

# **Cannabis Product Sampling and Laboratory Testing Frequently Asked Questions (FAQ)**

The New York State Office of Cannabis Management (OCM) has received several questions related to the requirements pertaining to sampling, transport and laboratory testing of adult-use and medical cannabis products. This FAQ will assist licensees, including registered organizations, producing cannabis product batch, in understanding the sampling, transportation, and testing process.

## **Batch of Cannabis Product and Sampling of Cannabis Products**

### **Q 1: What is the difference between cannabis product batch and cannabis product lot?**

A: OCM sees these terms as interchangeable. Part 130 of Title 9 of New York Codes Rules and Regulations (9 NYCRR Part 130) defines a cannabis product batch as a uniquely defined quantity of medical cannabis or cannabis product; including pre-roll, that is uniform in processing, manufacture, and packaging within a concurrent time frame.

### **Q 2: Can a laboratory be a sampling firm?**

A: Yes, [9 NYCRR Part 130](#) allows for laboratories to operate as a sampling firm.

### **Q 3: In a processing facility, can a product's expiration date serve as the lot number if the facility already uses a batch code as the unique identifier?**

A: The use of only a product's expiration date would be unacceptable as multiple products could potentially have the same date of expiration and therefore it would not serve as a unique identifier. A licensee may use any distinctive letters, numbers, or symbols, or any combination of them, from which the complete history of cultivation, manufacturing, processing, testing, custody, distribution or recall of a cannabis or cannabis product lot can be determined. This may be displayed on the retail package or, if a marketing layer is used, the marketing layer. This application to the packaging or marketing layer, as defined in 9 NYCRR Part 128, can be in the form of a label.

### **Q 4: If an individual works for a licensee, is the individual prohibited from working as a sampling technician for an approved sampling firm?**

A: No, provided that the individual is not a True Party of Interest for any license; whereby, the individual must not have any interest, direct or indirect, including, but not limited to, as a landlord, financier or management service provider, to any license. For more information on True Parties of Interest, please see the [Personal History Disclosure for Laboratory Testing and Sampling \(OCM-06005 \(8/22\)\)](#).



**Q 5: How many samples need to be collected and sent for cannabis product batch testing?**

A: A random statistically significant sample of products from each lot of cannabis products produced must be tested. “How much” or the representative sample of products depends on the lot size. Page 4 of OCM’s [Sampling Quality System Standard](#) includes a table with the number of random sample increments for different batch or lot size ranges.

Cannabis Product or Pre-roll Batch Size (units)	Number of Sample Increments (per sample)
≤ 50– 500	5
501 – 1,200	8
1,201 – 3,200	13
3,201 – 10,000	20
10,001 – 35,000	32
35,001 – 150,000	50

Bulk oil may be sent in a sanitary conical tube to the laboratory containing a volume of oil representative of the lot to perform all required compliance testing for cannabis product.

The only exception is metals testing; whereby, the producer of the product will also send a subset of samples in the apparatus the oil is intended for to be readily consumable (i.e., vape cartridge, vape pen, syringe, etc.). For the volume of bulk oil and minimum number of oil in vaporization apparatus required for testing, refer to the table below. Additionally, it is included on page 5 of OCM’s [Sampling Quality System Standard](#).

Batch Size (units)	Bulk Oil Required (g)	Final Form Vapes Required (# of units)
50 – 500	3	1
501 – 1,200	4	2
1,201 – 3,200	6.5	3
3,201 – 10,000	10	4
10,001 – 35,000	16	7
35,001 – 150,000	25	10



**Q 6: Who is to collect the samples for cannabis product batch testing?**

A: A trained employee of an approved sampling firm must obtain the representative packaged samples. An employee of a licensee must be physically present to observe the sampling firm employee collect the representative samples.

Note that the licensee is NOT required to have the entire lot packaged at the time of sampling for cannabis product batch testing. Refer to question and answer below that addresses the packaging of an entire lot after passing test results are received from a permitted laboratory.

However, they are expected to package the samples at the time of sampling. The trained employee of an approved sampling firm must randomly choose which samples to package. The licensee must perform the actual packaging, including the weighing of the package. Additionally, the licensee must perform the bulk oil sampling and draw the bulk oil to be placed in vaporization apparatuses for metals testing.

**Q 7: Does final packaging need to include a tamper evident seal, all layers of packaging, and all label requirements?**

A: Samples of cannabis product submitted for testing must be in packaging as it would be sold to the consumer. All layers of packaging are not required. For testing purposes, the layer of packaging in which the product comes in contact with is required.

Examples of acceptable packaging for testing purposes:

- Sealed Vaporization Cartridge
- Gummies in mylar bags
- Whole Flower in jars
- Pre-rolls in tubes
- Bottles of tincture

Final packaging, for testing purposes, does not require complete regulatory labeling, but at minimum must include the product name and form, specific unique lot number, net contents, and target potencies.

**Q 8: Who is responsible for video-recording the collection of samples for cannabis product batch testing?**

A: Since the regulation requires that the video recordings be maintained for at least ninety (90) calendar days by the licensee, it is the responsibility of the licensee to record or ensure that a recording is made, once the licensee receives passing compliance testing results from the permitted laboratory, the licensee must package the entire lot prior to releasing for retail sale.

When the entire lot is not packaged within a concurrent timeframe, the lab testing results are no longer representative of the lot.

**Q 9: What does a sampling firm do if a licensee chooses not to video-record the sampling event?**

A: A sampling event cannot occur without a video recording. It is the responsibility of the licensee to record or ensure that a recording is made.

**Q 10: Does the full lot need to be finished and packaged prior to submitting samples for cannabis product batch testing?**

A: Full lot completion is mandatory prior to submitting samples for cannabis product batch testing. This ensures random sampling performed by sampling firms. However, the full lot does not have to be packaged prior to sample collection. The samples collected will need to be placed in the final packaging before they can be sent to the laboratory. Once the licensee receives passing testing results from the permitted laboratory, the licensee must package the remainder of the lot within a concurrent timeframe prior to releasing for retail sale.

**Q 11: If the licensee has performed the sampling before the sampling firm arrives and requests the sampling technician to take the samples they set aside, is this an acceptable practice?**

A: No. Refer to the response above to Question 6 - “Who is to collect the samples for cannabis product batch testing?”

**Q 12: Is a mylar bag containing e.g., 5 gummies, considered a single product, or would each of the individual gummy pieces be considered to constitute a product?**

A: If the intended product was 5 gummies, then a mylar bag containing the intended contents of 5 gummies would be considered a single product and would constitute one sample from the cannabis product batch/lot.

**Q 13: What are the requirements and standards for sampling and transportation firms?**

A: Criteria to be an approved “laboratory sampling firm” are set forth in [9 NYCRR Part 130](#) and OCM’s [Sampling Quality System Standard](#). OCM’s [Sampling Firm website](#) includes four (4) application forms.

**Q 14: When was the use of sampling firms made mandatory?**

A: The use of sampling firms became mandatory on July 1, 2023.

**Q 15: Does a representative sample of cannabis product need to be retained for future testing?**

A: Yes, licensees are required to retain a representative sample of each lot of cannabis product tested to allow for testing in the future if required. Retained samples must be held until the date of expiration. The retained quantity must be representative of the lot and contain enough material to allow for complete testing of the product two times.



**Q 16: What process is in place to prohibit a sampling technician from sampling in the absence of having an approved sampling firm?**

A: A licensee must ensure it uses an approved sampling firm. The approved sampling firms are listed on OCM's [Sampling Firm website](#). Additionally, pursuant to 9 NYCRR § 130.19(d), an employee of a sampling firm must carry a copy of the firm's approval and the copy shall, upon request, be provided to any person requesting the sampling firm's service. The approval lists the sampling firm's OCM identification number, an expiration date, and all authorized sampling technician(s) and vehicle(s).

**Q 17: How is OCM verifying that permitted laboratory with "built in" sampling technicians are following protocol (procedure)?**

A: The permitted laboratory must apply to be a sampling firm, which includes submission of an application. When submitting their application, the permitted laboratory must provide its procedure for sampling and transport of cannabis products, and training of its sampling technicians on the procedures and data integrity. These documents are reviewed by OCM, and approval is granted only when all requirements are satisfied. Additionally, OCM has the authority to inspect any sampling firm at any licensed premises or during transport at any time. Furthermore, the sampling and transport procedures are inspected during a laboratory regulatory audit if the laboratory offers sampling and transportation services.

**Q 18: Are there any examples of sampling plans available and how detailed/extensive should they be?**

A: No. Please refer the Sections III and IV of OCM's [Sampling Quality System Standard](#) for information on what to include in a procedure and how sampling is to be performed. Also, reach out to [labs@ocm.ny.gov](mailto:labs@ocm.ny.gov) for assistance in any specific concerns or questions.

**Q 19: As a sampling technician of an approved sampling firm, do I have to verify the "amount shipped (weight/count)" recorded on the shipping manifest by weighing the samples on a balance?**

A: No. A sampling technician does not have to weigh the samples because the licensee attests that the contents of this shipment match the records entered on the shipping manifest and are securely packaged for transport. As noted above in Question 6, the licensee must perform the actual packaging, including the weighing of the package.

The sampling technician verifies the amount shipped is recorded, and it is consistent with the amount documented on the laboratory's chain of custody.

**Q 20: What is the difference between a testing laboratory and sampling firm?**

A: A testing laboratory is an independent third-party laboratory capable of testing cannabis and cannabis products for adult-use and medical-use; cannabinoid hemp and hemp extract; or for all categories of cannabis and cannabis products.



A sampling firm is a service that provides appropriate random representative sampling for licensees and transportation of such samples documenting chain of custody and following procedures to maintain the integrity of the cannabis product samples to be delivered to the laboratories to perform cannabis product testing.

## **Transportation of Cannabis Products**

**Q 21: During the transport of cannabis products from a licensee to a permitted laboratory, is it acceptable if a trained employee of an approved sampling firm releases the cannabis products to another trained employee of the same approved sampling firm?**

A: Yes, this is acceptable, provided that the chain of custody is not broken, and the chain of custody and shipping manifest correctly reflect the change in custody of the samples.

**Q 22: During transport of final products, is it acceptable to take a shorter route through another state such as NJ, CT or PA?**

A: No. Cannabis is not federally legal; therefore, cannabis grown and processed in NY cannot cross state lines.

## **Batch Testing of Cannabis Products**

**Q 23: What cannabis requires laboratory testing?**

A: Adult-Use and medical Cannabis product lots or batches require laboratory testing. Adult-Use and medical cannabis product lots or batches are an amount of cannabis produced during a period of time under similar conditions, identifiable by a unique identifier number for the lot/batch which allows traceability. Adult-use and medical cannabis product lots or batches include final packaging. These are the cannabis products that will be sold to the consumer. Production of a lot/batch can extend beyond a 24-hour period providing that conditions of the production stay consistent.

It is NOT required to have testing performed on batches of harvested flower prior to processing or packaging a cannabis product batch for sale to consumers. Lots/batches of harvested flower are a specific quantity of cannabis harvested from cannabis plants of the same strain, grown under the same conditions, and harvested during a specified period of time from a specified cultivation.

**Q 24: What is the current order of prioritization for testing requests that go to the laboratory?**

A: Per the current guidance, laboratories will reserve 60% of their daily capacity for individual lot testing for adult-use cannabis products from licensees, 35% of their daily capacity for individual lot testing for medical cannabis products from registered organizations, and 5% for research and development. Should a laboratory's reserved capacity not be utilized for each of these categories, they may re-allocate testing slots to fill vacant testing slots.

**Q 25: What is a state reference laboratory?**

A: State reference laboratory means a cannabis laboratory with which OCM contracts, or a laboratory operated by the NYS Department of Health (DOH). OCM has an agreement with DOH's Wadsworth Center, Biggs Laboratory, to serve as the reference laboratory for OCM.

**Q 26: Can a licensee use the state reference laboratory to test a cannabis product lot/batch?**

A: No, the state reference laboratory assists the Office in testing cannabinoid hemp, cannabis product, or medical cannabis that the Office suspect fraudulent, inaccurate or compromised testing by a permitted cannabis laboratory.

**Q 27: What is an appropriate way to homogenize a cannabis flower product?**

A: To homogenize a cannabis flower product, one uses a combination of grinding, quartering and compositing. Refer to the NYS DOH quartering guidance republished by OCM on the [Cannabis Laboratory](#) webpage of the OCM website.

**Q 28: How does a laboratory test for labeled potency of flower products?**

A: For an adult-use and medical cannabis flower product lot or batch, the laboratory must create a homogenized composite sample, which is done by pooling subsamples from across the cannabis product samples collected. Additionally, the laboratory must prepare and test three (3) replicates. The potency reported on the certificate of analysis must be the mean of the 3 sample injections.

**Q 29: Does homogeneity testing apply to cannabis flower products, including non-enhanced pre-rolls, too?**

A: No. Cannabis flower products are not required to have homogeneity testing.

**Q 30: Does homogeneity testing apply to cannabis flower products that are enhanced (e.g. infused pre-rolls, flower dipped in kief, flower dipped in resin)?**

A: No, because homogeneity testing is not required for cannabis flower products.

**Q 31: Except for cannabis flower products, how many samples must be submitted for homogeneity testing of an adult-use and medical cannabis product?**

A: Five (5) samples across an adult-use and medical cannabis product lot or batch, regardless of the lot/batch size, must be sampled and tested. Homogeneity must be established among three (3) consecutive lot/batches.

**Q 32: Is the homogeneity acceptance criteria the same for adult-use and medical cannabis products?**

A: Yes. The concentration of total THC and CBD in milligrams per single dose or serving for any sample of an adult-use and medical cannabis product submitted for testing must be within

twenty-five (25) percent of the mean concentration of total THC and CBD in milligrams per single dose or serving for that submitted lot with the exception that, for products with a specified total THC and CBD concentration less than two (2) milligrams per single dose or serving, the concentration of each sample for that low concentration phytocannabinoid shall be within 0.5 milligrams per dose or serving of the mean concentration.

**Q 33: Are residual solvents required to be tested on mixed matrix cannabis products (e.g., infused pre-rolls, hash, kief, pre-rolls dipped in kief)? What other tests are required? Which microbial limits apply to mixed matrix products?**

A: Yes, any cannabis flower product that is coated in a hydrocarbon-based extract or resin, dipped in kief or both, resulting in a mixed matrix cannabis product, must be treated as a concentrate; therefore, residual solvents must be tested.

As for all the other contaminants of concern, treat the mixed matrix product as a flower; therefore, moisture content and filth and foreign material must be tested, and the flower product limits will apply. A laboratory will apply the microbial limits for flower products. Pesticides, metals, mycotoxins, and terpenes must be tested, too, and the flower product limits will apply.

Please be reminded that these mixed matrix types may be taxed differently. For example, resins are taxed as a concentrate; whereas, pre-rolls dipped in kief are taxed as a flower for tax purposes. See Table 3 of OCM’s “Laboratory Testing Guidance for Adult-Use Conditional Cultivators, Adult-Use Conditional Processor and Licensees and Registered Organizations” on the [Cannabis Laboratories](#) webpage.

General rule is that a product is taxed based on whatever component is the greatest. All licensees should reach out directly to OCM at [info@ocm.ny.gov](mailto:info@ocm.ny.gov) for a final determination until OCM’s seed-to-sale system is live.

**Q 34: For edibles made with ethanol-based flavoring, are residual solvents to be tested?**

A: Yes. The laboratory will report the ethanol result and qualify the result, indicating the product included an ethanol-based flavoring.

**Q 35a: Is a lab to test a cannabis flower product that is coated with a resin of an unknown extraction source for residual solvents?**

A: Yes, because a solvent may have been used and not declared by the licensee.

**Q 35b: Is a lab required to test a cannabis flower product that is not coated with any resin for residual solvents.**

A: No.

**Q 36: Does a licensee have to use only one laboratory for testing?**





A: No, licensees can utilize multiple laboratories to meet their individual testing needs. However, a licensee cannot use multiple laboratories to perform the same test on a cannabis product lot nor use another lab to test a remediated lot.

**Q 37: Can a licensee get unused product and packaging, that was sent for testing but not tested, back from the laboratory?**

A: Unused product may not be returned. There is no prohibition however to returning empty containers. Please see more information in the OCM's [Packaging and Labeling Guidance](#). Return of empty containers would have to be agreed upon between the laboratory and the licensee. It would be incumbent upon a licensee to appropriately sanitize and determine, based upon visual inspection, if the retail package is in good working order and does not appear to pose a risk of unintended exposure or ingestion of cannabis products. The visual inspection must ensure such retail packages are not brittle and do not have chips, cracks, or other imperfections which could compromise the child-resistant properties of the retail package or otherwise pose a threat of harm to any individual. Before being reused, retail packages must be sanitized and disinfected to ensure that they do not contain any harmful residue or contaminants. This sanitization and disinfection can be done by a licensee or by a third-party.

**Q 38: What's the cost for adult-use and medical cannabis product lot or batch testing?**

A: Laboratories set their own prices based upon market demand. Please contact multiple laboratories to find which laboratory works best for your business needs.

**Q 39: Are terpenes required to be tested on all adult-use and medical cannabis products?**

A: Yes, for adult-use cannabis products. Refer to § 123.6 (f) "Requirements for all cannabis products" and the latest version of the OCM testing limit document on the Cannabis Laboratories webpage. Also, note that the 10% limit only applies to vaporized or inhaled cannabis products.

For medical cannabis products, the proposed Amendments to Part 113 were approved by the Cannabis Control Board on July 19, 2023, and include the requirement for terpene testing. This change won't be effective until the regulations are adopted and published.

## **Laboratory Reporting of Results**

**Q 40: Which certificates of analysis (COA)s are required to be linked to the QR Code?**

A: Only the COA representing the results of the cannabis product testing needs to be linked to the QR/Bar code on the product label.

**Q 41: How will laboratories communicate test results to OCM and licensees so that we can ensure that tax records are paid accordingly?**

A: Each laboratory performing testing must communicate testing results with OCM and the licensee. Licensees should speak to the laboratory they choose to discuss how the laboratory will provide the COA to their clients.

**Q 42: If I don't like the results reported, is retesting of adult-use and medical cannabis products allowed?**

A: Retesting of adult-use and medical cannabis products will not be allowed without sufficient evidence that there was an issue resulting in a potential inaccuracy during the testing or sampling process as well as prior written approval of the OCM.

**Q 43: My adult-use and medical cannabis product lot or batch failed for the presence of an Aspergillus species, and I chose to remediate the lot/batch. Do I have to have the remediated lot tested by the same laboratory that performed the original test?**

A: Yes. The laboratory will retest the remediated lot for all microbial analytes, and the laboratory will issue a revised/amended COA, indicating the lot was remediated and microbial analytes were tested.

**Q 44: Do I have to use a sampling firm to collect samples from a remediated or repurposed lot?**

A: Yes. A sampling firm will collect a representative set of samples from a remediated or repurposed lot.

**Q 45: Where can I find a list of the regulated contaminants and the limits associated with each contaminant?**

A: The limits can be found in the "[Laboratory Testing Limits](#)" document on the [Cannabis Laboratory](#) webpage of the OCM website.

**Q 46: What happens if I cannot remediate or repurpose my adult-use and medical cannabis product lot or batch?**

A: Any individual lots that failed contaminant testing and could not be remediated or repurposed, as well as any remediated or repurposed lots/batches that failed contaminant testing, must be destroyed in accordance adult-use and medical cannabis regulations and guidance.

**Q 47: How should complaints regarding product quality (potency or contaminants) be handled?**

A: First, seek immediate medical attention or advice if you are currently experiencing a serious or troublesome cannabis-related symptom(s). Call your health care provider or the Poison Center at (800) 222-1222.

If the complainant is not experiencing a serious or troublesome cannabis related symptom(s), please refer them to complete OCM's [Incident Reporting Form](#). OCM will evaluate the



information you provided and determine if additional testing of the products is needed. If additional testing is required, OCM will obtain the products and have them sent to the state reference laboratory for testing.