split and that only one testing facility may conduct required mandatory testing for a particular package. An upcoming rule update will soon clarify this policy. The only instance when it is allowable to split sample testing is in the case of an instrument failure at one of the certified testing facilities as specified in earlier guidance issued by OCP.

Question: If a sample fails for one analyte, do the retest samples for that batch need to be sent back to the same testing facility or can they be sent to a different testing facility?

Answer: The two confirmation samples sent in after a failure, either after remediation or as a retest, must be sent to the same cannabis testing facility that issued the original failed result.

Question: If a batch of distillate has already passed all required final form testing and is combined with terpenes that were extracted from the same flower, what testing is required?

Answer: If all batches of both the terpenes and extract have been tested for metals, pesticides, and residual solvents, the final combined product batch does not need those tests, because those analyte categories carry through. If the terpenes have not had this testing completed, then it can be performed either on the terpenes alone, before they are added to the distillate, or the tests can be performed on the combined batch after the terpenes have been added.

Once the terpenes are recombined with the distillate, it is now a new production batch, and then that final product batch needs the regular set of potency, homogeneity, microbials, and filth and foreign material to complete the final form testing. Any time testing of these analyte categories is done on a product before it is in final form, that testing must be repeated upon completion of the product. It is most efficient to wait until cannabis or a cannabis product is in its final form before conducting potency, homogeneity, microbial, and filth and foreign material testing.

Question: Does a batch of concentrate that was made from flower or trim that failed a test for yeast and mold need to be tested for mycotoxins?

Answer: Yes, the resulting concentrate does need mycotoxin testing in addition to the regularly required tests for cannabis concentrate since mycotoxins will not be destroyed during the extraction process.

Question: Is water activity testing required for ice cream or refrigerated products?

Answer: No.

Question: When a package of edibles fails for potency, does it need to be retested for homogeneity after it has been remediated and sent for retesting?

Answer: Yes, two samples from the remediated batch need to be submitted for potency and homogeneity testing.

Question: Can a sample be resubmitted for potency testing if there was no previous fail for that batch?

Answer: Retesting for potency in the absence of a failure is not permitted. It may be retested for homogeneity if the samples submitted for homogeneity fail, or it may be remediated and retested for potency in edibles if the edibles are determined to be above the potency limits. Resubmitting a sample to enhance the potency value is not permitted.

Question: Can several batches of concentrate be combined into one batch and be tested for potency?

Answer: Yes, the batches may be combined. The resulting package constitutes a new production batch and must be recorded as such in Metrc. The new production batch would be subject to a full round of mandatory tests, not just for potency. If all the material in the new production batch has passed prior testing for pesticides, metals, and residual solvents, retesting for those analyte categories is not required.

Question: Are pre-rolls categorized as flower or product? What are the required tests?

Answer: There are two different types of pre-roll products that exist in the market. One is a regular "raw pre-roll" (joint/cannabis cigarette), which is a rolling paper (and sometimes a filter) wrapped around cannabis flower and/or trim. The other type of pre-roll is an "infused pre-roll" which is a pre-roll that is infused with cannabis concentrate.

The "raw pre-roll" is considered cannabis flower/trim, not a product. The "infused pre-roll" is considered a cannabis product, because it is a combination of something *with* cannabis concentrate.

The required tests for final form "raw pre-rolls" are filth and foreign material, microbials, metals (select Flower/Trim in Metrc), water activity, potency (Select Flower/Trim in Metrc), and pesticides. Testing for metals and pesticides may be performed prior to a product's final form.

The required tests for final form "infused pre-rolls" are filth & foreign material, microbials, metals (select Concentrate & Inhalable Concentrate in Metrc), water activity, potency (select Infused in Metrc), pesticides, and residual solvents (if concentrate used to make infused pre-rolls was not previously tested). Testing for metals and pesticides may be performed prior to a product's final form.

Please note that either raw or infused cannabis plant material that is sold at retail as loose material (not rolled into joints) does *not* need homogeneity testing.

OCP has published guidance for licensees so they know what tests are required for each broad item category, and how those tests must be "selected" in the State's inventory tracking system, Metrc.

Frequently Asked Questions from Certified Cannabis Testing Facilities

Question: Are infused pre-rolls reported like edibles, and how do the THC limits apply?

Answer: Infused pre-rolls are a cannabis product, but they are not reported like edibles. Cannabis products include things like topicals (salves/balms/patches) and inhalables (infused pre-rolls) and edible cannabis products (tinctures, foods, drinks, etc.).

The potency limits (10mg/serving and 200 mg/package) are applicable *only* to edible cannabis products. There is no potency limit for products that are not edible cannabis products.

Question: What is the allowable variance for edible cannabis products effective October 25, 2023?

Laws enacted during the first special session of the 131st Maine Legislature go into effect on October 25, 2023. One of those laws is PL 2023, ch. 396, which increased the allowable potency of a package of edible cannabis products from 100 mg of THC/package to 200 mg of THC/package. That law did not change the statutorily allowable variance for a serving or a package of edible cannabis products promulgated in 28-B MRS § 703(F) and (F-1) which specifies that an edible cannabis product:

"F. May not contain more than 10 milligrams of THC per serving of the product and may not contain more than 200 milligrams of THC per package of the product, with an allowable variance rate of 10%, except that the allowable variance may not be less than 0.6 milligrams or greater than 5 milligrams. In the calculation of the amount of THC allowed under this paragraph, the allowable variance rate must be in addition to the allowable variance rate applicable to a testing facility pursuant to section 602, subsection 3;

F-1. May, except as provided in paragraph F, have the amount or potency of cannabinoids calculated using an allowable variance rate of 10%, except that the allowable variance may not be less than 0.6 milligrams or greater than 5 milligrams. In the calculation of the amount or potency of cannabinoids allowed under this paragraph, the allowable variance rate may be in addition to the allowable variance rate applicable to a testing facility pursuant to section 602, subsection 3."

A cannabis testing facility may not have laboratory uncertainty greater than 5%.

Therefore, at most, a single serving of an edible cannabis product may not contain more than a maximum of **11.5 mg of THC/serving**; and a package of edible cannabis products may not contain more than **215 mg of THC/package**.

Question: For analysis at the testing facility, is a two-gram subsample required to be used for microbial testing?

Answer: For qualitative microbials in flower (Salmonella and E.coli STEC), it is necessary to use 1g of material in order to report out <1 cfu/gram, as required. For quantitative microbials (total enterobacteria, total coliform, total yeast & mold, and total aerobic bacteria), it is possible to use less material, as required by the technology used. The certification rule, section 6.10A, cites 2g of plant material to ensure a representative portion is used from which to draw the testing aliquots, not necessarily to dictate the quantity of sample that needs to be used in the testing.