

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 1 GENERAL PROVISIONS

16.8.1.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.1.1 NMAC – N, 08/24/2021]

16.8.1.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.1.2 NMAC - N, 08/24/2021]

16.8.1.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.1.3 NMAC - N, 08/24/2021]

16.8.1.4 DURATION: Permanent.
[16.8.1.4 NMAC - N, 08/24/2021]

16.8.1.5 EFFECTIVE DATE: August 24, 2021, unless a later date is cited at the end of a section.
[16.8.1.5 NMAC - N, 08/24/2021]

16.8.1.6 OBJECTIVE: The objective of Part 1 is to set forth the general provisions that apply to all of Chapter 8, and to all persons affected or regulated by Chapter 8 of Title 16.
[16.8.1.6 NMAC - N, 08/24/2021]

16.8.1.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

A. Definitions beginning with “A”:

(1) **“Advisory committee”** means the cannabis regulatory advisory committee.

(2) **“Applicant”** means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. Definitions beginning with “B”: **“Batch”** means, with regard to cannabis, an identified quantity of cannabis no greater than 15 pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with “C”:

(1) **“Cannabis Regulation Act”** means the Cannabis Regulation Act, as enacted in Chapter 4, Sections 1 through 42 of New Mexico Laws of 2021, and as may be amended thereafter.

(2) **“Cannabis Waste”** means all parts of the plant genus Cannabis which may or may not contain a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

(3) **“Carbon dioxide solvent”** means carbon dioxide in a liquid or supercritical state.

(4) **“CBD”** means cannabidiol, a cannabinoid and a non-psychoactive ingredient found in cannabis.

(5) **“CBDA”** means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

(6) **“Closed loop extraction system”** means a commercially manufactured extraction system

that is sealed during operation and designed to recover all solvents used during the extraction process through a feedback loop.

(7) **“Concentrated cannabis product (“concentrate”)** means a cannabis product that is manufactured by a division approved mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains or that is intended to contain at the time of sale or distribution, no less than thirty-percent THC by weight.

D. Definitions beginning with “D”:

(1) **“Delivery agreement”** means a contract between a licensed cannabis establishment and a licensed cannabis courier to deliver cannabis or cannabis products from the cannabis establishment directly to consumers as permitted under the provisions of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rule.

(2) **“Division”** means the cannabis control division.

(3) **“Diversion”** means the unlawful transfer of a cannabis plant, plant material, or cannabis product.

(4) **“Dried cannabis”** means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

E. Definitions beginning with “E”: **“Extraction area”** means the area of a licensed manufacturer’s processing facility that is designed for solvent-based extraction, which the division has inspected and approved for the area’s designated use.

F. Definitions beginning with “F”: [RESERVED]

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”:

(1) **“Homogeneity”** means the reasonably equal dispersion of cannabinoids throughout a batch of cannabis product and within the cannabis product as packaged or as intended for sale.

(2) **“Hydrocarbon solvent”** means N-butane, isobutene, propane, pentane, heptane, or any isomer or combination thereof.

I. Definitions beginning with “I”: **“Independent professional engineer”** means an engineer licensed pursuant to the Engineering and Surveying Practice Act, Section 61-23-1 *et seq.*, NMSA 1978, that is not an employee, owner, officer, controlling person, board member, or manager of the cannabis establishment licensee.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Licensee”** means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

(2) **“Limited-access area”** means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

(3) **“Limit of detection”** means an estimate of the minimum amount of an analyte in a given matrix that an analytical process can reliably detect.

(4) **“Limit of quantitation”** means the minimum level, concentration, or quantity of a target analyte in a given matrix that an analytical process can reliably quantitate.

(5) **“Liquor Control Act”** mean the Liquor Control Act, Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A, NMSA 1978.

(6) **“Lot”** means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

(7) **“Lynn and Erin Compassionate Use Act”** means the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

M. Definitions beginning with “M”: **“Minor”** means an individual who is less than 18 years of age.

N. Definitions beginning with “N”: [RESERVED]

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

(1) **“Pesticide”** means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.

- (2) **“Plant”** means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.
- (3) **“Plant material”** means leaves, stalks, stems, roots, and any other part of the cannabis plant.
- (4) **“Pressure vessel”** means a component of a closed loop system containing cannabis plant material and solvents used during solvent-based extraction and designed to withstand pressure greater than 15 psi.
- (5) **“Policy”** means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.
- (6) **“POS”** means point of sale system.
- (7) **“Person”** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.
- (8) **“Produce”** means to engage in any activity related to the planting or cultivation of cannabis.
- (9) **“Proficiency testing”** means a standardized test administered by an ISO 17043 accredited laboratory to evaluate the ability of a laboratory to measure, within acceptable limits, the presence, quantity, or other factors pertaining to a given analyte.
- Q. Definitions beginning with “Q”: [RESERVED]**
- R. Definitions beginning with “R”:**
- (1) **“Recall”** means to request the return of a product after the discovery of a safety issue or product defect.
- (2) **“RLD”** means the regulation and licensing department.
- S. Definitions beginning with “S”:**
- (1) **“Safe moisture level”** means a level of moisture low enough to prevent the growth of undesirable microorganisms in the finished produce.
- (2) **“Security alarm system”** means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.
- (3) **“Segregate”** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis products in order to first determine its suitability for use through testing by an approved laboratory.
- (4) **“Solvent”** means a hydrocarbon solvent, carbon dioxide solvent, or organic solvent, which is used to dissolve or disperse chemical compounds from cannabis plant material in a closed loop system.
- (5) **“Solvent-based extraction”** means the process of dissolving or dispersing specific chemical compounds from the cannabis plant material using a solvent in a closed loop system.
- T. Definitions beginning with “T”:**
- (1) **“THC”** means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.
- (2) **“THCA”** means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.
- (3) **“Testing”** means testing of cannabis and cannabis products consistent with division rules.
- (4) **“Track and trace system”** means the electronic system designated by the division to track and trace the production, transportation, sale, and wastage of cannabis and cannabis products.
- U. Definitions beginning with “U”: [RESERVED]**
- V. Definitions beginning with “V”:**
- (1) **“Vault”** means a limited access storage room that is within a licensed cannabis establishment and is outfitted with adequate security features for the purposes of storing cannabis, cannabis products, or cash.
- (2) **“Volatile solvent”** means a hydrocarbon solvent, alcohol, or acetone.
- W. Definitions beginning with “W”:**
- (1) **“Waste” or “wastage”** means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.
- (2) **“Water activity”** means the measure of the free moisture in a manufactured cannabis product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.
- X. Definitions beginning with “X”: [RESERVED]**

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[16.8.1.7 NMAC - N, 08/24/2021; A, 12/28/2021; A, 01/11/2022]

16.8.1.8 SOCIAL AND ECONOMIC EQUITY:

A. Division mandate: Pursuant to the Cannabis Regulation Act, Paragraphs (7) and (8) of Subsection B of Section 26-2C-3 NMSA 1978, the division must adopt procedures to promote and encourage full participation in the cannabis industry of representatives of communities that have disproportionately been harmed by rates of arrest through the enforcement of cannabis prohibitions and encourage racial, ethnic, gender, geographic diversity, and New Mexico residency among license applicants, licensees and cannabis industry employees. Policies must also encourage representatives from rural communities that are likely to be impacted by cannabis production, including agricultural producers from economically disadvantaged communities.

B. Division goal: To accomplish these mandates, the division establishes a goal that at least fifty percent of applicants for licensure, licensees, and cannabis industry employees will represent these groups.

[16.8.1.8 NMAC - N, 08/24/2021; A, 03/22/2022]

16.8.1.9 FEDERAL LAW: The activities described in these rules may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution. The division is not responsible or liable for the actions of licensed cannabis establishments under the rule.

[16.8.1.9 NMAC - N, 08/24/2021]

16.8.1.10 LABOR PEACE AGREEMENT: Cannabis establishment licensees, excluding cannabis producer microbusiness and integrated cannabis microbusiness, are encouraged to maintain a labor peace agreement with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant’s employees. For purposes of this section, a labor peace agreement between a cannabis establishment and a bona fide labor organization includes protecting the state’s interests by, at a minimum, prohibiting the labor organization from engaging in picketing, work stoppages, or boycotts against the cannabis establishment. An applicant, whether for an initial license or renewal of a license, must submit an attestation confirming whether or not the applicant has entered into a labor peace agreement with a bona fide labor organization that is actively engaged in representing or attempting to represent the applicant’s employees.

[16.8.12.10 NMAC – Rp, 16.8.1.10 NMAC, 07/12/2022]

16.8.1.11 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.12.11 NMAC - N, 08/24/2021; Rn, 16.8.1.10, 07/12/2022]

History of 16.8.1 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 6 HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES

16.8.6.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.6.1 NMAC – N, 10/11/2022]

16.8.6.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.6.2 NMAC - N, 10/11/2022]

16.8.6.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.6.3 NMAC - N, 10/11/2022]

16.8.6.4 DURATION: Permanent.
[16.8.6.4 NMAC - N, 10/11/2022]

16.8.6.5 EFFECTIVE DATE: October 11, 2022, unless a later date is cited at the end of a section.
[16.8.6.5 NMAC - N, 10/11/2022]

16.8.6.6 OBJECTIVE: The objective of Part 6 is to set forth standards related to health and safety, food and product safety, environmental impacts, and natural resources to ensure public health, safety, and well-being. Part 6 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.6.6 NMAC - N, 10/11/2022]

16.8.6.7 DEFINITIONS: [RESERVED]

16.8.6.8 PREREQUISITE AND RESPONSIBILITY FOR OPERATION:

A. Except as specified in Subsection F of 16.8.6.7 NMAC, prior to the submission of a license application for a class II, III, or IV cannabis manufacture license, each applicant or licensee engaged in the manufacturing of edible or topical cannabis products or edible or topical cannabis finished products shall provide to NMED a certification that:

(1) the facility where the cannabis manufacturer operates, and the manufacturing equipment used will be constructed and maintained in accordance with the requirements of this part; and

(2) edible and topical cannabis products and edible and topical finished products will be stored, manufactured, packaged, repackaged, labeled, relabeled, tested, reworked, or wasted in accordance with the requirements of this part.

B. A certification shall include information specified in Subparagraphs (a) through (i) of Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

C. Any person signing a certification pursuant to this section shall include the following signed statement: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information.”

D. NMED shall provide confirmation of receipt to each applicant or licensee that provides a certification.

E. Each applicant or licensee shall provide the NMED confirmation to RLD as specified in Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

F. Certification to NMED, as specified in Subsections A through E of 16.8.6.7 shall no longer be required after December 31, 2022.

G. Class II, III, or IV cannabis manufacturers that were licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing of cannabis edible products or cannabis edible finished products, shall apply for a food permit from NMED or a home rule municipality by January 1, 2023.

H. Except as specified in Subsection F of 16.8.6.7 NMAC, class II, III, or IV cannabis manufacturers that were not licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing cannabis edible products or cannabis edible finished products, shall provide a certification to NMED as specified in Subsections A through E and apply for a food permit from NMED or a home rule municipality as specified in G of 16.8.6.7 NMAC.

I. Beginning April 1, 2023, Class II, III, or IV cannabis manufacturers that manufacture cannabis edible products or cannabis edible finished products shall not operate without a food permit from NMED or a home rule municipality.

[16.8.6.8 NMAC - N, 10/11/2022]

16.8.6.9 MANAGEMENT AND PERSONNEL:

A. Adoption of food code parts 2-1, 2-3 and 2-4 and section 2-103.11. Except as otherwise provided, parts 2-1, 2-3 and 2-4 and section 2-103.11 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

B. A licensee shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the edible cannabis manufacturing facility. The procedures shall be maintained onsite and address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

C. Except as otherwise provided, the licensee shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the cannabis manufacturer facility during all hours of operation.

D. If edible or topical cannabis products or edible or topical cannabis finished products are manufactured as part of a vertically integrated cannabis establishment or integrated cannabis microbusiness that is the legal responsibility of the same licensee and that are located on the same licensed premises, the licensee may designate a single person in charge who is present on the licensed premises during all hours of operation.

E. The person in charge shall have the education, training, or experience necessary to supervise the production of clean and safe edible or topical cannabis products or edible or topical cannabis finished products and ensure the cannabis manufacturer remains in compliance with this part, division rules, and the act at all times.

F. Personal care items on the premises shall be stored in a manner to protect edible and topical cannabis products, edible and topical cannabis finished products, other ingredients, equipment, and utensils from contamination at all times.

G. A licensee shall:

(1) immediately contact the division to report an illness of an employee or conditional employee as specified under Subsection A of this section;

(2) immediately discontinue operations and notify the division if an imminent health hazard may exist as specified in 16.8.6.13 NMAC;

[16.8.6.9 NMAC - N, 10/11/2022]

16.8.6.10 EDIBLE AND TOPICAL CANNABIS MANUFACTURER REQUIREMENTS:

A. Adoption of 21 CFR 117. Except as otherwise provided, Subpart F and the sections, specified in paragraphs 1-7 of this subsection, of Subparts A and B of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety:

- (1) 117.3 Definitions;
- (2) 117.20 Plant and grounds;
- (3) 117.35 Sanitary operations;
- (4) 117.37 Sanitary facilities and controls;
- (5) 117.40 Equipment and utensils;
- (6) 117.80 Processes and controls; and
- (7) 117.110 Defect action levels and Subpart F.

B. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

- (1) 117.301: All records required by this part are subject to all requirements of this subpart;

(2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and

(3) 117.320: All records required by this part must be made promptly available to the division for official review and copying upon oral or written request.

C. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of 21 CFR 117:

(1) 117.310;

(2) 117.315(d);

(3) 117.325;

(4) 117.335; and

(5) The following terms are omitted from section 117.3 Definitions:

(a) Allergen;

(b) Food;

(c) Food-contact surfaces;

(d) Lot;

(e) Manufacturing/processing; and

(f) Packing.

D. Adoption of food code parts 4-5, 4-6 and 4-7. Except as otherwise provided, parts 4-5, 4-6, and 4-7 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

E. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of the 2017 United States food and drug administration model food code, 4-603.12
Precleaning:

(1) Food or cannabis product debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(2) If necessary, for effective cleaning, utensils and equipment shall be pre-flushed, presoaked, or scrubbed with abrasives. Ethyl alcohol (ethanol) or isopropyl alcohol (isopropanol) are acceptable for pre-flushing or presoaking.

F. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of the 2017 United States food and drug administration model food code:

(1) 4-502.12;

(2) 4-502.13(B);

(3) 4-502.14;

(4) 4-602.11(A)(1);

(5) 4-602.11(B);

(6) 4-602.11(D)(3); and

(7) 4-602.11(E)(2)-(3).

G. Cannabis Product Ingredient Source.

(1) Ingredients shall be received from sources as specified in 7.6.2 NMAC.

(2) Cannabis products, ingredients, and edible or topical cannabis finished products intended for human consumption shall be transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of the cannabis products, ingredients, and cannabis finished products, as well as against deterioration of the cannabis products, ingredients, and cannabis finished products and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

H. The current 21 CFR 111 and United States Federal Food, Drug, and Cosmetic Act, Title 21, Chapter 9 and 7.6.2 NMAC are hereby adopted as a technical reference and interpretation guide.
[16.8.6.10 NMAC – N, 10/11/2022]

16.8.6.11 WATER SUPPLY AND SEWAGE:

A. Drinking water shall be obtained from an approved source that is:

(1) a public water system; or

(2) a non-public water system that is constructed, maintained, and operated according to law.

B. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce

contaminants to the system.

C. Except as specified under Subsection D of this section:

(1) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(2) Water from a non-public water system shall meet:

(a) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(b) the drinking water source setback requirements as specified in 20.7.3 NMAC.

D. A non-drinking water supply shall be used only if its use is approved and shall be used only for nonculinary purposes such as air conditioning, non-cannabis equipment cooling, and fire protection.

E. Except when used as specified in Subsection D of this section, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

F. The most recent sample report for the non-public water system shall be retained on file in the cannabis manufacturer facility or the report shall be maintained as specified by state water quality regulations.

G. Water shall be received from the source through the use of:

(1) an approved public water main; or

(2) one or more of the following that shall be constructed, maintained, and operated according to law:

(a) Non-public water main, water pumps, pipes, hoses, connections, and other appurtenances;

(b) Water transport vehicles; or

(c) Water containers.

H. Sewage shall be disposed of according to LAW. Liquid waste systems shall meet the requirements of 20.7.3 NMAC.

[16.8.6.11 NMAC - N, 10/11/2022]

16.8.6.12 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING:

A. Edible and topical cannabis finished products shall meet the requirements specified in division rules related to testing prior to being transported or transferred from the licensed premises, distributed, sold or otherwise made available to consumers.

B. Edible and topical cannabis finished products that do not meet the requirements of Subsection A of this section shall:

(1) be segregated;

(2) reworked, remediated or reconditioned as specified in division rules related to testing; or

(3) destroyed, wasted, and disposed of in accordance with the wastage requirements of the

division.

[16.8.6.12 NMAC – N, 10/11/2022]

16.8.6.13 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING

LABORATORIES: Testing required by the division shall be conducted by a division-approved cannabis testing laboratory that has no direct ownership or financial interest in the facility for which the testing is being conducted.

[16.8.6.13 NMAC - N, 10/11/2022]

16.8.6.14 CEASING OPERATIONS AND REPORTING:

A. Except as specified in Subsections B and C of this section, a licensee shall immediately discontinue operations if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne or cannabis-borne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

B. A licensee need not discontinue operations in an area of a cannabis manufacturer facility that is unaffected by the imminent health hazard.

C. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the division may allow the licensee to continue operations in the event of an extended interruption of electrical or water service if:

(1) a written emergency operating plan has been approved by the division (NMED);

(2) immediate corrective action is taken by the licensee to eliminate, prevent, or control any

food safety risk and imminent health hazard associated with the electrical or water service interruption; and
(3) the division (NMED) is informed upon implementation of the written emergency operating plan.

D. If operations are discontinued as specified in Subsection A of this section or otherwise according to law, the licensee shall obtain approval from the division (NMED) before resuming operations.

[16.8.6.14 NMAC - N, 10/11/2022]

16.8.6.15 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.6.15 NMAC – N, 10/11/2022]

History of 16.8.6 NMAC:

Emergency New Rule, Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources, filed and effective December 2, 2021, expired as a matter of law, June 2, 2022.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 3 PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL
DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS

16.8.3.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.3.1 NMAC – N, 04/01/2022]

16.8.3.2 SCOPE: This rule applies to all licensees and applicant for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

[16.8.3.2 NMAC - N, 04/01/2022]

16.8.3.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.3.3 NMAC - N, 04/01/2022]

16.8.3.4 DURATION: Permanent.

[16.8.3.4 NMAC - N, 04/01/2022]

16.8.3.5 EFFECTIVE DATE: April 1, 2022, unless a later date is cited at the end of a section.

[16.8.3.5 NMAC - N, 04/01/2022]

16.8.3.6 OBJECTIVE: The objective of Part 3 is to establish standards for packaging, labeling, advertising, marketing, and commercial display requirements for cannabis products. Part 3 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

[16.8.3.6 NMAC - N, 04/01/2022]

16.8.3.7 DEFINITIONS: Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.

[16.8.3.7 NMAC – N, 04/01/2022]

16.8.3.8 ADVERTISING AND MARKETING:

A. Required Practices. The following practices are required in all advertising and marketing activities:

(1) **Responsible persons.** All advertisements and marketing for cannabis products shall accurately and legibly identify all licensees or organizations who are responsible for the proliferation of the advertisement or marketing activity.

(2) **Reasonable expectation of audience age.** All advertisements in print and digital communications shall only be placed in areas where at least seventy percent of the audience is reasonably expected to be 21 years of age or older as determined by reliable, current audience composition data. For the purposes of this section, “reliable, current audience composition data” means data regarding the age and location demographics of the audience viewing a particular advertising or marketing medium. Immediately upon request, a licensee shall provide to the division audience composition data as required in this section for advertising or marketing placed by the licensee. If the audience composition data for advertising or marketing provided by a licensee does not comply with the requirements of this section, or the licensee fails to provide audience composition data to the division upon request, the licensee shall remove the advertising or marketing placement in question.

(3) **Statements and warnings:** Any advertising or marketing materials created for viewing by the public shall include the statement "Please Consume Responsibly" in a conspicuous manner on the face of the advertisement and shall include the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) for use only by adults 21 and older;

(b) keep out of reach of children;

(c) this product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality;

(d) do not drive a motor vehicle or operate machinery while under the influence of cannabis; and

(e) there may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding.

B. Prohibited practices. Advertising and marketing activities of cannabis products shall not:

(1) occur on radio, television or other broadcast media, internet pop-ups and mass transit vehicles. The division shall not prohibit advertising and marketing activities on these forums where:

(a) subscribers of subscription-based radio, television or other broadcast media are 21 years of age or older; or

(b) persons 21 years of age or older have solicited the advertising or marketing activities.

(2) be done in such a manner that is deemed to be is deceptive, misleading, false or fraudulent, or that tends to deceive or create a misleading impression, whether directly or by omission or ambiguity;

(3) make unproven health benefit claims and any health benefit claims must be supported by substantial evidence or substantial clinical data;

(4) be on billboards, posters, handbills or other visual media that are located or can be viewed within 300 feet of a school, daycare center or church;

(5) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors;

(6) use predatory marketing or advertising practices targeting minors; and

(7) be designed to mimic any other product brand;

(8) promote the over consumption of cannabis or cannabis products; or

(9) depict the actual consumption of cannabis or cannabis products.

C. Branding. “Branding” means promotion of a cannabis establishment’s brand through publicizing the cannabis establishment’s name, logo, or distinct design feature of the brand.

(1) Branding shall not be designed to be appealing to a child and shall not contain:

(a) cartoons;

(b) a design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;

(c) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors.

(2) Branding is not considered a marketing or advertising activity.

(3) Branding is allowed without the required warnings and statements for advertising and marketing of cannabis establishments.

[16.8.3.8 NMAC – N, 04/01/2022; A, 04/01/2022]

16.8.3.9 CANNABIS FINISHED PRODUCT LABELING:

A. Unless otherwise provided, cannabis finished products shall meet the minimum labeling requirements of this section.

B. The label shall be printed on or affixed to the container and printed on or affixed to any outer package or container that is used to display the edible or topical cannabis finished product for retail sale.

C. Font size used on a label shall be no smaller than 1/16 of an inch by measuring the height of a lower-case letter “o”.

D. Labels shall identify the intended use and directions for use. Products having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed.

E. Labels shall be in English, though it can be in other languages.

F. Labels shall be unobstructed and conspicuous.

G. If the cannabis finished product’s target potency or potency value of the Total THC or CBD is less than one milligram per serving, the potency may be expressed as “<1 mg.” If “<1 mg” was used to display the Total THC or CBD per serving, then a corresponding statement regarding the Total THC or CBD content for the entire container shall be included on the container. For example, if there are five servings in the container, “<5 mg” should be displayed for the Total THC or CBD statement that was represented as “<1 mg” per serving.

H. The potency statement stated on an edible or topical cannabis finished product label shall not deviate by more than fifteen percent of what is stated on the label.

I. A label shall not:

- (1) contain any untruthful or misleading statements including, but not limited to, health or benefit claims, and
- (2) contain advertising or marketing; and
- (3) contain words that refer to products that are commonly associated with minors or marketed by minors; including use of the word(s) “candy” or “candies” on the label of any container, unless the words identify the strain of cannabis in the cannabis finished product.

J. Cannabis finished product labels shall have a principal display panel.

K. The principal display panel shall include:

(1) the product identity or common name in bold type, in a size reasonably related to the most prominent printed matter on the principal display panel and shall be parallel to the base on which the package rests as it is designed and displayed.

(2) Net quantity, net weight, or volume in U.S. customary and metric units of contents displayed in bold type in the bottom thirty percent of the principal display panel in lines generally parallel with the base of the container; and shall be in terms of fluid measure if the item is liquid, or in terms of weight if the item is solid, semi-solid, or viscous.

(3) Potency, as confirmed by a cannabis testing laboratory, in bold font and including:

(a) for edible products, Total THC and CBD in milligrams per serving;

(b) percent of Total THC per container; and

(c) if detected, percent of CBD per container.

(4) A logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch.

(5) A logo designed and provided by the division that demonstrates a cannabis product is produced or manufactured by an integrated cannabis microbusinesses or cannabis producer microbusinesses or owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities;

(6) for an edible or topical cannabis finished product that is perishable or meets the definition of a time/temperature control for safety food, the label shall bear a statement that the product must be refrigerated; and

(7) the following warning statement in bold font “For use only by adults 21 and older. Keep out of reach of children. Do not drive a motor vehicle or operate machinery while under the influence of cannabis. BE CAUTIOUS. Cannabinoid edibles can take up to two hours or more to take effect.”

L. Except as provided in Subsections M and N of this section, cannabis finished product labels shall have an information panel or static quick response (QR) code that links the consumer to the required information that contains the following without intervening material:

(1) cannabis manufacturer business or trade name;

(2) unless the business or trade name placed on the package is the actual manufacturer, it must be accompanied by a qualifying phrase which states the firm's relation to the product (e.g., “manufactured for” or “distributed by”);

(3) cannabis manufacturer license number;

(4) pesticide used in the product by the cannabis producer;

(5) date product was manufactured;

(6) ingredient list:

(a) using the common or usual name;

(b) sub-ingredients, as follows: any ingredient containing two or more sub-ingredients shall parenthetically list the component ingredients in descending order of predominance after the multi-component ingredient;

(c) identifying the cannabis extract/concentrate and each isolated cannabinoid as an ingredient; and

(d) in descending order of predominance by weight or volume.

(7) if utilized, pharmacologically active ingredients;

(8) a "contains" statement identifying allergens at the end of or immediately adjacent to the ingredient list; or listing the allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen;

(9) nutritional information meeting the requirements of 21 CFR 101.9;

(10) the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality. There may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding."

(11) the New Mexico poison and drug information center phone number;

(12) the product expiration date. Persons shall not alter that expiration date or affix a new label with a later expiration date;

(13) the state track and trace system number or identifier associated with the product; and

(14) a list of any solvent(s), processing aids, and chemicals used to manufacture cannabis product, cannabis concentrate or extract, or isolated cannabinoid identified.

M. When, because of its container size, an edible cannabis finished product label does not have sufficient space for a label meeting the requirements of Subsections K-L of this section, labels shall, at a minimum, contain:

(1) a principal display panel containing the net weight or volume, product identity, and logos designed and provided by the division;

(2) cannabis manufacturer business or trade name;

(3) cannabis manufacturer license;

(4) potency, as specified in Paragraph (3) of Subsection K of this section;

(5) the warning statements, as specified in Paragraph (7) of Subsection K of this section;

(6) the state track and trace system number or identifier associated with the product; and

(7) all other required labeling as specified in Subsections K-L of this section through the use of a static quick response (QR) code that links the consumer to the required information or a peel-back or accordion label that can be easily identified by a consumer as containing important information.

N. When the surface area being labeled is less than two inches squared and does not have sufficient space for a label meeting the requirements of Subsections K-L of this section, labels shall, at a minimum, contain:

(1) a principal display panel containing the product identity and logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch;

(2) cannabis manufacturer business or trade name;

(3) cannabis manufacturer license number;

(4) potency, as specified in Paragraph (3) of Subsection K of this section;

(5) the warning statement "For use only by adults 21 and older. Keep out of reach of children."

(6) the state track and trace system number or identifier associated with the product; and

(7) all other required labeling as specified in Subsections K-L of this through the use of a static quick response (QR) code that links the consumer to the required information or use a peel-back or accordion label that can be easily identified by a consumer as containing important information.

[16.8.3.9 NMAC - N, 04/01/2022]

16.8.3.10 CANNABIS SEED AND IMMATURE CANNABIS PLANT LABELING:

A. Unless otherwise provided, cannabis seeds and immature cannabis plants sold to consumers, qualified patients, or reciprocal patients shall meet the minimum labeling requirements of this section.

B. The label shall be printed on or affixed to the container or receptacle and printed on or affixed to any outer package or container that is used to display the cannabis seed or immature cannabis plant for retail sale.

C. Font size used on a label shall be no smaller than 1/16 of an inch by measuring the height of a lower-case letter "o".

D. The label shall be in English, though it can be in other languages.

E. The label shall be unobstructed and conspicuous.

F. The label shall not contain any untruthful or misleading statements including, but not limited to, health or benefit claims.

G. The principal display panel shall include:

- (1) the product identity or common name in bold type, in a size reasonably related to the most prominent printed matter on the principal display panel;
 - (2) potential potency, as confirmed by a cannabis testing laboratory of the parent cannabis plant; and
 - (3) a logo designed and provided by the division that is no smaller than 1/2 inch by 1/2 inch.
- H.** For cannabis seeds the display panel shall also include net quantity of seeds.
- I.** Cannabis seed and immature cannabis plant labels shall have an information panel or static quick response (QR) code that links to or contains the following without intervening material:
- (1) if applicable, the cannabis manufacturer business or trade name;
 - (2) if applicable, unless the business or trade name placed on the package is the actual manufacturer, a qualifying phrase which states the firm's relation to the product (e.g., "manufactured for" or "distributed by");
 - (3) if applicable, cannabis manufacturer license number;
 - (4) pesticide used in the product by the cannabis producer;
 - (5) if applicable, date product was manufactured;
 - (6) the following warning statement in bold font "For use only by adults 21 and older. Keep out of reach of children."

[16.8.3.10 NMAC - N, 04/01/2022]

16.8.3.11 CANNABIS FINISHED PRODUCT LABELING IN CANNABIS CONSUMPTION

AREAS: Packaging and labeling exemptions and minimum requirements. A licensed cannabis consumption area may sell cannabis products to a consumer, qualified patient, or reciprocal patient without packaging and labeling under the following conditions:

- A.** the consumer, qualified patient, or reciprocal patient intends to consume cannabis product on the licensed premises of the cannabis consumption area and will store unused product on the premises as required by cannabis consumption area licensing requirements in 16.8.2 NMAC;
- B.** at the time of transfer of the cannabis finished product to a consumer, the licensed cannabis consumption area provides the consumer with a written statement of the potency of the cannabis product's THC or Total THC, and CBD, which shall be expressed as a percentage for inhaled cannabis finished products, and expressed in milligrams for edible cannabis finished products and topical cannabis finished products. If CBD is not detected in the inhaled cannabis finished product, then CBD potency is not required;
- C.** the licensed cannabis consumption area maintains and makes available to the consumer, qualified patient, or reciprocal patient upon request written or electronic documentation reflecting all relevant information required in cannabis consumption area licensing requirements 16.8.2 NMAC; and
- D.** for multiple-serving edible cannabis finished product, the licensed cannabis consumption area at the time of transfer to the consumer, qualified patient, or reciprocal patient shall provide a measurement device necessary for the purchaser to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of Total THC per serving.

[16.8.3.10 NMAC - N, 04/01/2022]

16.8.3.12 CANNABIS FINISHED PRODUCT PACKAGING:

- A.** Unless otherwise specified, edible or topical cannabis finished products shall meet the following minimum packaging requirements:
 - (1) containers used for edible cannabis products or edible cannabis finished products shall be food-grade or GRAS and must not impart any toxic or deleterious substance to the packaged product;
 - (2) containers used for topical cannabis products and topical cannabis finished products must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product;
 - (3) unless otherwise provided, containers shall be child-resistant. If the product is multiple use, or contains multiple servings, it shall also be packaged in a container that is resealable and continually child-resistant;
 - (4) cannabis finished products that contain only cannabis flower must be packaged in resealable containers and are not subject to the child resistant container requirement;
 - (5) containers shall be compostable and recyclable, or made from recycled materials;
 - (6) edible cannabis finished products packaged for commercial sale shall not exceed 10 milligrams of Total THC per serving, or 100 milligrams of Total THC per container;

(7) edible cannabis finished products packaged for qualified patients, qualified caregivers and reciprocal participants as defined by the Lynn and Erin Compassionate Use Act shall be identified for medical use only and shall not exceed 50 milligrams of Total THC per serving;

(8) single serving edible cannabis finished products that are placed into a child resistant container may be bundled into an exit package;

(9) edible cannabis finished products containing multiple servings in a single container shall:

- (a) when in solid form, be:
 - (i) easily separable in order to allow an average person 21 years of age or older to physically separate, with minimal effort, individual servings of the product; and
 - (ii) easily and permanently scored to identify individual servings;
- (b) be packaged in a single serving size; and
- (c) be marked, stamped, or otherwise imprinted with a logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch for each single serving contained in a multi-serving package.

(10) Unless as otherwise specified in Paragraph (10) of this subsection, liquid cannabis finished products shall be single-serving only.

(11) Each liquid cannabis finished product that is a multiple-serving edible cannabis finished product shall be:

- (a) packaged in a structure that uses a single mechanism to achieve both child-resistant properties and accurate pouring measurement of each liquid serving in increments; and
- (b) the measurement component is within the child-resistant cap or closure of the bottle and is not a separate component.

(12) A cannabis manufacturer shall maintain a copy of the certificate showing that each child-resistant container into which edible or topical cannabis finished product is placed is child-resistant and complies with the requirements of 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20;

(13) Packaging containers shall not be designed to be appealing to a child and shall not use words that refer to products that are commonly associated with minors or marketed by minors, including use of the word(s) “candy” or “candies” on the label of any container.

(14) Once any remaining cannabis has been removed and destroyed pursuant to these rules, a cannabis establishment may reuse containers subject to the following requirements and restrictions:

- (a) the containers have been sanitized and disinfected either by a cannabis establishment or by a third-party to ensure that they do not contain any harmful residue or contaminants, and
- (b) if child resistant, the containers can be reused with new child resistant packaging that complies with 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20; or if new child resistant packaging is not being used, based on a visual inspection, the existing child-resistant packaging appears to be in good working order and does not appear to pose a risk of unintended exposure or ingestion of cannabis. The visual inspection must ensure such containers are not brittle or have chips, cracks, or other imperfections that could compromise the child-resistant properties of the container or otherwise pose a threat of harm to a patient or consumer.

(15) Packaging for edible cannabis finished products packaged pursuant to the Lynn and Erin Compassionate Use Act that was purchased prior to January 11, 2022 may be used by a licensee until October 1, 2022.

[16.8.3.12 NMAC - N, 04/01/2022; A, 04/01/2022]

16.8.3.13 EXIT PACKAGING: All finished cannabis products purchased by a customer, qualified patient, or reciprocal patient shall not leave the licensed retailer’s premises unless the cannabis products are placed in an opaque exit package.

[16.8.3.13 NMAC - N, 04/01/2022]

16.8.3.14 CANNABIS SEED AND IMMATURE PLANT PACKAGING: Unless otherwise specified, cannabis seeds sold shall meet the following minimum packaging requirements:

- A. cannabis seeds and immature cannabis plants shall be placed into a container;
- B. containers must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product; and
- C. containers shall be compostable and recyclable, or made from recycled materials.

[16.8.3.14 NMAC - N, 04/01/2022]

16.8.3.15 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.3.15 NMAC – N, 04/01/2022]

History of 16.8.3 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 6 HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL
IMPACTS, AND NATURAL RESOURCES

16.8.6.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.6.1 NMAC – N, 10/11/2022]

16.8.6.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.6.2 NMAC - N, 10/11/2022]

16.8.6.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.6.3 NMAC - N, 10/11/2022]

16.8.6.4 DURATION: Permanent.
[16.8.6.4 NMAC - N, 10/11/2022]

16.8.6.5 EFFECTIVE DATE: October 11, 2022, unless a later date is cited at the end of a section.
[16.8.6.5 NMAC - N, 10/11/2022]

16.8.6.6 OBJECTIVE: The objective of Part 6 is to set forth standards related to health and safety, food and product safety, environmental impacts, and natural resources to ensure public health, safety, and well-being. Part 6 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.6.6 NMAC - N, 10/11/2022]

16.8.6.7 DEFINITIONS: [RESERVED]

16.8.6.8 PREREQUISITE AND RESPONSIBILITY FOR OPERATION:

A. Except as specified in Subsection F of 16.8.6.7 NMAC, prior to the submission of a license application for a class II, III, or IV cannabis manufacture license, each applicant or licensee engaged in the manufacturing of edible or topical cannabis products or edible or topical cannabis finished products shall provide to NMED a certification that:

(1) the facility where the cannabis manufacturer operates, and the manufacturing equipment used will be constructed and maintained in accordance with the requirements of this part; and

(2) edible and topical cannabis products and edible and topical finished products will be stored, manufactured, packaged, repackaged, labeled, relabeled, tested, reworked, or wasted in accordance with the requirements of this part.

B. A certification shall include information specified in Subparagraphs (a) through (i) of Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

C. Any person signing a certification pursuant to this section shall include the following signed statement: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information.”

D. NMED shall provide confirmation of receipt to each applicant or licensee that provides a certification.

E. Each applicant or licensee shall provide the NMED confirmation to RLD as specified in Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

F. Certification to NMED, as specified in Subsections A through E of 16.8.6.7 shall no longer be required after December 31, 2022.

G. Class II, III, or IV cannabis manufacturers that were licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing of cannabis edible products or cannabis edible finished products, shall apply for a food permit from NMED or a home rule municipality by January 1, 2023.

H. Except as specified in Subsection F of 16.8.6.7 NMAC, class II, III, or IV cannabis manufacturers that were not licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing cannabis edible products or cannabis edible finished products, shall provide a certification to NMED as specified in Subsections A through E and apply for a food permit from NMED or a home rule municipality as specified in G of 16.8.6.7 NMAC.

I. Beginning April 1, 2023, Class II, III, or IV cannabis manufacturers that manufacture cannabis edible products or cannabis edible finished products shall not operate without a food permit from NMED or a home rule municipality.

[16.8.6.8 NMAC - N, 10/11/2022]

16.8.6.9 MANAGEMENT AND PERSONNEL:

A. Adoption of food code parts 2-1, 2-3 and 2-4 and section 2-103.11. Except as otherwise provided, parts 2-1, 2-3 and 2-4 and section 2-103.11 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

B. A licensee shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the edible cannabis manufacturing facility. The procedures shall be maintained onsite and address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

C. Except as otherwise provided, the licensee shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the cannabis manufacturer facility during all hours of operation.

D. If edible or topical cannabis products or edible or topical cannabis finished products are manufactured as part of a vertically integrated cannabis establishment or integrated cannabis microbusiness that is the legal responsibility of the same licensee and that are located on the same licensed premises, the licensee may designate a single person in charge who is present on the licensed premises during all hours of operation.

E. The person in charge shall have the education, training, or experience necessary to supervise the production of clean and safe edible or topical cannabis products or edible or topical cannabis finished products and ensure the cannabis manufacturer remains in compliance with this part, division rules, and the act at all times.

F. Personal care items on the premises shall be stored in a manner to protect edible and topical cannabis products, edible and topical cannabis finished products, other ingredients, equipment, and utensils from contamination at all times.

G. A licensee shall:

(1) immediately contact the division to report an illness of an employee or conditional employee as specified under Subsection A of this section;

(2) immediately discontinue operations and notify the division if an imminent health hazard may exist as specified in 16.8.6.13 NMAC;

[16.8.6.9 NMAC - N, 10/11/2022]

16.8.6.10 EDIBLE AND TOPICAL CANNABIS MANUFACTURER REQUIREMENTS:

A. Adoption of 21 CFR 117. Except as otherwise provided, Subpart F and the sections, specified in paragraphs 1-7 of this subsection, of Subparts A and B of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety:

- (1) 117.3 Definitions;
- (2) 117.20 Plant and grounds;
- (3) 117.35 Sanitary operations;
- (4) 117.37 Sanitary facilities and controls;
- (5) 117.40 Equipment and utensils;
- (6) 117.80 Processes and controls; and
- (7) 117.110 Defect action levels and Subpart F.

B. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

- (1) 117.301: All records required by this part are subject to all requirements of this subpart;

(2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and

(3) 117.320: All records required by this part must be made promptly available to the division for official review and copying upon oral or written request.

C. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of 21 CFR 117:

(1) 117.310;

(2) 117.315(d);

(3) 117.325;

(4) 117.335; and

(5) The following terms are omitted from section 117.3 Definitions:

(a) Allergen;

(b) Food;

(c) Food-contact surfaces;

(d) Lot;

(e) Manufacturing/processing; and

(f) Packing.

D. Adoption of food code parts 4-5, 4-6 and 4-7. Except as otherwise provided, parts 4-5, 4-6, and 4-7 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

E. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of the 2017 United States food and drug administration model food code, 4-603.12
Precleaning:

(1) Food or cannabis product debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.

(2) If necessary, for effective cleaning, utensils and equipment shall be pre-flushed, presoaked, or scrubbed with abrasives. Ethyl alcohol (ethanol) or isopropyl alcohol (isopropanol) are acceptable for pre-flushing or presoaking.

F. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of the 2017 United States food and drug administration model food code:

(1) 4-502.12;

(2) 4-502.13(B);

(3) 4-502.14;

(4) 4-602.11(A)(1);

(5) 4-602.11(B);

(6) 4-602.11(D)(3); and

(7) 4-602.11(E)(2)-(3).

G. Cannabis Product Ingredient Source.

(1) Ingredients shall be received from sources as specified in 7.6.2 NMAC.

(2) Cannabis products, ingredients, and edible or topical cannabis finished products intended for human consumption shall be transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of the cannabis products, ingredients, and cannabis finished products, as well as against deterioration of the cannabis products, ingredients, and cannabis finished products and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

H. The current 21 CFR 111 and United States Federal Food, Drug, and Cosmetic Act, Title 21, Chapter 9 and 7.6.2 NMAC are hereby adopted as a technical reference and interpretation guide.
[16.8.6.10 NMAC – N, 10/11/2022]

16.8.6.11 WATER SUPPLY AND SEWAGE:

A. Drinking water shall be obtained from an approved source that is:

(1) a public water system; or

(2) a non-public water system that is constructed, maintained, and operated according to law.

B. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce

contaminants to the system.

C. Except as specified under Subsection D of this section:

(1) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(2) Water from a non-public water system shall meet:

(a) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(b) the drinking water source setback requirements as specified in 20.7.3 NMAC.

D. A non-drinking water supply shall be used only if its use is approved and shall be used only for nonculinary purposes such as air conditioning, non-cannabis equipment cooling, and fire protection.

E. Except when used as specified in Subsection D of this section, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

F. The most recent sample report for the non-public water system shall be retained on file in the cannabis manufacturer facility or the report shall be maintained as specified by state water quality regulations.

G. Water shall be received from the source through the use of:

(1) an approved public water main; or

(2) one or more of the following that shall be constructed, maintained, and operated according to law:

(a) Non-public water main, water pumps, pipes, hoses, connections, and other appurtenances;

(b) Water transport vehicles; or

(c) Water containers.

H. Sewage shall be disposed of according to LAW. Liquid waste systems shall meet the requirements of 20.7.3 NMAC.

[16.8.6.11 NMAC - N, 10/11/2022]

16.8.6.12 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING:

A. Edible and topical cannabis finished products shall meet the requirements specified in division rules related to testing prior to being transported or transferred from the licensed premises, distributed, sold or otherwise made available to consumers.

B. Edible and topical cannabis finished products that do not meet the requirements of Subsection A of this section shall:

(1) be segregated;

(2) reworked, remediated or reconditioned as specified in division rules related to testing; or

(3) destroyed, wasted, and disposed of in accordance with the wastage requirements of the

division.

[16.8.6.12 NMAC – N, 10/11/2022]

16.8.6.13 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING

LABORATORIES: Testing required by the division shall be conducted by a division-approved cannabis testing laboratory that has no direct ownership or financial interest in the facility for which the testing is being conducted.

[16.8.6.13 NMAC - N, 10/11/2022]

16.8.6.14 CEASING OPERATIONS AND REPORTING:

A. Except as specified in Subsections B and C of this section, a licensee shall immediately discontinue operations if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne or cannabis-borne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

B. A licensee need not discontinue operations in an area of a cannabis manufacturer facility that is unaffected by the imminent health hazard.

C. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the division may allow the licensee to continue operations in the event of an extended interruption of electrical or water service if:

(1) a written emergency operating plan has been approved by the division (NMED);

(2) immediate corrective action is taken by the licensee to eliminate, prevent, or control any

food safety risk and imminent health hazard associated with the electrical or water service interruption; and
(3) the division (NMED) is informed upon implementation of the written emergency operating plan.

D. If operations are discontinued as specified in Subsection A of this section or otherwise according to law, the licensee shall obtain approval from the division (NMED) before resuming operations.

[16.8.6.14 NMAC - N, 10/11/2022]

16.8.6.15 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.6.15 NMAC – N, 10/11/2022]

History of 16.8.6 NMAC:

Emergency New Rule, Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources, filed and effective December 2, 2021, expired as a matter of law, June 2, 2022.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 7 QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS

16.8.7.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.7.1 NMAC – N, 3/1/2022]

16.8.7.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.7.2 NMAC - N, 3/1/2022]

16.8.7.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.7.3 NMAC - N, 3/1/2022]

16.8.7.4 DURATION: Permanent.
[16.8.7.4 NMAC - N, 3/1/2022]

16.8.7.5 EFFECTIVE DATE: March 1, 2022, unless a later date is cited at the end of a section.
[16.8.7.5 NMAC - N, 3/1/2022]

16.8.7.6 OBJECTIVE: The objective of Part 7 is to set forth standards related to quality control of inspection, and testing of cannabis and cannabis products to ensure uniformity of cannabis and cannabis products and protect public safety. Part 7 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.7.6 NMAC - N, 3/1/2022]

16.8.7.7 DEFINITIONS: [RESERVED]

16.8.7.8 GENERAL TRACKING REQUIREMENTS: In addition to any requirements specific to tracking within each license type, all licensees of cannabis establishments must meet minimum requirements.

A. Tracking immature cannabis plants: licensees must track, using the track and trace system specified by the division, cannabis plants as follows:

(1) each immature plant shall be assigned a plant tag with an individual track and trace number and shall be:

- (a) placed contiguous to one another to facilitate identification by the division; and
- (b) be fully separated from mature plants.

(2) Immature plants transferred from one licensee to another shall be labeled with the track and trace number that corresponds to the track and trace number. The receiving licensee shall remove the originating licensee's tag and assign a plant or package tag, as applicable, belonging to the receiving licensee within three calendar days of receiving the immature plants.

B. Tracking mature cannabis plants: mature cannabis plants shall be tagged as follows:

(1) Each mature plant shall be tagged with a plant tag. A plant tag shall be attached to the main stem at the base of the plant, placed in a position so it is visible and within clear view of an individual standing next to the mature plant, and kept free from dirt and debris.

(2) Licensees are prohibited from removing the plant tag from the mature plant to which it was attached and assigned until the plant is harvested, destroyed, or disposed of.

C. Tracking cannabis and cannabis products: licensees must track, using the track and trace system specified by the division, cannabis and cannabis products according to packaging and labeling requirements set forth in 16.8.3 NMAC.

D. Additional recorded information: in addition to any tracking requirements specific to license type or cannabis product type, a licensee must ensure the following data is properly recorded in the tracking system:

- (1) a complete inventory of all cannabis and cannabis products in the possession, control or ownership of the licensee;
- (2) any changes to the licensee’s inventory of any cannabis or cannabis products;
- (3) when cannabis material is converted to waste
- (4) when cannabis waste is destroyed;
- (5) when an authorized transfer of cannabis or cannabis product occurs;
- (6) any theft of cannabis or cannabis products;
- (7) all sales records of cannabis or cannabis product;
- (8) all mandatory cannabis or cannabis product testing results;
- (9) the county and municipality, if applicable, where the cannabis or cannabis product was harvested, otherwise cultivated, manufactured, tested, sold to other licensees, sold to consumers and disposed of or destroyed; and
- (10) other information required by the tracking system or specified by the division.
- (11) cannabis material in segregation while testing occurs.

[16.8.7.8 NMAC – N, 3/1/2022; A/E, 03/10/2022; Rp, 16.8.7.8 NMAC, 07/12/2022]

16.8.7.9 IMPLEMENTATION AND ADMINISTRATION OF TRACKING SYSTEM:

A. Operational account: a licensee must have a track and trace system account activated and functional prior to operating or exercising any privileges of a license. The licensee shall keep and maintain comprehensive records to ensure adequate inventory tracking of any cannabis or cannabis products.

B. System administrator required: each licensee must designate at least one individual as a track and trace system administrator.

C. System training: in order to obtain a track and trace system administrator account, a licensee or its designee must attend and successfully complete all required track and trace system training. A licensee may apply for an account and training once they receive a license from the division.

D. Continuing education: The division may also require additional ongoing, continuing education for the track and trace system administrator to retain their track and trace system administrator account.

E. Responsible for cost: each licensee is responsible for all costs associated with its use of the tracking system and any associated vendor fees.

F. Additional users: a licensee may designate additional individuals as track and trace system users. The licensee shall ensure that all individuals who are granted track and trace system user account access for the purposes of conducting track and trace functions in the system are trained by an track and trace system administrator in the proper and lawful use of the track and trace system.

[16.8.7.9 NMAC – N, 3/1/2022; Rp, 16.8.7.9 NMAC, 07/12/2022]

16.8.7.10 GENERAL TRACK AND TRACE SYSTEM USE:

A. System required: all track and trace activities of a licensee must be tracked through use of the track and trace system. Licensees must reconcile all on-premises and in-transit cannabis or cannabis products each day in the track and trace system by 11:59 p.m. that same day. Track and trace system software must then be synchronized by the licensee prior to closing the session (as applicable).

B. Weights and measures: licensees must utilize a standard of weights and measures that is supported by the track and trace system to track all cannabis or cannabis products. A scale used to weigh product prior to entry into the track and trace system shall be certified to be registered and calibrated in accordance with applicable requirements of the New Mexico department of agriculture

C. System security: licensees shall maintain the security of the track and trace system, as follows:

- (1) maintain an accurate and complete list of all track and trace system users for each licensed premise;
- (2) update this list when a new track and trace system user is trained or when an existing user is removed;
- (3) train and authorize any new track and trace system users before they may access track and trace system or input, modify or delete any information in the track and trace system; and
- (4) cancel any track and trace system administrators and track and trace system users from their associated track and trace system accounts once any such individuals are no longer employed by the licensee or at the licensed premises.

D. Responsible for employee actions: licensees are accountable for all actions employees take while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities.

E. Responsible for individual actions: each individual user is also accountable for all of their actions while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities, and shall maintain compliance with all relevant laws and division rules.

F. Use of appropriate account: each individual user shall only log activities in the track and trace system under the user's own unique track and trace system user account.

G. Additional software allowed: licensees may use separate software applications to collect information to be used by the business, including additional inventory tracking or point of sale systems. [16.8.7.10 NMAC – N, 3/1/2022; Rp, 16.8.7.10 NMAC, 07/12/2022]

16.8.7.11 CONDUCT WHILE USING TRACK AND TRACE SYSTEM:

A. Licensees or designated track and trace administrator(s) and track and trace system user(s) shall enter data into the track and trace system that fully and transparently accounts for all inventory tracking activities and authorized transfers. Both the licensee and the individuals using the track and trace system are responsible for the accuracy of all information entered into the track and trace system.

B. Individuals entering data into the track and trace system shall only use that individual's track and trace system account.

C. If at any point a licensee loses access to the track and trace system for any reason, the licensee or track and trace system administrator shall immediately notify the division and shall keep and maintain comprehensive records detailing all cannabis or cannabis product track and trace activities that occurred during the loss of access. These track and trace activities must be entered into the track and trace system and the division shall be notified that access has been restored. Licensees must document when access to the system was lost, the cause of system loss and when it was restored. Licensee shall not transport or receive any cannabis or cannabis product to or from another cannabis establishment until such time as access is restored and all information is recorded into the track and trace system.

[16.8.7.11 NMAC – Rp,16.8.7.11 NMAC, 07/12/2022]

16.8.7.12 COMPLIANCE NOTIFICATIONS:

A. Monitor notifications: licensees must monitor all compliance notifications from the track and trace system or the division and must resolve any issue(s) detailed in the compliance notification in a timely fashion. Compliance notifications from the track and trace system shall not be dismissed in the track and trace system until the licensee resolves the compliance issues detailed in the notification.

B. Monitor informational notifications: licensees must take appropriate action in response to informational notifications received through the track and trace system or the division including but not limited to notifications related to enforcement alerts and other pertinent information.

[16.8.7.12 NMAC - N, 07/12/2022]

16.8.7.13 LAWFUL ACTIVITY REQUIRED: Proper use of the track and trace system does not relieve a licensee of its responsibility to maintain compliance with all laws, rules and other requirements at all times.

[16.8.7.13 NMAC - N, 07/12/2022]

16.8.7.14 TRACK AND TRACE SYSTEM PROCEDURES:

A. Conformity of use: licensees must utilize the track and trace system in conformance with division rule and track and trace system procedures.

B. Track and trace procedures include:

- (1) properly indicating the creation of a harvest batch or production batch including the assigned harvest batch or production batch number;
- (2) accurately identifying the cultivation room or outdoor location where each plant is located on the licensed premises;
- (3) accurately identifying when inventory is no longer on the licensed premises;
- (4) properly identifying cannabis or cannabis products identified as test batch;
- (5) properly indicating test results from a cannabis testing laboratory;
- (6) accurately indicating the track and trace system category for all cannabis or cannabis products;

(7) accurately including a note explaining the reason for any destruction of cannabis or cannabis products, and the reason for any adjustment in weight or count to inventory in the track and trace system software; and

(8) properly assigning unique identifying tracking numbers to each cannabis plant, cannabis product and any batch, lot, or subplot from such cannabis plant(s) and cannabis product(s).

[16.8.7.14 NMAC - N, 07/12/2022]

16.8.7.15 REQUIRED TESTING OF CANNABIS PRODUCTS: A cannabis establishment shall segregate a batch of cannabis product and arrange for samples to be collected and tested by a cannabis testing laboratory if required by this section. The batch must pass all required tests prior to the sale or delivery to a qualified patient, primary caregiver or consumer.

A. Required testing: Unless an exception applies:

(1) A cannabis producer, cannabis producer microbusiness, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1, *Required Testing of Cannabis Products*, below, of any cannabis flower and trim that it harvests prior to:

- (a) packaging for retail sale;
- (b) transfer to another cannabis establishment for the purposes of retail sale;
- (c) retail sale; or
- (d) delivery to a patient or consumer.

(2) A cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:

- (a) packaging for retail sale
- (b) transfer to another cannabis establishment for the purposes or retail sale;
- (c) retail sale; or
- (d) delivery to a qualified patient, primary caregiver or consumer.

(3) A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.

Table 1, Required Testing of Cannabis Products						
Product category	Potency	Homogeneity of Batch	Visual Inspection	Microbiological	Residual Pesticides	Residual Solvents
Flower	X		X	X	X	
Trim	X		X	X	X	
Concentrate (volatile solvent)	X			X	X	X
Kief	X		X	X	X	
Pre-rolls	X			X	X	
Concentrate (non-volatile solvent)	X		X	X	X	
Extract – alcohol	X			X	X	
Extract – other liquid	X			X	X	
Topical	X			X		
Edible	X			X	*	
Other inhalable	X				*	X

Other	X			X	*	X
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*Pesticide testing required unless exempted by Subsection E, below.

B. Staggered implementation:

(1) The division may within its discretion delay implementation of sample collection and testing requirements of this section, in whole or in part.

(2) In determining the start date of an individual testing requirement, the division shall consider whether a cannabis testing laboratory has validated a method for conducting the test.

(3) In determining the date on which a cannabis establishment must have its samples collected by an employee or contractor of a cannabis testing laboratory, the division shall consider the capacity of cannabis testing laboratories to collect and transport samples.

(4) The division may establish different implementation dates for sample collection requirements for:

(a) cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(b) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;

(c) cannabis producer microbusinesses and integrated cannabis microbusinesses located more than 100 miles by automobile from the nearest licensed cannabis testing laboratory location;

(d) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located more than 200 miles by automobile from the nearest licensed cannabis testing laboratory location; and

(e) cannabis establishments for which travel to a licensed cannabis testing laboratory location requires passing through a United States border patrol checkpoint.

C. Collection and transportation of samples: A cannabis testing laboratory is responsible for the collection of samples for the performance of any required test, re-test after a failing result, re-test after remediation, or test for the purposes of labeling.

(1) A cannabis testing laboratory may perform sample collection using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b) Contractors who have completed the sampling agent training offered by the U.S. department of agriculture’s domestic hemp production program and sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. The contractor shall obtain necessary training to comply with the cannabis testing laboratory’s protocols, and the cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(2) A cannabis testing laboratory may transport samples using:

(a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or

(b) Contractors who sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. Transporting cannabis for a cannabis establishment on a contractual basis does not preclude a person or entity from transporting samples in secure containers for cannabis testing laboratories.

(3) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to collect samples from or transport samples on behalf of any cannabis establishment.

(4) If the division has delayed implementation of the requirement that the cannabis testing laboratory collect the sample from a cannabis establishment, based on its distance from the nearest cannabis testing laboratory or location beyond a U.S. border patrol checkpoint, then any person collecting or transporting samples for required testing must receive training in sample collection and transportation protocols.

(a) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to accept samples from a cannabis establishment.

(b) The cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(5) A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire

batch of cannabis product. Precautions may include, but are not limited to:

- (a) requiring the use of gloves and other personal protective equipment;
- (b) inspecting tools and containers prior to their use;
- (c) specifying the location within the cannabis establishment at which the samples

will be collected;

- (d) specifying locations within the cannabis establishment to which laboratory

employees or contractors do not have access; and

- (e) the right to refuse entry to any laboratory employee or contractor not in

compliance with the precautions

(6) Nothing in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

(7) This Subsection C of 16.8.7.8 NMAC is effective March 1, 2023.

D. Compliance with all rules and applicable laws required: Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

(1) A cannabis establishment shall waste and dispose of any cannabis product to which a pesticide has been applied in violation of division rules or the Pesticide Control Act or any product manufactured using an unapproved solvent.

(2) Nothing in this rule shall be interpreted as precluding regulatory activities by other state agencies that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

E. Exceptions to required testing:

(1) A cannabis establishment shall not be required to have tested for pesticide residue any cannabis product made from cannabis concentrate or cannabis extract with verified pesticide residue test results, so long as the establishment can demonstrate that the resulting product will not exceed action levels for that type of cannabis product.

(2) A cannabis establishment shall not be required to have tested a cannabis product acquired from another cannabis establishment if the batch, in present form, was previously determined to have passed the testing requirements of this rule and is accompanied by a *Certificate of Analysis* issued by a licensed cannabis testing laboratory within the previous 90 days.

(3) If additional testing requirements take effect after a cannabis testing laboratory obtains a sample of a cannabis product for required testing, the laboratory is required to perform only those tests required at the time the sample was obtained.

F. Visual inspection: A sample shall pass visual inspection if, under a minimum of 40X magnification, laboratory personnel detect in a one gram sample:

- (1) no living or dead insects, hair, eggs, or feces; and
- (2) no more than two percent sand, soil, mold, or rocks.

G. Microbiological testing: A sample shall pass microbiological testing if the sample contains concentrations of target microbes not exceeding the action levels set forth in Table 2, *Microbiological Testing Requirements*, below.

(1) The division may require required testing for additional microbes if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence, in a quantity or amount that poses a threat to public health, in a cannabis product produced, manufactured, or sold by any cannabis establishment. The division shall provide written notice to licensees 30 days before requiring required testing for additional pesticide residues, except that such notice is not required when human illness is linked to contaminated cannabis products.

(2) The cannabis testing laboratory may report a collective total of the four *Aspergillus* strains listed without distinguishing individual totals.

(3) The test results shall be reported as “Present,” “Absent,” or in colony forming units (CFU) per one gram sample.

(4) Testing for shiga-toxin producing *E. coli*, *Clostridium botulinum*, and *Pseudomonas aeruginosa* is effective July 1, 2022.

Table 2. Microbiological Testing Requirements

Target Microbe	Action Level
*E. coli	100 CFU/gram
Aspergillus flavus, Aspergillus fumigatus, Aspergillus niger, or Aspergillus terreus	Present in 1 gram
Salmonella spp.	Present in 1 gram
†Shiga-toxin producing E. coli	Present in 1 gram
†Clostridium botulinum	Present in 1 gram
†Pseudomonas aeruginosa	Present in 1 gram
<p>*Cannabis product may be tested for shiga-toxin producing E. coli, rather than generic E. coli. †Testing for shiga-toxin producing E. coli, Clostridium botulinum, and Pseudomonas aeruginosa is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.</p>	

H. Residual solvent testing: A sample shall pass residual solvent testing if the sample contains concentrations of residual solvents lower than the action levels set forth in Table 3, *Residual Solvent Testing Requirements*, below. The test results shall be reported as described in the notes to Table 3.

Table 3. Residual Solvent Testing Requirements				
Target Compounds	Common Chemical Name	IUPAC Name	CAS Number	Action Level*
Propane	Propane	Propane	74-98-6	5000
Butanes	<i>n</i> -butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
Pentane	<i>n</i> -pentane	Pentane	109-66-0	5000
Hexane	<i>n</i> -hexane	Hexane	110-54-3	290
Benzene	Benzene	Benzene	71-43-2	2.0
Toluene	Toluene	Methylbenzene	108-88-3	890
Heptane	<i>n</i> -heptane	Heptane	142-82-5	5000
Ethylbenzene and Xylenes	Ethylbenzene	Ethylbenzene	100-41-4	2170 Total
	<i>ortho</i> -xylene	1,2-dimethylbenzene	95-47-6	
	<i>meta</i> -xylene	1,3-dimethylbenzene	108-38-3	
	<i>para</i> -xylene	1,4-dimethylbenzene	106-42-3	
Ethanol†	ethyl alcohol	Ethanol	64-17-5	5000
Methanol	methyl alcohol	Methanol	67-56-1	3000
Isopropanol	Isopropyl alcohol	2-propanol	67-63-0	5000
Acetone	Acetone	2-propanone	67-64-1	5000

Use two significant digits when reporting residual solvent results.
 Report levels less than the Limit of Quantitation for each solvent according to the following example:
 "Benzene < 2.0 µg/g"
 *Micrograms solvent per gram (µg/g) of sample/parts per million (ppm).
 †Unless exempt from testing.

I. Potency testing: Potency testing requires determining the quantity of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA) per gram of sample and the calculation of THC potency and CBD potency, according to Table 4, *Potency Testing Requirements*, below.

Table 4. Potency Testing Requirements			
Cannabinoid	Abbreviation	CAS Number	Reporting Units
Tetrahydrocannabinolic Acid	THCA	23978-85-0	For solids: mg of analyte/gram of sample and percentage by weight
Tetrahydrocannabinol	THC	1972-08-3	
Cannabidiolic Acid	CBDA	1244-58-2	
Cannabidiol	CBD	13956-29-1	For liquids: mg/ml
Total THC Potency (solids)	THC Potency = (Percent THCA × 0.877) + Percent THC		Percentage by weight
Total CBD Potency (solids)	CBD Potency = (Percent CBDA × 0.877) + Percent CBD		
Total THC Potency (liquids)	THC Potency = (mg/ml THCA × 0.877) + mg/ml THC		mg/ml
Total CBD Potency (liquids)	CBD Potency = (mg/ml CBDA × 0.877) + mg/ml CBD		

J. Pesticide testing: A sample shall pass pesticide testing if concentrations of residues of pesticides are lower than the action levels listed in Table 5, *Pesticide Testing Requirements*, below.

(1) The division may adopt required testing for additional pesticide residues if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence in a cannabis product produced or manufactured by any cannabis establishment. The division shall provide written notice to licensees 30 days before implementing required testing for additional pesticide residues.

(2) Nothing in this section shall be interpreted to waive or diminish any requirement of the Pesticide Control Act, Sections 76-4-1 et seq. NMSA 1978. The division, alone or in conjunction with NMDA, may investigate any suspected use of a pesticide not registered with NMDA for use on cannabis.

(3) This Subsection J of 16.8.7.8 NMAC is effective July 1, 2022.

Table 5. Pesticide Testing Requirements			
Targeted Pesticide	CAS Number	Action Level: Inhalable*	Action Level: Non-Inhalable*

†Abamectin	71751-41-2	0.1	0.15
†Acequinocyl	57960-19-7	2.0	2.0
†Bifenazate	149877-41-8	0.2	0.2
†Bifenthrin	82657-04-3	0.1	0.1
†Etoxazole	153233-91-1	0.1	1.0
†Imazalil	35554-44-0	0.1	0.1
†Imidacloprid	138261-41-3	0.1	3.0
†Myclobutanil	88671-89-0	0.1	0.4
†Paclobutrazol	76738-62-0	0.04	0.04
Piperonyl butoxide	51-03-6	3.0	8.0
†Pyrethrins (cumulative total)	121-21-1 25402-06-6 4466-14-2	0.5	1.0
†Spinosyn A, D (cumulative total)	131929-60-7 131929-63-0	0.1	3.0
†Spiromesifen	283594-90-1	0.1	0.2
†Spirotetramat	203313-25-1	0.1	0.2
†Trifloxystrobin	141517-21-7	0.02	0.02
Other pesticide not registered with NMDA for use on cannabis	Varies	0.02	0.02
<p>*Micrograms of pesticide per gram ($\mu\text{g/g}$) of sample/parts per million (ppm). Report levels less than the Limit of Quantitation for each pesticide residue according to the following example: "Paclobitrazol < 0.4 $\mu\text{g/g}$" †Not registered with NMDA for use on cannabis.</p>			

K. Release of batch after testing: A cannabis establishment may release an entire batch of cannabis product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

L. Procedures for testing: A cannabis establishment shall adhere to the following procedures:
(1) After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions (temperature, humidity, light) designed to limit microbial growth or other spoilage until the cannabis establishment receives a certificate of analysis indicating the batch meets the testing requirements of this rule.

(2) The secured container shall be labeled with the identification number used in the track and trace system, the name of the cannabis testing laboratory, the date on which the samples were taken, and, in minimum 12-point font, all capital letters, "AWAITING TEST RESULTS. DO NOT TRANSFER."

(3) The cannabis testing laboratory and the cannabis establishment submitting samples each shall appropriately document in the track and trace system the sampling and testing of cannabis product.

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and shall make those results available to consumers or cannabis retailers upon request.

M. Re-testing: If a sample fails any test, the cannabis establishment may request re-testing by the same cannabis testing laboratory or another cannabis testing laboratory. If the repeated test is within acceptable limits, then the batch may be sold, transferred, or further manufactured.

N. Remediation: Within 120 days of a failed test, a cannabis establishment may remediate and retest the batch according to the procedures described in this subsection. A cannabis establishment shall adopt and maintain on the premises protocols regarding remediation consistent with this rule.

(1) A cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent. Other products that fail microbiological testing may not be remediated.

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting,

mixing, infusing, or otherwise combining the batch.

(3) A cannabis establishment may remediate any cannabis product that fails residual solvent testing by evaporating solvent using heat, vacuum pressure, or a combination of methods.

(4) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of mold by means of extraction using an approved volatile solvent.

(5) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of insects, hair, eggs, or feces by removing the contaminants, followed by extraction using an approved volatile solvent.

(6) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of soil or rocks by removing the contaminants.

(7) Cannabis product that has been remediated must undergo any test that was previously failed.

(8) Cannabis product that has been remediated with the use of volatile solvents must additionally undergo residual solvent testing.

O. Notice and destruction: Any cannabis product that fails a test and cannot be remediated, including any remediated cannabis product that fails any test after remediation, is subject to destruction in accordance with the wastage requirements of 16.8.2.15 NMAC. The cannabis establishment shall notify the division within 24 hours and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from inventory shall be noted in the track and trace system.

P. Interpretation of differing results: Results produced by a cannabis testing laboratory are valid only for the sample tested. A differing result produced by quality control or inspection testing of a different sample pursuant to 16.8.2.16 NMAC is not grounds for action against the cannabis testing laboratory that produced the original testing result.

[16.8.7.15 NMAC – N, 07/12/2022; A/E, 11/18/2022]

16.8.7.16 ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:

A cannabis testing laboratory may offer cannabis establishments testing for quality improvement, research and development, or labeling purposes. A cannabis testing laboratory may also offer testing to persons other than cannabis establishments as provided in this section.

A. Research and development testing for cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments any required test or any additional test for the purpose of research and development or for quality-control measures requested by a cannabis establishment.

(1) The cannabis establishment may collect the sample, or an agent of the cannabis testing laboratory may collect the sample.

(2) If a cannabis establishment requests testing for research and development purposes, the results may not be used to satisfy any required testing requirement, even if the sample passes all tests.

(3) The failure of a test for research and development purposes shall not constitute a failed test.

(4) The results of a test conducted for research and development purposes shall not be included on a product label or advertisement.

B. Testing for the purposes of labeling by cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments additional tests not included in required testing for the purposes of product labeling, including quantitation of specific pesticides, microbial contaminants, solvents, mycotoxins, or metals.

(1) An agent of the cannabis testing laboratory shall collect the samples according to the laboratory's protocols.

(2) A label may include a reference to concentrations of compounds not subject to required testing, including terpenes, terpenoids, or additional cannabinoids.

(3) A label may include a reference to the passage of cannabis screenings, including one or more of the following:

(a) naming the contaminants for which screening was performed;

(b) providing a link or QR code to the list of contaminants for which the cannabis product was screened; or

(c) a statement that the product has met third-party screening criteria, such as those established by an industry association, except that no label shall contain claims that a cannabis product is “pesticide free” or “organic” unless such labeling is specifically authorized under U.S. department of agriculture regulations.

C. Reporting of contamination: Nothing in this rule shall be interpreted to require a cannabis testing laboratory to offer testing for analytes not included in required testing. However, a cannabis testing facility shall report to the division, without naming the source of the sample, the detection of any of the following analytes in the course of testing for research and development or labeling purposes:

- (1) aflatoxin B1, B2, G1, and G2 and ochratoxin A, at a total concentration of 20 µg/kg (parts per billion) or greater;
- (2) arsenic, cadmium, lead, or mercury, at a concentration of 0.4 µg/g (parts per million) or greater;
- (3) the residue of any pesticide not required to be tested or not registered in New Mexico for use on cannabis, at any level detectable by the cannabis testing laboratory’s methodology; or
- (4) any microorganism not required to be tested at a level that poses a significant threat to human health.

D. Research and development testing in connection with personal use or medical use of Cannabis. A cannabis testing laboratory may perform any test on a sample of cannabis product for any resident of New Mexico who is at least 21 years of age and represents in writing that the cannabis product is for the personal use or medical use of the person submitting the sample or a person for whom the person submitting the sample is acting as a primary caregiver. The cannabis testing laboratory shall provide guidance on sample collection but shall not collect samples onsite.

E. Testing services to entities operated or licensed by a tribal government. A cannabis testing laboratory may perform any test on a sample of cannabis product for any entity located within New Mexico and operated or licensed by a tribal government with which the division has an intergovernmental agreement covering cannabis testing. If the intergovernmental agreement permits such entities to collect and submit samples, the cannabis testing laboratory shall provide guidance on sample collection. Otherwise, an agent of the laboratory shall collect samples.

F. Testing services for the division or other governmental entities: A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.
[16.8.7.16 NMAC – N, 07/12/2022]

16.8.7.17 PREVENTION OF HEAVY METAL CONTAMINATION: A cannabis establishment shall adhere to the following quality control standards for the production and manufacturing of cannabis:

- A. Growing media:** The cannabis establishment shall maintain, and make available for division inspection, records of all growing media purchased.
- B. Water:** If using for irrigation water from a non-municipal source, a cannabis establishment shall maintain quarterly testing data indicating concentrations at or below the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below.
- C. Soil:** If growing cannabis directly in the ground, the cannabis establishment shall submit at least annually representative soil samples to a laboratory for analysis of arsenic, cadmium, lead, and mercury levels and shall retain a certificate of analysis for inspection by the division. If the concentration of any heavy metal exceeds the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below, the cannabis establishment shall remediate the soil and shall not produce additional plants until soil concentrations are below the applicable action levels.
- D. Choice of laboratories:** The cannabis establishment may submit water or soil samples to any laboratory in the United States offering water or soil analysis for the four required analytes.

Table 1. Heavy Metal Testing Requirements for Water and Soil				
Analyte	Symbol	CAS Number	Action Level: Soil*	Action Level: Water†
Arsenic	As	7440-38-2	4.25	10.0
Cadmium	Cd	7440-43-9	7.05	5.0

Lead	Pb	7439-92-1	400	15.0
Mercury	Hg	7439-97-6	2.38	2.0
<p>*Reported in micrograms per gram ($\mu\text{g/g}$) of sample/parts per million (ppm). Based on New Mexico Environment Department's <i>Risk Assessment Guidance for Site Investigations and Remediation</i>. †Reported in micrograms per liter ($\mu\text{g/L}$) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.</p>				

[16.8.7.17 NMAC – N, 07/12/2022]

16.8.7.18 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.7.18 NMAC – N, 3/1/2022; Rn, 16.8.7.11 NMAC, 07/12/2022]

History of 16.8.7 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 8 CANNABIS PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF
CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM

16.8.8.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.8.1 NMAC - N, 08/24/2021]

16.8.8.2 SCOPE: This rule applies to all persons licensed or seeking to be licensed to produce, manufacture, and sell cannabis pursuant to the Cannabis Regulation Act.
[16.8.8.2 NMAC - N, 08/24/2021]

16.8.8.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.
[16.8.8.3 NMAC - N, 08/24/2021]

16.8.8.4 DURATION: Permanent.
[16.8.8.4 NMAC - N, 08/24/2021]

16.8.8.5 EFFECTIVE DATE: August 24, 2021, unless a different date is cited at the end of a section.
[16.8.8.5 NMAC - N, 08/24/2021]

16.8.8.6 OBJECTIVE: The objective of Part 8 is to establish the limit of mature cannabis plants a licensee is authorized to cultivate pursuant to the Cannabis Regulation Act.
[16.8.8.6 NMAC - N, 08/24/2021]

16.8.8.7 DEFINITIONS: Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.
[16.8.8.7 NMAC - N, 08/24/2021]

16.8.8.8 GENERAL PROVISIONS FOR PLANT COUNT:

A. Cannabis plant growth cycle: For purposes of this rule, the cannabis plant growth cycle is based on the following four stages:

- (1) germination stage includes a seed sprouting to form a seedling;
- (2) seedling stage includes a shoot emerging from the soil surface, eventually forming the first leaves;
- (3) vegetative stage is the period of growth between germination and the beginning of flowering, including cloned cannabis plants; and
- (4) flowering stage is the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes in the stem.

B. Mature cannabis plant: For purposes of this rule, a mature cannabis plant shall be a female cannabis plant in the flowering stage.
[16.8.8.8 NMAC - N, 08/24/2021]

16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:

A. Initial license designation: For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:

- (1) applicant's requested mature cannabis plant limit level;

(2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;

(3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;

(4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and

(5) applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.

B. Designated mature cannabis plant levels:

(1) Level 1: 201 – 2,000 mature cannabis plants;

(2) Level 2: 2,001 – 6,000 mature cannabis plants;

(3) Level 3: 6,001 – 12,000 mature cannabis plants; or

(4) Level 4: 12,001 – 16,000 mature cannabis plants.

C. Incremental increase: A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature cannabis plant count increase shall only be approved in increments of 500 mature cannabis plants.

D. Limit of incremental increase: A licensee may be allowed to increase its authorized mature cannabis plant count up to eight increments at a time upon application and approval by the division.

E. Immature Plants: For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level.

F. Maximum cannabis plant count: In no event shall a licensee be permitted to grow more than 20,000 mature cannabis plants at one time.

[16.8.8.9 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.8.10 PLANT INCREASE REQUEST:

A. A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:

(1) a current inventory of mature cannabis plants and harvested cannabis;

(2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;

(3) applicant's reported number of plants harvested in the preceding three months;

(4) applicant's medical cannabis and commercial cannabis sales in the preceding three months;

(5) applicant's total cannabis sales; and

(6) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities. **B.** The division shall make a determination to approve or deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:

(1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;

(2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;

- (3) the existence of any pending or final enforcement action taken by the division against the licensee;
- (4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;
- (5) whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and
- (6) the completeness of information and data provided to the division.

C. Ground for Denial: The division may deny a request for additional mature cannabis plants based on the information provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.

[16.8.8.10 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

16.8.8.11 ADDRESSING A SHORTAGE OF MEDICAL CANNABIS:

A. Upon the division allowing commercial cannabis retail sales, cannabis retail establishments shall make reasonable efforts to sell a minimum of twenty-five percent of their monthly cannabis sales to qualified patients, primary caregivers, and reciprocal participants, or to other licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers, and reciprocal participants until December 31, 2022.

B. Upon the division allowing commercial cannabis retail sales, licensed cannabis producers, including cannabis producer microbusinesses, vertically integrated cannabis establishments, and integrated cannabis microbusinesses, and cannabis manufacturers shall make reasonable effort to sell wholesale to licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers and reciprocal participants until December 31, 2022.

C. After December 31, 2022, the division may take the following measure to address a shortage of cannabis supply in the medical cannabis program:

- (1) require all licensed cannabis retail establishments to ensure that at least ten percent of their cannabis and cannabis products in stock on a monthly basis is designated for sale to qualified patients, primary caregivers, and reciprocal participants; or

- (2) reduce the per plant fee for designated medical cannabis plants to incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program; and

- (3) after having first exhausted measures to increase production of cannabis plants, the division may exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness, or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and

- (4) require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program, provided that:

- (a) the division may require a licensee to devote no more than twenty-five percent of the licensee's cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and

- (b) the division may require additional specific tracking of cannabis plants.

[16.8.8.11 NMAC - N, 08/24/2021]

16.8.8.12 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.

[16.8.8.12 NMAC - N, 08/24/2021]

History of 16.8.8 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 10 CANNABIS SERVERS LICENSING AND TRAINING PROGRAM

16.8.10.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.10.1 NMAC – N, 07/12/2022]

16.8.10.2 SCOPE: This rule applies to applicants for cannabis server permit education provider and a cannabis server permit pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.10.2 NMAC - N, 07/12/2022]

16.8.10.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.10.3 NMAC - N, 07/12/2022]

16.8.10.4 DURATION: Permanent.
[16.8.10.4 NMAC - N, 07/12/2022]

16.8.10.5 EFFECTIVE DATE: July 12, 2022, unless an earlier date is cited at the end of a section.
[16.8.10.5 NMAC - N, 07/12/2022]

16.8.10.6 OBJECTIVE: The objective of Part 10 is to set forth the provisions that apply to cannabis server permit education and server permits.
[16.8.10.6 NMAC - N, 07/12/2022]

16.8.10.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set for in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.
[16.8.10.7 NMAC - N, 07/12/2022]

16.8.10.8 CANNABIS SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:

A. Cannabis server permit required. A licensee approved to operate a cannabis consumption area and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed cannabis consumption area unless that person obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

B. Server permit issuance. Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

C. Providers' duty to inform the division of student's satisfactory completion. Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the division a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the division on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

D. Division will distribute permits. The division will prepare and distribute the server permits to the student within 90 days of satisfactory completion of a certified program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the

certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

E. Temporary Server Permits. Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the division, upon satisfactory completion of the program by student. Temporary server permits are valid for 90 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit the server may obtain one from the provider.

F. Replacement server permits. Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form approved by the division. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.

[16.8.10.8 NMAC - N, 07/12/2022]

16.8.10.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:

A. Certification required: Any person seeking certification as a provider, instructor or program must submit an application to the division for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

B. Applications for providers and programs:

(1) Providers and instructors:

(a) the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

(b) for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

(c) fees that will be charged to take the program; and

(d) any other relevant information as may be required by the director.

(2) Programs:

(a) a description of program content that meets the minimum requirements contained in the Cannabis Regulation Act, specifically Section 26-2C-11, NMSA 1978, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be administered, at least in part, in an interactive way;

(b) all proposed programs must include a minimum of four and one-half classroom hours or the equivalent for on-line programs;

(c) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data security standards prescribed by the payment card industry security council or the equivalent as determined by the division, and in a format approved by the division;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the division that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the division that students cannot fast-forward or skip through the course materials.

(d) any other reasonably relevant information as may be required by the division;

C. Completeness check: When the division receives an application for certification as a provider, instructor or program, the division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

D. Standards for licensure: An application for licensure may be granted if the standards identified in this section are met.

(1) Providers and instructors: In reviewing applications for licensure as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of cannabis and cannabis products;

(c) whether applicant is 21 years of age or older;

(d) whether applicant has ever been found guilty of or admitted guilty to a violation of the Cannabis Regulation Act;

(e) whether applicant intends to teach a program approved by the division in accordance with these rules;

(f) any other reliable and relevant information, as determined by the division.

(2) Programs: In reviewing applications for licensure as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all content required by law, currently contained in Section 26-2C-11 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of cannabis and cannabis products for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(f) whether the program is reviewed and revised annually to ensure current comprehensive training;

(g) whether the program is interactive and includes real life instructional examples;

(h) for on-line programs whether it is easy to navigate and user-friendly; and

(i) any other reliable and relevant information, as determined by the division.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server permits at all times when providing instruction.

E. Expiration of licensure: Provider, instructor and program licensure expire on December 31 each year.

F. Renewal: Renewal applications for provider, instructor and program licensure must be submitted no later than November 30 of each year.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued

to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

G. Transferability: Provider, instructor and program licensure are non-transferrable.

H. Cancellation: A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider.

[16.8.10.9 NMAC - N, 07/12/2022]

16.8.10.10 ADMINISTRATION OF SERVER PERMIT TRAINING PROGRAM:

A. Providers' responsibility in administering program: It is the responsibility of providers to ensure that they and any instructors employed by them are teaching an approved program.

B. Course materials: Providers shall ensure that each student is provided complete course materials at the beginning of each program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be presented by instructors in a manner that does not indicate which material is selected for the proctored test.

C. Prior approval required: Providers must obtain prior approval from the division before changing the required content of an approved program.

D. Proctored tests: Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.

E. On-line tests: On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the division to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.

F. ADA compliance: Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are provided with reasonable accommodation for instructional and learning purposes to the extent required by law.

G. Administration of on-line programs: Providers who administer an on-line program without the presence of a live instructor must ensure the following:

- (1) a secure login process is in place to confirm the identity of the person taking the course;
- (2) students may not be allowed to fast-forward through the instruction portion of the course;
- (3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;
- (4) no advertisements appear during course instruction; and
- (5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[16.8.10.10 NMAC - N, 07/12/2022]

16.8.10.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS: The division may take disciplinary action against any program, or refuse to renew licensure, when the division determines that:

A. a provider, instructor or an agent, knowingly provided false information to the division with regard to completion of a program by any person;

B. a provider, instructor or an agent, failed to conduct the program as approved by the division;

C. any person filing an application with the division for licensure of a provider, instructor or program knowingly submitted false information to the division;

D. a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or

E. a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.
[16.8.10.12 NMAC - N, 07/12/2022]

16.8.10.13 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.
[16.8.10.13 NMAC - N, 07/12/2022]

History of 16.8.10 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 11 FEES

16.8.11.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.11.1 NMAC - N, 08/24/2021]

16.8.11.2 SCOPE: This rule applies to all applicants and licensees applying for licensure and renewal of licensure under all license types as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
[16.8.11.2 NMAC - N, 08/24/2021]

16.8.11.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.
[16.8.11.3 NMAC - N, 08/24/2021]

16.8.11.4 DURATION: Permanent.
[16.8.11.4 NMAC - N, 08/24/2021]

16.8.11.5 EFFECTIVE DATE: August 24, 2021, unless a later date is cited at the end of a section.
[16.8.11.5 NMAC - N, 08/24/2021]

16.8.11.6 OBJECTIVE: The objective of Part 11 is to establish a uniform schedule of fees applicable to licenses issued under the Cannabis Regulation Act.
[16.8.11.6 NMAC - N, 08/24/2021]

16.8.11.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set forth in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.
[16.8.11.7 NMAC - N, 08/24/2021]

16.8.11.8 GENERAL PROVISIONS FOR FEES: [RESERVED]
[16.8.11.8 NMAC - N, 08/24/2021]

16.8.11.9 ANNUAL LICENSING FEES: Every application for the issuance or renewal of the following licenses shall be accompanied by an annual licensing fee in the following specified amounts:

- | | |
|---|--|
| A. Cannabis courier license: | \$250 annually |
| Each additional licensed premises of the licensee: | \$100 annually |
| B. Cannabis testing laboratory license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| C. Cannabis manufacturer license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| D. Cannabis producer license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| E. Cannabis retailer license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| F. Cannabis research laboratory license: | \$2,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| G. Vertically integrated cannabis establishment license: | \$7,500 annually |
| Each additional licensed premises of the licensee: | \$1,000 annually |
| H. Cannabis producer microbusiness license: | License fees for cannabis producer microbusinesses shall be determined by the number of plants growing under each license. |
| (1) Licensees growing 100 plants or less: | \$500 annually |
| (2) Licensees growing 101 to 200 plants: | \$1,000 annually |

I. Integrated cannabis microbusiness license: License fees for integrated cannabis microbusinesses shall be determined by the number of activities conducted under each license. Activities considered are defined by the Cannabis Regulation Act and entail:

- (1) production of cannabis at a single licensed premises, provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sale and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment; or
- (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

(a)	Two activities:	\$1,000 annually
(b)	Three activities:	\$1,500 annually
(c)	Four activities:	\$2,000 annually
(d)	Five activities:	\$2,500 annually

J. Cannabis consumption area: \$2,500 annually
[16.8.11.9 NMAC - N, 08/24/2021]

16.8.11.10 ANNUAL LICENSING FEE PRORATION: Licensees submitting an amended application to add or change a license type shall only be required to pay the difference between the fee for the original license type and the fee for the amended license type, provided that the division will not issue any refunds. The division shall prorate the fee to align with the expiration date of the licensee's original license.
[16.8.11.10 NMAC - N, 08/24/2021]

16.8.11.11 ANNUAL PER PLANT FEE:

A. Commercial cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be assessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: \$5.00 per mature cannabis plant;
- (2) Level 2: \$5.00 per mature cannabis plant;
- (3) Level 3: \$5.00 per mature cannabis plant; and
- (4) Level 4 and above: \$5.00 per mature cannabis plant.

B. Medical cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be assessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: \$2.50 per mature cannabis plant;
- (2) Level 2: \$2.50 per mature cannabis plant;
- (3) Level 3: \$2.50 per mature cannabis plant; and
- (4) Level 4 and above: \$2.50 per mature cannabis plant.

[16.8.11.11 NMAC - N, 08/24/2021; A/E 01/13/2022; A, 03/22/2022]

16.8.11.12 FEE LIMITATIONS: Application, license, premises and plant fees, or license renewal, premises renewal and annual plant fees shall not exceed \$125,000 for a vertically integrated cannabis establishment license for both medical cannabis activity and commercial cannabis activity. License fees or renewal fees for a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.
[16.8.11.12 NMAC - N, 08/24/2021]

16.8.11.13 PROHIBITED ACTIVITY AND IMPACTS ON FEES: Cannabis producer microbusiness or integrated cannabis microbusinesses entering into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee's license shall not be eligible for the lower fee prescribed in Subsections H and I of 16.8.11.9 NMAC. Upon entering into such an arrangement, the licensees shall

immediately pay the per-plant fee as set forth in 16.8.11.11 NMAC and the applicable fee for a producer license or vertically integrated cannabis establishment license as set forth in 16.8.11.9 NMAC.
[16.8.11.13 NMAC - N, 08/24/2021]

16.8.11.14 FEE PAYMENT TYPES ACCEPTED: The division shall accept payment for annual licensing fees and annual per plant fees from sources including credit cards, debit cards, electronic checks, electronic bank transfers, automated clearing house payments, or cashier's checks. Other forms of payment, including cash, shall not be accepted.
[16.8.11.14 NMAC - N, 08/24/2021]

16.8.11.15 RENEWAL FEE COLLECTION TIMING: The division shall collect all renewal fees, including annual per plant fees, at the time of renewal of a license.
[16.8.11.15 NMAC - N, 08/24/2021]

16.8.11.16 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.
[16.8.11.16 NMAC - N, 08/24/2021]

History of 16.8.11 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 12 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE; SANCTION, PLAN OF CORRECTION, AND CIVIL MONETARY PENALTY

16.8.12.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.

[16.8.12.1 NMAC - N, 07/12/2022]

16.8.12.2 SCOPE: This rule applies to all licensees and applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

[16.8.12.2 NMAC - N, 07/12/2022]

16.8.12.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.

[16.8.12.3 NMAC - N, 07/12/2022]

16.8.12.4 DURATION: Permanent.

[16.8.12.4 NMAC - N, 07/12/2022]

16.8.12.5 EFFECTIVE DATE: July 12, 2022, unless an earlier date is cited at the end of a section.

[16.8.12.5 NMAC - N, 07/12/2022]

16.8.12.6 OBJECTIVE: The objective of Part 12 is to promote, preserve, and protect the public health and safety by regulating the safe production, testing, wholesale, and consumption of commercial and medical cannabis, as well as the authority to take action against a licensee or applicant for licensure, and to set forth the procedures for filing a complaint against cannabis establishment licensees.

[16.8.12.6 NMAC - N, 07/12/2022]

16.8.12.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

[16.8.12.7 NMAC - N, 07/12/2022]

16.8.12.8 GENERAL PROVISIONS:

- A. A complaint may be initiated in writing by any person.
- B. Complaints must be legible, either printed in black ink or typed.
- C. Complaints must contain factual allegations, constituting the alleged violations of any provisions

of the Cannabis Regulation Act or division rules.

[16.8.12.8 NMAC - N, 07/12/2022]

16.8.12.9 COMPLAINT PROCEDURES: A complaint may be initiated by any person in writing and delivered via the division website, mail, or by visiting the division office. Only complaints written on the official complaint form will be formally addressed by the division. The forms required for an official complaint can be obtained from the division office, located at 2550 Cerrillos Road, Santa Fe, NM, 87505, or the division website.

[16.8.12.9 NMAC - N, 07/12/2022]

16.8.12.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:

A. The division will maintain a written log of all complaints received, which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).

B. Upon receipt of a complaint, the division will:

- (1) log in the date the complaint was received;
- (2) determine whether the respondent is licensed or an applicant for licensure with the

division;

(3) assign a complaint number and create an individual file;

(4) send the complainant a written acknowledgment of receipt of the complaint; and

(5) at the division's discretion, investigate the allegations contained in the complaint to determine their veracity and whether the circumstances warrant any action by the division or referral to law enforcement.

[16.8.12.10 NMAC - N, 07/12/2022]

16.8.12.11 DIVISION ACTION:

- A.** The division may:
- (1) assess a civil monetary penalty that shall not exceed ten thousand dollars (\$10,000) per violation; or
 - (2) suspend or revoke the license.
- B.** If the division determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.
- C.** The division shall send a letter of the division's decision to both the complainant and respondent stating the division's actions and the reasons for its decision.
- D.** If the division determines that there is sufficient evidence or cause to proceed with disciplinary action against the licensee, the division shall issue a notice of contemplated action and initiate disciplinary proceedings.

[16.8.12.11 NMAC - N, 07/12/2022]

16.8.12.12 PROCEEDINGS AGAINST APPLICANT OR LICENSEE:

- A.** All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.
- B.** Licensees who have been found culpable and sanctioned by the division shall be responsible for the payments of all costs of the disciplinary proceedings.

[16.8.12.12 NMAC - N, 07/12/2022]

16.8.12.13 SCHEDULE OF CIVIL MONETARY PENALTIES:

- A.** Subject to subsection B of this section, the division shall impose penalties as follows:
- (1) For the first offense within a 12-month period, a civil monetary penalty ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.
 - (2) For the second offense within a 12-month period, a civil monetary penalty ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.
 - (3) For three or more offenses within a 12-month period, a civil monetary penalty of ten thousand dollars (\$10,000) and revocation of the license.
 - (4) For any offense involving sale or distribution of cannabis to minors, a fine of ten thousand dollars (\$10,000) and revocation of the license.
- B.** Any portion of the civil monetary penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case. When determining whether penalties should be enhanced or suspended, the division shall consider:
- (1) the nature of the violation;
 - (2) the licensee's level of cooperation with the division in investigating the violation;
 - (3) the violation's threat or potential threat to public health, safety, and welfare;
 - (4) the licensee's willingness to address and remediate the violation; and
 - (5) any other fact or circumstance that the division finds relevant.

[16.8.12.13 NMAC - N, 07/12/2022]

16.8.12.14 SETTLEMENT AGREEMENT:

- A.** Whenever probable cause exists that a licensee has violated a provision of the Cannabis Regulation Act, division rules, or any applicable state or federal law, and a monetary penalty or other disciplinary action may be issued to the licensee for such violation, an informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interests of the state or public health and safety.
- B.** Final disciplinary action decisions will be mailed to the licensee.
- C.** A copy of the final decision shall be filed in the division and posted on the division website.

D. The civil monetary penalty imposed shall not exceed those which could be imposed after hearing.
[16.8.12.14 NMAC - N, 07/12/2022]

16.8.12.15 SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.
[16.8.12.15 NMAC - N, 07/12/2022]

History of 16.8.12 NMAC: [RESERVED]