JANET T. MILLS
GOVERNOR

STATE OF MAINE
OFFICE OF CANNABIS POLICY
162 STATE HOUSE STATION
19 UNION STREET
FIRST FLOOR
AUGUSTA, MAINE 04333-0162

ADMINISTRATIVE & FINANCIAL SERVICES

KIRSTEN LC FIGUEROA
COMMISSIONER

OFFICE OF CANNABIS POLICY

JOHN HUDAK
DIRECTOR

To: Current and Prospective Adult Use Cannabis Program Participants
From: Director John Hudak, Office of Cannabis Policy
Date: December 23, 2024
Subject: Adult Use Sample Collection Follow Up and Pre-rolls Testing Guidance

---

Background

The following guidance is provided by the Office of Cannabis Policy (OCP) in response to questions received at the Office's Cannabis Conversation on Sample Collection on December 12, 2024. There was robust discussion at this event along with a number of questions from the cannabis industry and answers from the Office that may be helpful for other adult use licensees. Additionally, since that Cannabis Conversation, OCP has received a number of questions from licensees regarding the mandatory testing requirements for pre-rolled cannabis cigarettes (pre-rolls) made from cannabis flower or trim that had previously passed testing. OCP is issuing the following guidance to summarize the questions and answers provided during the Cannabis Conversation and to clarify the testing requirements applicable to pre-rolls, which OCP will begin enforcing on February 1, 2025.

Guidance

The following questions and responses were raised at OCP's Cannabis Conversation on Sample Collection on December 12, 2024. Questions and answers have been combined and summarized for the benefit of program participants.

Question: Must a pre-roll be tested for contaminants if the cannabis flower or trim used to make the pre-roll passed mandatory testing?

Answer: Yes. All pre-rolls, whether infused or not, will need to be submitted for testing for Yeast & Mold, Microbials, and Filth & Foreign Materials regardless of whether the plant material or concentrate used to make the pre-roll has had this testing completed. Given that there has been widespread misunderstanding within the industry, **OCP will not begin enforcing this requirement until February 1, 2025,** to allow time for licensees to become compliant.

Testing for Yeast & Mold, Microbials, and Filth & Foreign Materials will be required for pre-rolls because grinding and rolling the plant material constitutes further processing into a final form cannabis product. During that additional processing, yeast, mold, microbial, or filth or foreign material contamination could be introduced into the product in its final form. However, if a licensee chooses to test the cannabis flower or trim before rolling the plant material into pre-rolls, then testing for Pesticides, Metals, Water Activity, Residual Solvents, and Potency conducted on the plant material (and concentrate, as applicable for infused pre-rolls) will apply

to the final pre-rolls. This is because the processing involved in making pre-rolls does not present an opportunity for further contamination or change in the Potency or concentration of Pesticides, Metals, Water Activity, Residual Solvents.

Question: May a licensee treat or remediate a sample?

Answer: No, a licensee may not treat or remediate a sample for mandatory testing. Licensees are required to take and submit for mandatory testing a representative sample of the batch sampled. A licensee is permitted to treat or remediate an entire batch of cannabis or cannabis products and *then* take a representative sample for mandatory testing, but it is a major violation affecting public safety for a licensee to intentionally or knowingly tamper with or interfere with mandatory testing processes, including sample collection.[1] Under no circumstances should a licensee treat or remediate a sample or otherwise tamper with it.

Through audit testing, OCP has identified circumstances where a sample and the batch it was taken from were treated at the same time, using the same machine, but packaged separately. Due to the different densities of the sample and batch packages, harmful contaminants were able to be mitigated in the sample but not in the larger batch, leading to audit testing failures and a recall of contaminated cannabis.

Question: Have OCP's Compliance staff received training on sample collection and transportation?

Answer: Yes. OCP staff have been trained on how to take a representative sample from a batch of cannabis, cannabis concentrate, or cannabis products. OCP's Compliance staff use the same sample collection SOP and Best Practice Guide as licensees are required to use.

- The Maine Adult Use Cannabis Program Sample Collection Standard Operating Procedure for Mandatory Testing is included as Appendix A to the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, chapter 40.
- The Best Practice Guide for Sample Collection is available on OCP's website under "Guidance Documents".

Question: How many sample increments, and of what size, do I need to collect for a 5 kg batch of cannabis flower?

Answer: For a 5 kg batch of cannabis flower, 16 sample increments of 1 gram per increment need to be collected for a total composite sample of 16 grams.

Both the sample collection SOP and the Best Practice Guide for Sample Collection include tables that specify the minimum sample increment size and minimum number of sample increments that must be collected in order to create a representative composite sample of the batch for mandatory testing. Licensees are reminded to reference the chart applicable to the type of cannabis or cannabis product being sampled to determine the sample increment size (either 0.5 gram or 1.0 gram depending on the size of the batch sampled).

[1] *See* 28-B MRS § 802-A(2)(A)(7).

Question: Can a licensee use research and development (R&D) testing to help determine whether a sample will likely pass mandatory testing?

Answer: Absolutely, a licensee may submit any cannabis or cannabis product for R&D testing. While R&D samples are allowed, licensees are reminded that they cannot be used to meet any mandatory testing requirements. If a licensee intends to use R&D testing to gauge the likelihood that a batch will pass mandatory testing, it is important that the R&D sample is representative of the entire batch sampled. When submitting an R&D sample to a cannabis testing facility for testing, licensees must be sure to record it as an R&D sample in the inventory tracking system.

Question: May a licensee treat cannabis using radiation, ozone, or gases? May a licensee remediate cannabis that has failed mandatory testing for microbials, yeast, or mold using radiation, ozone, or gases?

Answer: Yes, so long as the licensee ensures that the cannabis is labeled in accordance with the *Compliance Rules for Adult Use Cannabis Establishments*, 18-691 CMR, chapter 30, section 5, sub-section 3, paragraph B(3) which reads, "If applicable, for cannabis flower or trim that has been treated or remediated, including without limitation treatment or remediation using radiation, ozone, or carcinogenic gases to mitigate mold, mildew, yeast, microbials, or other harmful contaminants, a statement in no less than 6-point font that reads 'Contents have been treated with [treatment or remediation method].' For the purposes of this paragraph the use of ozone generators to clean a cultivation room or area that does not have any plants, flower or trim present does not constitute treatment or remediation of cannabis flower or trim."

The use of radiation, ozone, or gases to mitigate contaminants like microbials, yeast, or mold ***before*** a batch is sampled for mandatory testing is "treatment", whereas the use of such methods ***after*** a failed mandatory test result is "remediation". In either case, a licensee must ensure that cannabis flower or trim that has been treated or remediated using those methods is labeled in accordance with the *Compliance Rules for Adult Use Cannabis Establishments*.

Question: How does homogeneity testing work for an edible cannabis product that has nuts in it or some other additive that varies in size from one serving of the edible product to the next?

Answer: 28-B MRS § 703(1)(B) requires any edible cannabis product sold or offered for sale by a licensee to a consumer to be "…manufactured in a manner that results in the cannabinoid content within the product being homogeneous throughout the product or throughout each element of the product that has a cannabinoid content." Section 6.6 (¶¶ H-J) of the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR, ch. 5 addresses the way in which a cannabis testing facility determines whether or not an edible cannabis product passes mandatory testing for homogeneity. The purpose of this requirement is to ensure that consumers can have a clear and predicable understanding of the potency of each serving of the edible cannabis product they are consuming.

Conclusion

On December 12, 2024, OCP hosted a Cannabis Conversation on Sample Collection that led to a robust discussion featuring a number of questions from the cannabis industry and answers from the Office that may be helpful for licensees that were not able to attend the Cannabis Conversation. In recent weeks, OCP has also received a number of questions from licensees regarding the mandatory testing requirements for pre-rolled cannabis cigarettes (pre-rolls) made from cannabis flower or trim that had previously passed testing. This guidance summarizes the questions and answers provided during the Cannabis Conversation and clarifies the testing requirements applicable to pre-rolls, which OCP will begin enforcing on February 1, 2025.

Licensees with questions regarding this guidance should contact OCP's Compliance Team at Compliance.OCP@maine.gov.