



ADMINISTRATIVE & FINANCIAL SERVICES

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To: Adult Use Cannabis Program Stakeholders
From: Director Erik Gundersen, Office of Cannabis Policy
Date: Monday, August 8, 2022
Subject: Guidance on Variance in the Amount & Potency of THC in Edible Cannabis Products

Background

P.L. 2021, ch. 558, *An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products* permits licensees that manufacture edible cannabis products, and cannabis testing facilities that conduct mandatory testing of edible cannabis products, to account for some variance in the THC potency of those edible cannabis products per serving and per package, in order to determine whether the edible cannabis product exceeds the allowable amount of THC per serving or per package.

That law provides for a 10% allowable variance in the potency of servings and packages of edible cannabis products, “except that the allowable variance may not be less than .6 milligrams or greater than 5 milligrams”. This variance is in addition to a cannabis testing facility’s laboratory uncertainty for THC potency analyses indicated on the testing facility’s certificate of analysis for any mandatory potency testing conducted by that facility. [OCP previously issued guidance to testing facility licensees regarding the use of laboratory uncertainty for determining whether edible cannabis products pass mandatory testing.](#)

The Office of Cannabis Policy (OCP) has received questions from products manufacturing and cannabis testing facility licensees regarding the implementation of these allowable variances and is providing the following guidance in response to those questions.

Guidance

An Act To Allow for a Variance Rate in the Amount and Potency of Cannabinoids in Adult Use Edible Marijuana Products provides for a variance in the potency of adult use

edible cannabis products by providing a maximum allowable percentage variance in excess of the statutorily defined per-serving and per-package limits of THC.

It is OCP's understanding that the intent of this law is to permit edible cannabis products' manufacturers to produce edible cannabis products with the maximum amount of cannabis per serving (10 mg of THC) and per package (100 mg of THC) without failing mandatory testing for small excesses in the amount of THC that are inherent in the manufacturing processes.

The changes to the law align with OCP's existing labeling requirements for edible cannabis products, which have always permitted licensees to report potency values that are +/- 10% of the actual potency results by a cannabis testing facility. However, historically, manufacturing facility licensees that produced maximum dose edibles were subject to a "hard stop" for testing purposes at the statutorily defined potency limits. This change allows testing facilities to pass maximum-potency edibles even if the edibles slightly exceed the statutorily defined serving and package potency limits.

The following examples are provided to illustrate the application of the newly allowable variances per serving and per package:

The infographic is divided into two vertical panels by a blue zigzag line. The left panel, titled "Single Serving Example", features a single red, round, textured edible. Below it is the text " ≤ 11 mg". The right panel, titled "Package Example", features a clear glass jar with a metal lid containing several colorful (red, orange, yellow) round edibles. Below the jar is the text " ≤ 105 mg". Underneath this, it lists two examples: "for example... 9 servings @ 11 mg (99 mg total)" and "OR 17 servings @ 6 mg (102 mg total)". In the bottom left corner of the infographic is the logo for the "OFFICE of CANNABIS POLICY" with the text "MINNESOTA DEPARTMENT OF COMMERCE, SECURITY AND FINANCIAL SERVICES" below it.

Single Serving Example

≤ 11 mg

Package Example

≤ 105 mg

for example...
9 servings @ 11 mg
(99 mg total)

OR

17 servings @ 6 mg
(102 mg total)

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Conclusion

Edible cannabis products manufactured, tested, and sold within the Adult Use Cannabis Program must be manufactured in a way that results in the THC content within each serving and package of edible cannabis products being homogeneous throughout.

Cannabis testing facilities conducting mandatory testing of the potency of an edible cannabis product may account for the testing facility's known laboratory uncertainty as well as the statutorily permitted variance of up to 10% above the statutorily identified potency limits per serving and per package of edible cannabis products; except that such permitted variance may not be less than 0.6 milligrams or greater than 5 milligrams.