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To: Current and Prospective Adult Use Cannabis Program Licensees  
From: Director Erik Gundersen, Office of Cannabis Policy  
Date: Thursday, September 8, 2022  
Subject: Guidance for Improved Testing Requirements for Adult Use Cannabis

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## **Background**

This guidance is provided by the Office of Cannabis Policy (OCP) to current and prospective adult use licensees. Included in revisions to the recently adopted *Adult Use Cannabis Program Rule*, 18-691 CMR, ch. 1, and the *Rules for the Certification of Cannabis Testing Facilities*, 18-691 CMR, ch. 5, are provisions permitting adult use cultivation and products manufacturing facilities to transfer cannabis and cannabis products to another cultivation or products manufacturing facility without first testing the cannabis and cannabis products. Under the new rules, licensees are only required to engage in mandatory testing of cannabis and cannabis products prior to transferring those items to an adult use cannabis store for sale to consumers (commonly referred to as “final form” testing).

These changes were necessitated by PL 2021, ch. 612, *An Act To Improve Testing Requirements for Adult Use Marijuana*. That law also included a provision permitting licensees to exempt from testing any cannabis or cannabis products that have been previously subjected to mandatory testing that have “...not undergone any further processing, manufacturing or alteration that would result in an increase in the concentration of any contaminants or factors [for which testing is mandatory].”

**The licensee that transfers cannabis or cannabis products to a cannabis store licensee is ultimately responsible for ensuring that the cannabis or cannabis products have undergone all mandatory testing.** The following guidance provides information regarding the circumstances when cannabis or cannabis products in their final form may be exempt from testing for some analyte categories.

## **Guidance**

Unless explicitly excepted by rule, adult use cannabis and cannabis products offered for sale to consumers must pass mandatory testing for the following analyte categories:

1. Filth and foreign materials
2. Dangerous molds and mildews
3. Harmful microbes
4. THC potency, homogeneity and cannabinoid profiles
5. Water activity
6. Other harmful chemicals (metals, including cadmium, lead, arsenic, and mercury)
7. Residual solvents
8. Pesticides<sup>1</sup>

OCP, in consultation with the Maine Center for Disease Control, has determined that several of these analyte categories are of the kind for which “further processing, manufacturing or alteration” will not “result in an increase in the concentration” of the analyte. Those analyte categories are pesticides, residual solvents and other harmful chemicals. Simply put: once cannabis or cannabis products pass mandatory testing for these analyte categories, it is unlikely that these contaminants may be reintroduced or concentrated into the cannabis or cannabis product through further manufacture or processing.

Thus, OCP’s revised rules permit licensees to voluntarily conduct mandatory testing for these analyte categories on cannabis or cannabis products before those items are in their final form. Specifically, OCP’s revised rules allow licensees to conduct mandatory testing for pesticides on cannabis flower and trim before it is transferred to a manufacturing facility or further processed into cannabis concentrate or cannabis products. Similarly, licensees may opt to conduct mandatory testing for residual solvents and other harmful chemicals on cannabis concentrate before that concentrate is further manufactured into a cannabis product.

However, these exceptions to final form testing are subject to a big, and important, caveat: In order for cannabis concentrate or cannabis products in their final form to be exempt from mandatory testing for these analytes, every batch of cannabis flower, trim and/or concentrate combined to make the cannabis concentrate or cannabis products in their final form must have previously passed mandatory testing for the exempted analyte category.

For example: A batch of brownies is made by combining brownie ingredients with cannabis concentrate from 3 separate production batches of concentrate. Each batch of cannabis concentrate was made using 4 harvest batches of cannabis trim. In order for that batch of brownies, in its final form for sale to consumers, to be exempt from mandatory testing for pesticides, residual solvents and other harmful chemicals, both of the following must be true:

1. All 12 harvest batches of cannabis trim used to make the 3 production batches of cannabis concentrate must have passed testing for pesticides prior to being extracted; and

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<sup>1</sup> Testing for pesticides is not mandatory until December 12, 2022. For more information: <https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/Pesticides%20Advance%20Notice%20Final.pdf>

2. All three production batches of cannabis concentrate must have passed mandatory testing for residual solvents and other harmful chemicals before those production batches were combined with the brownie ingredients.

If any harvest batch of cannabis flower or trim did not pass mandatory testing for pesticides prior to extraction, then the brownie is not exempt from the mandatory testing requirements for pesticides. Likewise, if any of the production batches of cannabis concentrate was not tested for residual solvents or other harmful chemicals before those batches of cannabis concentrate were combined in the brownie, then the brownie in its final form is subject to mandatory testing for those analytes.

### **Conclusion**

Pursuant to recent changes to the Cannabis Legalization Act and the rules governing the Adult Use Cannabis Program, licensees are no longer required to conduct mandatory testing on cannabis and cannabis products every time the cannabis and cannabis product is transferred to another licensee. Licensees may now conduct mandatory testing on cannabis and cannabis products in their “final form” prior to transfer by the licensee to a cannabis store. Licensees may also opt to conduct mandatory testing for some analyte categories before the cannabis or cannabis product is in its final form for sale to consumers (pesticides, residual solvents and metals) – for these analyte categories, testing of the cannabis or cannabis product is not required if all harvest and/or production batches combined to create the item in its final form have already passed mandatory testing for those analytes.