




COMMONWEALTH of VIRGINIA

DEPARTMENT OF FORENSIC SCIENCE

OFFICE OF THE DIRECTOR
A Nationally Accredited Laboratory

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DFS POLICY NOTICE

TO: All Agencies Served by DFS
FROM: Linda C. Jackson, Department Director 
DATE: June 29, 2023
RE: Updated Submission Policy for Marijuana, Including Food Products

The 2023 Session of the General Assembly passed legislation addressing the sale of certain hemp products and made changes to the definition of terms, including but not limited to *marijuana*, *hemp product*, and *tetrahydrocannabinol* (as in §§ 3.2-4112, 4.1-600, 18.2-247, and 54.1-3401). This new legislation establishes that for offenses occurring on or after July 1, 2023, the Department consider the total tetrahydrocannabinol (THC) concentration of a cannabis-containing item when determining whether the product is marijuana. Total THC would include the delta-9-THC concentration in addition to the concentration of any of its isomers, such as delta-8-THC and delta-10-THC, and their corresponding tetrahydrocannabinolic acids.

Our previously validated semi-quantitative method¹ has been expanded to accommodate the latest legislative changes. As can be seen in Table 1, the Department has the capability to differentiate marijuana and hemp for plant material, oils, extracts, and vape cartridges when the concentration of total THC, including isomers other than delta-9-THC, is greater than approximately 1% by weight. In addition, DFS has the capability to perform a quantitative test for delta-9-THC on these sample types.

Table 1: Cannabis testing capabilities

Sample Type	Qualitative / Semi-Quantitative Capabilities	Quantitative Capabilities	Notes
Plant Material	Identification of MJ if THC isomers are greater than ~1% by weight	Identification of MJ if delta-9-THC is greater than 0.3% by weight	DFS Semi-Quantitative Method is validated for delta-9-THC, delta-8-THC, delta-10-THC and delta-6a,10a-THC
Oils, Extracts, Vape Cartridges, etc.	Identification of MJ if THC isomers are greater than ~1% by weight	Identification of MJ if delta-9-THC is greater than 0.3% by weight	DFS Quantitative Method is validated for delta-9-THC
Edibles	Confirmation of the presence of THC isomers or other Controlled Substances	Outsource from DFS to private lab	NMS Quantitative Method is validated for delta-9-THC, delta-8-THC, delta-9-THC acid, and CBD

¹ This semi-quantitative GC-MS method evaluates the total tetrahydrocannabinol (THC) concentration by first converting tetrahydrocannabinolic acids, if present, to THC. The resulting THC concentration is measured and compared to the administrative threshold.

For cannabis edibles, DFS can currently identify cannabinoids that may be present in a food product but cannot quantify the THC concentration. The Department, however, has established a contract to allow for outsourcing evidence to a private laboratory, NMS Laboratories, to provide this analysis. For edible items, initial examination and qualitative identification of THC isomers will be performed by the Department. Should the item(s) be suitable for THC quantitation by NMS Laboratories, DFS examiners will contact submitting agencies to determine if this type of analysis is needed. If testimony is required for the quantitative results, it must be provided by NMS Laboratories. DFS strongly encourages the use of video testimony to limit billable time and travel expenses. The Department will use caseload and customer needs to guide the decision whether to develop and validate an in-house method for food products.

Based on these changes in legislation and testing capability, DFS is revising its marijuana submission policies. Table 2 below summarizes current, updated submission guidelines for marijuana evidence and is applicable to evidence submitted alone or with other suspected controlled substances.

Table 2: Updated submission guidelines for Cannabis

Offense	Policy
<ul style="list-style-type: none"> • Possession of marijuana and marijuana products (§ 4.1-1100) 	<p>Accepted: Quantities over 4 ounces Accepted with Limitations: Contested civil offenses (greater than 1 ounce but less than 4 ounces) submitted by law enforcement Not Accepted: Quantities under 1 ounce OR uncontested civil offenses</p>
<ul style="list-style-type: none"> • Home cultivation of marijuana (§ 4.1-1101) 	<p>Accepted: Five or more separately packaged plants or portions thereof, if a plant count is needed Not Accepted: Four or less plants, or portions thereof</p>
<ul style="list-style-type: none"> • Possession of marijuana and marijuana products by individuals under the age of 21 (§ 4.1-1105.1) • Other misdemeanors with no weight thresholds (§§ 4.1-1107, 4.1-1108, 4.1-1109, and 4.1-1110) • Manufacture, Sell, Distribute or PWID Marijuana (§ 18.2-248.1) <ul style="list-style-type: none"> ○ Offering for sale or selling at retail a substance that has total THC that is outside the legal limit for hemp products (§ 3.2-4112) or industrial hemp extracts (§ 3.2-5145.1) and would, therefore, meet the definition of marijuana under Virginia Code §§ 4.1-600 and 18.2-247 • Possession of marijuana by prisoners (§ 53.1-203(6)) and delivery of marijuana to prisoners (§ 18.2-474.1) 	<p>Accepted: All weighable quantities (not residue amounts) seized during criminal investigations or were the subject of controlled purchases Not Accepted: Edibles in violation of labeling and packaging requirements as described in §§ 3.2-4123 or 3.2-5145.4:1 or inhalants in violation of labeling and packaging requirements as described in § 3.2-4123[contact the Virginia Department of Agriculture and Consumer Services (VDACS) for enforcement guidance]</p>

If you have any questions regarding these marijuana submission guidelines, please contact the Controlled Substances Section Supervisor at the DFS Laboratory that provides service to your agency:

Laboratory	Section Contact	Phone Number
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