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To: Current and Prospective Adult Use Marijuana Program Licensees
From: Director Erik Gundersen, Office of Marijuana Policy
Date: Tuesday, January 26, 2021
Subject: Retesting and Remediation of Marijuana Items Subject to a Failed Test

Background

The Office of Marijuana Policy (OMP) is providing the following guidance to clarify the retesting requirements for failed batches of marijuana, marijuana concentrate and marijuana products subject to mandatory testing in the Adult Use Marijuana Program. OMP has received inquiries seeking clarification regarding the retesting of marijuana items and how testing obligations vary in instances where remediation may be considered or undertaken by licensees.

We make this and other guidance available to current and prospective licensees to ensure the consistent understanding of policies among all regulated entities and further enhance the good faith partnership between the State of Maine and its stakeholders.

Situational Guidance

Batches of marijuana, marijuana concentrate and marijuana products that have failed mandatory testing must be destroyed in accordance with statute and rule unless one of the following courses of action are taken.

Effective immediately, if a licensee chooses to remediate a batch or batches of marijuana, marijuana concentrate or marijuana products that have failed mandatory testing for **filth and foreign material, dangerous molds and mildews, harmful microbes, water activity or moisture content**, the licensee may remediate the batch without prior approval by OMP.

When OMP implements mandatory testing for residual solvents later this year, a licensee **may choose to remediate** a batch that failed mandatory testing for **residual solvents** without prior approval by OMP.

When OMP implements mandatory testing for pesticides and other harmful chemicals (metals), a licensee **may not remediate** a batch that failed mandatory testing for **pesticides or metals** but may choose to submit samples for retesting if the licensee believes the failed result was in error.

Effectively immediately, the following procedures will apply to marijuana items that have failed mandatory testing.

If a batch fails mandatory testing for an analyte type that may be remediated, the licensee may:

1. Submit the batch for retesting, if the licensee believes the first failed test was in error, in accordance with the guidance set forth below;
2. Remediate the batch in-house and submit the batch for retesting in accordance with the guidance set forth below;
3. Transfer the batch to a products manufacturing facility for remediation and the products manufacturing facility may submit the batch for testing in accordance with the guidance set forth below; or
4. Destroy the batch that failed mandatory testing and timely record that destruction event in METRC.

A licensee must record in METRC an action (retesting, remediation, destruction) within 30 days of receiving the final certificate of analysis from the marijuana testing facility that reported the failed test result. Failure to record an action in METRC within 30 days of receiving the final certificate of analysis for the failed batch will result in OMP issuing to the licensee a Final Order of Destruction for the entire failed batch.

Reminder: A licensee may submit, at any time, samples for research and development purposes to a licensed marijuana testing facility. Such research and development testing may not be used to satisfy mandatory test results but can inform licensee decision-making regarding retesting or remediation in accordance with this guidance and the Adult Use Marijuana Program Rule.

If a batch fails mandatory testing for an analyte type that may not be remediated, the licensee may:

1. Submit the batch for retesting, if the licensee believes the first failed test was in error, in accordance with the guidance set forth below; or
2. Destroy the batch that failed mandatory testing and timely record that destruction event in METRC.

A licensee must record in METRC an action (retesting, destruction) within 30 days of receiving the final certificate of analysis from the marijuana testing facility that reported the failed test result. Failure to record an action in METRC within 30 days of receiving the final certificate of analysis for the failed batch will result in OMP issuing to the licensee a Final Order of Destruction for the entire failed batch.

Two Subsequent Retests without Remediation: Batches of marijuana, marijuana concentrate and marijuana products that have failed mandatory testing may be retested without remediation. The licensee must submit two separate samples from the failed batch for retesting. The failed batch would only be required to pass two subsequent tests for the specific analyte category that originally failed.

For example: A batch of marijuana concentrate that fails for total yeast and mold would be required to pass two subsequent tests for the required analytes under the category of “dangerous molds and mildew” (including mycotoxin analysis) in order to be transferred to another licensee.

Two Subsequent Retests following Remediation: Batches of marijuana, marijuana concentrate and marijuana products that have failed mandatory testing may, in some cases, be remediated. If

the method of remediation results in the marijuana, marijuana concentrate or marijuana product remaining in the same form as the initially failed batch, the licensee must submit two separate samples from the remediated batch. The remediated batch would only be required to pass two subsequent tests for the specific analyte category that originally failed.

For example: A batch of marijuana flower that fails for water activity may be remediated by additional drying and curing and would be required to pass two subsequent tests for water activity and moisture content in order to be transferred to another licensee.

All Required Tests following Remediation: Batches of marijuana, marijuana concentrate and marijuana products that have failed mandatory testing may, in some cases, be remediated. If the method of remediation results in the marijuana, marijuana concentrate or marijuana product changing into a new marijuana item that is different from the items in the batch that initially failed testing, the licensee must submit a single sample from the resulting remediated batch. The remediated batch would be required to pass one subsequent round of all required tests for items in its form following remediation (including mycotoxin analysis if the original test failed for total yeast and mold).

For example: A batch of marijuana flower fails for total yeast and mold, is transferred to a manufacturing facility, and is remediated by hydrocarbon extraction into marijuana concentrate. The new marijuana item (concentrate) would need to pass all required tests for marijuana concentrate, as well as mycotoxin analysis, in order to be transferred to another licensee.

Note: If the remediated batch, that is in a new form, fails the subsequent test, it is treated as an original failed test and may begin the retest or remediation process again.