



MEMORANDUM

TO: Marijuana Control Board DATE: November 13, 2019
FROM: Erika McConnell, Director RE: Regulations Project – Retesting

The board opened this regulations project on February 20, 2019, to clarify the circumstances that warrant a retest.

Currently, a licensee selects a “representative, homogenous sample” and sends it to testing. If it fails a required test, the licensee may request to have a retest. If a retest is approved, then the licensee selects a different “representative, homogenous sample.” Because microbes and fungus such as E. coli and aspergillus are not spread evenly throughout a harvest batch, the results of a second test don’t have any relation to the validity of the first test. Just because the retest passes doesn’t mean that the failure of the first test was incorrect. In addition, if a retest is granted and passes, then there is one failed test and one passed test. Which is correct?

The only way to resolve this problem is if the same material of the original test is used for the retest. This draft regulations change proposes the following:

- A cultivation licensee who wishes to have the ability to request a retest shall provide 16 grams of marijuana to the testing facility, in the “required sample” and the “reserve sample.”
- The testing facility shall “grind, homogenize, and mix the sample and reserve quantities together,” use a portion for the initial test, and keep the remaining material in a secure manner.
- If the initial test fails and the cultivation facility requests and is approved for a retest, the cultivation facility decides that either the original testing facility shall perform a retest on the remaining material, or the original testing facility shall transfer the remaining material, at the cultivator’s expense, to a different testing facility, which shall perform the retest.
- The retest shall be performed in duplicate, so that ultimately there are three test results. If two of the three tests pass, the harvest batch package passes testing. If two of the three tests fail, the harvest batch package fails testing and must either be destroyed, or the cultivation facility may request permission to transfer it for extraction.

In addition, the draft regulation allows a product manufacturer to request a retest of a product that passed testing but for which the licensee wishes to reprocess to further reduce residual solvent levels.

The final draft proposal allows a request for a retest for potency if a narrative justifying the request and photographic evidence of why a retest is needed is submitted. The board has stated in the past

that it does not see a need for retests for potency. “Potency shopping”—i.e., finding the lab that gives the highest potency result—should not be permitted.

Options for the board:

- Put out for public comment
- Amend and put out for public comment
- Send back to staff for revisions
- Close the project without action



3 AAC 306.455 is amended to add a new subsection:

(d) A marijuana cultivation facility may collect a greater quantity of sub-samples than required above to allow for the possibility of a retest in duplicate, in order to have a reserve sample available for a retest under 3 AAC 306.660. The marijuana testing facility shall collect the amount required in (b)(1) above and a reserve sample quantity of an amount such that the required sample and the reserve sample quantity total 16 grams. The marijuana cultivation facility shall send the required sample and the reserve sample quantity to the marijuana testing facility of their choice at the same time. If a marijuana cultivation facility requests and is approved for a retest, the marijuana cultivation facility may have the retest performed by the marijuana testing facility which performed the initial test, or the marijuana cultivation facility may have a different marijuana testing facility perform the retest. (Eff. 2/21/2016, Register 217; am 11/08/2018, Register 228; am ___/___/____, Register____; am ___/___/____, Register____)

Authority: AS 17.38.010 AS 17.38.150 AS 17.38.200
AS 17.38.070 AS 17.38.190 AS 17.38.900
AS 17.38.121

3 AAC 306.660 is amended to read:

3 AAC 306.650. Chain of custody. (a) A marijuana testing facility shall establish an adequate chain of custody and sample requirement instructions that include

- (1) issuing instructions for the minimum sample requirements and storage requirements;
- (2) documenting the condition of the external package and integrity seals utilized to prevent contamination of or tampering with the sample;
- (3) documenting the condition and amount of sample provided at the time the sample is

received at the marijuana testing facility;

(4) documenting each person handling the original samples, aliquots, and extracts;

(5) documenting any transfer of samples, aliquots, and extracts to another marijuana testing facility for additional testing or at the request of the marijuana cultivation facility or marijuana product manufacturing facility that provided the testing sample;

(6) maintaining a current list of authorized persons and restricting entry to the marijuana testing facility to those authorized persons;

(7) securing the marijuana testing facility during non-working hours;

(8) securing short-term and long-term storage areas when not in use;

(9) using a secured area to log in and aliquot samples;

(10) ensuring samples are stored appropriately; and

(11) documenting the disposal of samples, aliquots, and extracts.

(b) When a marijuana cultivation facility provides a reserve sample quantity for a possible retest as allowed under 3 AAC 306.455, the marijuana testing facility shall grind, homogenize, and mix the sample and reserve quantities together, and then secure the sample volume not consumed by initial testing in a manner to prevent contamination and spoilage. If requested by a marijuana cultivation facility which has been approved for a retest under 3 AAC 306.660(c), the marijuana testing facility shall transfer the sample volume not consumed by testing to a different marijuana testing facility, at the expense of the marijuana cultivation facility. (Eff. 2/21/2016, Register 217; am ___/___/_____, Register _____)

Authority: AS 17.38.010 AS 17.38.121 AS 17.38.200
AS 17.38.040 AS 17.38.150 AS 17.38.900
AS 17.38.070

3 AAC 306.660 is repealed and readopted to read:

3 AAC 306.660. Failed materials; retests. (a) If a sample tested by a marijuana testing facility does not pass the required tests based on the standards set out in 3 AAC 306.645, including a visual foreign matter inspection, the marijuana establishment that provided the sample may request permission to transfer a batch of marijuana that fails a required test to be used to make a carbon dioxide- or solvent-based extract in accordance with (b) of this section, or request a retest in accordance with (c) or (d) of this section. Otherwise, a marijuana establishment that provided the sample shall dispose of the harvest batch package or production lot from which the sample was taken in accordance with 3 AAC 306.740.

(b) If a sample of marijuana fails a required test, any marijuana plant trim, leaf, and other usable material from the same harvest batch package fails the required test. The board or director may approve a written request, on a form prescribed by the board, to allow a batch of marijuana that fails a required test to be used to make carbon dioxide- or solvent-based extract. After processing, the carbon dioxide- or solvent-based extract must pass all required tests.

(c) If a marijuana cultivation or a marijuana product manufacturing facility submits a written request, on a form prescribed by the board, for a retest of marijuana or a marijuana product that failed a required test, the board or director may authorize a retest to validate the test results.

(1) A retest for a cultivation facility shall only be authorized if the marijuana cultivation facility has provided a reserve sample quantity to the testing facility in accordance with 3 AAC 306.455(d).

(2) If a retest is approved, the marijuana cultivation facility may have the same marijuana testing facility retest the reserve sample using the same test procedure in duplicate and in conjunction with a new set of positive and negative controls. Alternately, the marijuana cultivation facility may request the marijuana testing facility transfer the remaining reserve sample material to a different marijuana testing facility, which shall perform any tests in duplicate with a new set of

positive and negative controls.

(3) If both duplicate samples give a negative microbial result, no further testing is required and the harvest batch is saleable to a retail facility.

(4) If at least one duplicate sample tests returns a positive microbial result, the marijuana establishment that provided the sample may request permission to transfer a batch of marijuana that fails a required test to be used to make a carbon dioxide- or solvent-based extract in accordance with (b) of this section, or shall dispose of the harvest batch package or production lot from which the sample was taken in accordance with 3 AAC 306.740.

(5) The marijuana cultivation facility shall pay all costs associated with a retest.

(d) When requested by a marijuana product manufacturing facility, the director may authorize a retest of a marijuana concentrate that passed a required test when the licensee wishes to reprocess a marijuana product to further reduce residual solvent levels. The marijuana product manufacturing facility shall pay all costs of a retest.

(e) The marijuana cultivation facility or a marijuana product manufacturing facility may request a retest for potency, but must justify and be approved for a potency retest under this section. A potency retest request must be accompanied by photographic evidence and a narrative justifying the request. The marijuana facility shall pay all costs of a retest. (Eff. 2/21/2016, Register 217; am 7/5/2017, Register 223; am 10/20/2018, Register 228; am ___/___/____, Register _____; am ___/___/____, Register _____)

Authority:	AS 17.38.010	AS 17.38.150	AS17.38.200
	AS 17.38.070	AS 17.38.190	AS 17.38.900
	AS 17.38.121		