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To: Current and Prospective Adult Use Cannabis Program Participants  
From: Director John Hudak, Office of Cannabis Policy  
Date: November 27, 2024  
Subject: Adult Use Sample Collection Reminders and Mandatory Testing for Pesticides  
Guidance

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### Background

This guidance is provided by the Office of Cannabis Policy (OCP) in response to concerns identified through OCP's audit testing of cannabis and cannabis products being cultivated, manufactured, and offered for sale in Maine's Adult Use Cannabis Program (AUCP). Specifically, OCP's audit testing program has identified variations in the sample collection methods and procedures that licensees are using to collect samples of their own cannabis or cannabis products for mandatory testing, also known as "self-sampling".

In light of recent updates to the rules governing the Adult Use Cannabis Program, OCP has also received several questions regarding mandatory testing for pesticides. Licensees have asked OCP to clarify whether cannabis concentrate is subject to mandatory testing for pesticides if the cannabis flower and trim extracted to make that concentrate have already passed mandatory testing for pesticides.

### Guidance

#### **Reminders about self-sampling**

All adult use cannabis and cannabis products offered for sale to consumers are subject to mandatory testing for harmful contaminants in accordance with the *Cannabis Legalization Act*, Title 28-B, chapter 1. That law requires OCP to develop routine technical rules for mandatory testing in consultation with the Maine CDC. This includes rules regarding the collection of samples for mandatory testing and "rules identifying the types of contaminants that are injurious to health for which cannabis and cannabis products must be tested... and rules regarding the maximum level of allowable contamination for each contaminant."<sup>1</sup>

28-B MRS § 604-A further requires that samples for mandatory testing be collected in accordance with rules adopted by OCP regarding "sample collecting processes, protocols and standards, which must be complied with by the licensee and its employees in collecting samples of adult use cannabis and adult use cannabis products for testing purposes." Accordingly, **the sample collection requirements applicable to licensees are detailed in section 1 of [18-691](#)**

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<sup>1</sup> See 28-B MRS § 601.

**CMR, ch. 40, Rules for the Testing of Adult Use Cannabis.** These rules require licensees that collect samples for mandatory testing of their own cannabis or cannabis products (known as “self-sampling”) to take mandatory samples “in compliance with:

- (1) Sample collection, transport, and receipt recordkeeping requirements [of the rules governing the adult use cannabis program];
- (2) The Department-required [sampling standard operating procedures](#);
- (3) The Department-required [Best Practices Guide](#);
- (4) The requirements and restrictions of [28-B MRS §604-A](#); and
- (5) The rules governing the adult use cannabis program.”<sup>2</sup>

The mandatory testing program requires licensees to submit for mandatory testing a representative sample of the batch of adult use cannabis or cannabis product subject to mandatory testing. Per chapter 40, a representative sample is one that “accurately reflects the characteristics of the larger batch” sampled. OCP’s audit testing program has identified that some licensees are not submitting, for mandatory testing, “representative samples” of the batches sampled. This is because licensees are in some cases treating samples submitted for mandatory testing differently than the rest of each batch. For example, treating samples of cannabis or cannabis products with ozone, radiation, or hydrogen peroxide *after* the samples had been collected from the batch sampled. In other cases, licensees were found separating samples from a batch and *then* treating both the samples and the batch with ozone, radiation, or hydrogen peroxide before submitting the samples for mandatory testing.

These practices are prohibited under the laws and rules governing the Adult Use Cannabis Program: “Intentionally or knowingly tampering with or interfering with mandatory testing processes, including sample collection or auditing testing results,” such as treating the sample or the batch *after* samples are collected, is a major violation affecting public safety.<sup>3</sup> Such practices jeopardize the integrity of the State’s mandatory testing program and the ability for licensees to continue self-sampling.

Licensees are reminded that the sample collected must be representative of the entire batch sampled. Samples must be collected in accordance with the “Maine Adult Use Cannabis Program Sample Collection Standard Operating Procedure for Mandatory Testing” included in Appendix A of [18-691 CMR, ch. 40](#), and the [Best Practice Guide for Sample Collection](#) published by OCP.

### **Clarification regarding pesticides testing**

For reference, the “rules governing the Adult Use Cannabis Program” are comprised of the following:

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<sup>2</sup> 18-691 CMR, chapter 40, § 1(C)

<sup>3</sup> See 28-B MRS § 802-A(2)(A)(7). However, a licensee may remediate a batch after a failed test provided that the licensee records the remediation steps in the inventory tracking system and submits a new representative sample for mandatory testing in accordance with the requirements of the rules governing the Adult Use Cannabis Program and complies with any applicable labeling requirements regarding cannabis that has been remediated.

- *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR, ch. 5
- *Rules for the Administration of the Adult Use Cannabis Program*, 18-691 CMR, ch. 10
- *Rules for the Licensure of Adult Use Cannabis Establishments*, 18-691 CMR, ch. 20
- *Compliance Rules for Adult Use Cannabis Establishments*, 18-691 CMR, ch. 30
- *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40

Chapters 10, 20, and 30 are major substantive rules that require legislative review before OCP can finally adopt them. Chapters 5 and 40, which address mandatory testing of cannabis and cannabis products, are routine technical rules that go into effect five (5) days after the rules are adopted by OCP, unless OCP sets a later effective date.

When OCP provisionally adopted chapters 10, 20, and 30 last year as part of its regulatory review, chapter 40 was subsequently adopted with an effective date contingent upon adoption of those other rules – meaning chapter 40 was finalized about a year before the other rules governing the Adult Use Cannabis Program were finalized. This resulted in an apparent discrepancy between the pesticides testing requirements outlined in the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR, ch. 5 and the *Rules for the Testing of Adult Use Cannabis*, 18-691 CMR, ch. 40. Specifically, the chapter 40 rule that went into effect on November 6, 2024 exempted from pesticides testing cannabis concentrate manufactured using cannabis flower or trim that had already passed pesticides testing, while the chapter 5 rule that went into effect on November 12, 2024 requires that all adult use cannabis concentrate manufactured in the Adult Use Cannabis Program be tested for pesticides.

On November 7, 2024, [OCP issued guidance to licensees](#) regarding changes to the mandatory testing requirements in the chapter 5 rule, including changes related to mandatory testing for pesticides. That guidance should have included an explanation that the testing required by the chapter 40 rule is governed by the chapter 5 rule.<sup>4</sup> The apparent discrepancy between 18-691 CMR, chapter 5, section 6(2)(A)(3) and 18-691 CMR, chapter 40, section 2(2)(A)(3) will be addressed the next time OCP revises chapter 40.<sup>5</sup> In the interim, however, chapter 5 specifies that **all cannabis concentrate must be tested for pesticides, with cannabis flower and trim only subject to mandatory testing for pesticides if it is in its final form for sale to consumers** (as flower, trim, or as a pre-rolled cannabis cigarette).

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<sup>4</sup> 18-691 CMR, ch. 40, *Rules for the Testing of Adult Use Cannabis* requires all samples of adult use cannabis and cannabis products to be tested in accordance with 18-691 CMR, ch. 5, *Rules for the Certification of Cannabis Testing Facilities*.

<sup>5</sup> 18-691 CMR, ch. 40, *Rules for the Testing of Adult Use Cannabis* specify that mandatory testing must be conducted in accordance with 18-691 CMR, chapter 5 and that cannabis and cannabis products offered for sale to consumers must pass all mandatory testing for all contaminants identified. OCP updated the pesticides testing requirements in chapter 5 due to concerns regarding the concentration of harmful contaminants like pesticides through the extraction of cannabis flower or trim that previously passed testing for such contaminants. Specifically, OCP eliminated mandatory pesticides testing for flower or trim set for extraction because contaminants in the flower and trim were being concentrated in the resulting cannabis concentrate at levels that could be harmful to consumers' health.

## Conclusion

The mandatory testing program requires licensees to submit for mandatory testing a representative sample of the batch of adult use cannabis or cannabis product subject to mandatory testing. Licensees must collect samples in accordance with the [rules governing the Adult Use Cannabis Program](#) and the [Best Practice Guide for Sample Collection](#) published by OCP.

Regarding whether cannabis concentrate is subject to mandatory testing for pesticides, licensees should refer to the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR, ch. 5. Chapter 5 specifies that all cannabis concentrate must be tested for pesticides, with cannabis flower and trim only subject to mandatory testing for pesticides if it is in its final form for sale to consumers (as flower, trim, or as a pre-rolled cannabis cigarette).

Adult use licensees with questions regarding the rules and/or the mandatory testing requirements may contact OCP's Policy Director, Gabi Pierce, at [Gabi.Pierce@maine.gov](mailto:Gabi.Pierce@maine.gov). Licensees can also attend the Office's "Cannabis Conversation on Sample Collection" on **Thursday, December 12, 2024, at 11:00 a.m.** to ask questions and receive further guidance. [Register here](#).

*As a reminder, OCP cannot provide legal advice to program participants regarding the application of the rules or laws governing the adult use program to any licensee's particular circumstances. Please contact your own attorney or business advisor for such advice.*