



NMRLD

NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Kristen Thomson, Director

- (1) Publications in the New Mexico register Relating to the Proposed Rule



NOTICE OF PROPOSED RULEMAKING AND AMENDMENTS

Public Hearing. The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on Thursday December 9, 2021 at 9:00am. Due to the ongoing public health concerns posed by the threat of the contagious disease COVID-19, the rule hearing will be virtual via an Internet-based video conference and via telephone. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: <https://ccd.rld.state.nm.us> or from Julia Valdez at the contact below.

Purpose of Rule Hearing. The purpose of the public rule hearing is to receive public commentary to make proposals for new rules as well as amendments to existing rules. Proposed new rules will contain licensing and permitting requirements for testing laboratories, research laboratories, cannabis consumption areas, integrated cannabis microbusiness, training and education programs, and cannabis server permits. In addition, the division will be proposing rules related to packaging and labeling of cannabis products and advertising and marketing requirements for licensees. Rules related to quality control and food and product safety will also be proposed to product quality and public safety.

Lastly, the division will also be amending definitions corresponding to the new licenses and permits proposed by the division including: testing laboratories, research laboratories, cannabis consumption areas, integrated cannabis microbusiness, training and education programs, and cannabis server permits.

Any technical information used to inform the proposed rules will be accessible by visiting:
<https://ccd.rld.state.nm.us/>.

Statutory Authority. Legal authority for this rulemaking may be found the Cannabis Regulation Act, NMSA 1978 Section 26-2C-1 through Section 26-2C-42 NMSA (2021). Additional authority may be found at NMSA 1978 Section 9-7-6(E) (2017) and at NMSA 9-16-6 (2021).

Public Comment. The Division will begin accepting public comment on the proposed rules beginning November 9, 2021. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at ccd.publiccomment@state.nm.us. Written comment may also be submitted by visiting the Division website at ccd.rld.state.nm.us or by mailing the comment to the following address:

Cannabis Control Division
Public Comment
c/o Robert Sachs
P.O. Box 25101
Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on Thursday, December 9, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: ccd.rld.state.nm.us.

No later than November 9, 2021, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at rld.cannabiscontrol@state.nm.us or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Julia Valdez, Executive Assistant for the Cannabis Control Division, rld.cannabiscontrol@state.nm.us or (505) 362-2924 at least seven (7) days prior to the hearing.

Summary of Proposed New Rules.

16.8.1 NMAC: GENERAL PROVISIONS

Part 1 provides general requirements for licensees established under the Cannabis Regulation Act and required definitions. The proposed rule amendments to be discussed at the hearing will include the addition of definitions related to newly proposed and amended rules as listed below.

16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS

Part 2 provides the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 also governs the licensing and operational requirements for licenses. The proposed rules to be discussed at the hearing will include requirements for licenses including: cannabis consumption areas, integrated cannabis microbusinesses, testing laboratories and research laboratories. Additionally, this section will propose rules surrounding proper track and trace requirements for licensees.

16.8.3 NMAC: PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS

Part 3 provides the requirements related to packing, labeling, and commercial display of cannabis products as well as advertising and marketing requirements for licensees. The proposed rules to be discussed at the hearing will include proposed rules related to packaging and labeling requirements for cannabis products as well and advertising and marketing requirements for licensees.

16.8.6 NMAC: HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES

Part 6 provides the requirements related to health and safety, food and product safety, environmental impacts, and natural resources. The proposed rules to be discussed at the hearing will include rules related to creating health and safety for the licensed premises and food and product safety standards for cannabis products, particularly edibles.

16.8.7 NMAC: QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS

Part 7 provides the requirements related to quality control, inspection, and testing of cannabis products. The proposed rules will outline testing and quality control requirements for cannabis producers, manufacturers, and cannabis products themselves. These rules will ensure public safety by ensuring products are uniform in their THC content and do not contain potentially harmful pesticides, residual solvents, or other contaminants.

16.8.9 NMAC: CANNABIS TRAINING AND EDUCATION PROGRAMS

Part 9 provides the requirements related to cannabis training and education programs. The proposed rules to be discussed at the hearing will include requirements related cannabis training and education programs.

16.8.10 NMAC: CANNABIS SERVER LICENSING AND TRAINING PROGRAM

Part 10 provides the requirements related cannabis server licensing and training programs. The proposed rules to be discussed at the hearing will include requirements for proper licensure for cannabis server licensing and training programs.



NMRLD

NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Kristen Thomson, Director

(2) Technical Information Relied Upon in Formulating the Final Rule



Technical Information Used for CCD Rulemaking

Exhibit Number	Exhibit Name	Citation (if applicable)	URL (if applicable)
9	Ordinance City of West Hollywood	Ordinance No. 17-1016	-
10	Ordinance DeKalb, IL	Municipal Chapter 64	-
11	Ordinance Sesser, IL	Ordinance No. 5-2021	-
12	Resources for Testing Laboratory Rules	-	https://ccd.rld.state.nm.us/wp-content/uploads/2021/11/Resources-for-Testing-Laboratory-Rules.pdf
13	Rules - Alaska		
14	Rules - California	4 CCR §§ 1500 - 17905	https://cannabis.ca.gov/wp-content/uploads/sites/2/2021/10/DCC-Cannabis-Regulations-Sept.-2021.pdf
15	Rules - Colorado	1 CCR 212-3	https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=9438&fileName=1%20CCR%20212-3
16	Sampling for Testing State Comparison	18-691 C.M.R. ch. 2, 4 and 5	https://www.maine.gov/dafs/omp/medical-use/rules-statutes/18-691-C.M.R.-ch.-2; https://www.maine.gov/dafs/omp/medical-use/rules-statutes/18-691-C.M.R.-ch.-4; https://www.maine.gov/dafs/omp/adult-use/rules-statutes/18-691-C.M.R.-ch.-5
17	Rules - Massachusetts Medical	935 CMR § 501.00	https://www.mass.gov/regulations/935-CMR-50100-medical-use-of-marijuana
18	Rules - Massachusetts Recreational	935 CMR § 500.00	https://www.mass.gov/regulations/935-CMR-50000-adult-use-of-marijuana
19	Rules - Michigan Licensing	M Admin C 333	https://www.michigan.gov/documents/lara/R_333.101_to_R_333.133_1_671719_7.pdf
20	Rules - Oregon	OAR 845-025	https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3873
21	Rules - Washington	WAC 314-55	https://apps.leg.wa.gov/wac/default.aspx?cite=314
22	Sampling for Testing State Comparison	-	https://ccd.rld.state.nm.us/wp-



NMRLD

NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Kristen Thomson, Director

- (3) Official Transcript of a Public Rule Hearing and Memoranda Summarizing the Contents of the Hearing Prepared by the Hearing Officer or Agency Official who Presided Over the Hearing



NEW MEXICO REGULATION AND LICENSING DEPARTMENT

CANNABIS CONTROL DIVISION

RULEMAKING HEARING

THURSDAY, DECEMBER 9, 2021

9:00 A.M.

ZOOM VIDEO CONFERENCE HEARING

BEFORE: ROBERT SACHS, HEARING OFFICER (remote)

REPORTED BY: KIM KAY SHOLLENBARGER, RPR
PAUL BACA PROFESSIONAL COURT REPORTING
500 4TH STREET, NORTHWEST, SUITE 105
ALBUQUERQUE, NEW MEXICO 87102

1 HEARING OFFICER SACHS: It is now nine a.m. This
2 hearing will please come to order. I am Robert Sachs and I
3 have been designated by the Cannabis Control Division to
4 serve as the Hearing Officer for this Public Comment Hearing.

5 The subject matter of this Public Comment Hearing is
6 proposed Administrative Rules concerning the New Mexico
7 Cannabis Regulation Act. Today is December 9th and the time
8 is 9 a.m. I, along with staff members from the Regulation
9 and Licensing Department are gathered at the Tony Anaya State
10 Office Building located at 2550 Cerrillos Road in Santa Fe,
11 New Mexico.

12 In light of health concerns related to the ongoing
13 COVID-19 public health emergency and in an effort to make
14 this hearing as accessible to the public as possible, this
15 Public Comment Hearing is held on a virtual platform with the
16 public being able to attend via Internet video conferencing
17 technology in order to make public comment on the proposed
18 rules language.

19 The purpose of this hearing is for the Cannabis
20 Control Division, or CCD, of the Regulation and Licensing
21 Department to receive public comment on proposed new
22 Administrative Rules regarding the commercial and medical
23 cannabis industry.

24 The rules that have been proposed by the RLD at this
25 time give particular attention to rules regarding cannabis

1 production and cannabis producers.

2 On behalf of Director Kristen Thomson and the
3 Cannabis Control Division, I welcome everyone present at this
4 hearing, whether in person or participating remotely.

5 This hearing is being conducted pursuant to and in
6 accordance with the provisions of the New Mexico Cannabis
7 Regulation Act, Sections 26-2C-1 through 26-2C-42 NMSA 1978;
8 the Open Meetings Act, Sections 10-15-1 through (Zoom
9 disruption) State Rules Act, Section (Zoom disruption) NMAC,
10 the default procedural rule for rulemaking as promulgated by
11 the Attorney General.

12 Public notice of this hearing was advertised in the
13 New Mexico Register on November 9th, 2021. Copies of the
14 public notice, as well as copies of the proposed rules and
15 copies of research and documentation relied on by the
16 Cannabis Control Division in the development of the proposed
17 rules have been available from the Regulation and Licensing
18 Department Office since the notices were published and are
19 available to the public attending this hearing via the
20 Cannabis Control Division website at
21 [ccd.rld.state.nm.us/public-hearings-comments-notices-placehol](http://ccd.rld.state.nm.us/public-hearings-comments-notices-placeholder/)
22 [der/](http://ccd.rld.state.nm.us/public-hearings-comments-notices-placeholder/). Copies of the proposed rules continue to be available
23 by request to anyone who requests them.

24 I ask everyone physically present in the room today
25 to silence their cell phones and ask that any extended

1 conversations be held outside of this room. For all those
2 attending via video conference technology, I ask that you
3 ensure that your microphones remain muted until such time as
4 you are called upon by me to make your public comment.

5 This hearing is scheduled to end not later than 4
6 p.m. today. Due to the large number of participants and in
7 order to allow as many people as possible to present their
8 public comments on the proposed rules within the time we have
9 for the hearing, I will be limiting public comment for each
10 presented to five minutes. This time deadline will be
11 strictly enforced, and when a presenter's allotted time has
12 expired, the presenter's microphone will be muted and we will
13 move on to the next person.

14 Presenters will be able to see a five-minute clock
15 on the screen that will start when the presenter begins
16 speaking. Please consider this time limit carefully before
17 you speak and make every effort to focus your comments and
18 get to the heart of any concerns or issues you wish address
19 as quickly as possible.

20 If you would like to submit written testimony we
21 will accept written testimony after the conclusion of your
22 five-minute public hearing comment up until the close of the
23 public comment hearing today. You must submit your written
24 comments no later than the end of today's hearing if you wish
25 your written comments to become part of the official record

1 for this hearing.

2 If you previously submitted your written testimony
3 regarding the proposed rules, you do not need to resubmit any
4 documents previously submitted. You may submit public
5 comment via email sent to ccd.publiccomment@state.nm.us or by
6 visiting ccd.rld.state.nm.us and entering your public
7 comment.

8 As this public hearing is being conducted via the
9 teleconference format as opposed to a traditional sign-in
10 sheet, for those in attendance via teleconference who wish to
11 speak regarding the proposed rules, we will utilize the
12 registration log-in for WebEx to record all those who attend
13 and/or participate in the hearing. I will have a member of
14 the RLD staff assigned the responsibility for including the
15 names of attendees appearing by video conference to the
16 attendance sheet.

17 Let the record show that present here at the Tony
18 Anaya Building with me is Nicole Bazzano, Licensing Manager
19 of the Cannabis Control Division of the Regulation and
20 Licensing Department, who will be making presentations on the
21 proposed rules for the Cannabis Control Division, or CCD.

22 This is a formal proceeding and a court reporter has
23 been contracted to record the proceedings. The court
24 reporter will record the proceedings and the transcript will
25 become part of the rule hearing record.

1 Therefore, persons recognized to address the hearing
2 attendees and the RLD are asked to identify yourself for the
3 record each time you address the body and speak loudly and
4 clearly so the recorder can pick up your comments.

5 This hearing will be conducted in the following
6 manner: Ms. Bazzano from the Division will present exhibits
7 to be included in the rulemaking hearing record. I, as the
8 Hearing Officer, will rule on the admissibility of the
9 exhibits offered for admission. Exhibits admitted into
10 evidence by the Division will be available for review by
11 members of the public at ccd.rld.state.nm.us.

12 All public comments that have been submitted and
13 will be admitted as exhibits for this hearing will likewise
14 be available for review by members of the public on that same
15 website. Any additional exhibits admitted into the record
16 for this matter during the course of this hearing will also
17 be made public to review on the Cannabis Control Division's
18 website. After Ms. Bazzano makes her presentation on behalf
19 of the Cannabis Control Division and offers exhibits and
20 their admissions has been ruled upon, I will open the hearing
21 for comments from the audience.

22 Each person making public comment may speak
23 regarding any part of the proposed rules. Please make
24 reference to the individual rule parts or subsections to
25 which you refer. You may refer to other parts of the

1 proposed rules that reasonably relate to the part of the rule
2 being discussed or which relate to your comments.

3 The RLD does not follow the Rules of Evidence and
4 therefore I, as Hearing Officer, may in the interests of
5 efficiency exclude or limit comment or questions deemed
6 irrelevant, redundant or unduly repetitious. The decision as
7 to whether such exhibits, testimony, commentary or other
8 evidence is irrelevant, redundant or unduly repetitious shall
9 be made by me, the Hearing Officer.

10 Again, please be aware that each presenter will be
11 allowed only five minutes of testimony. After identifying
12 yourself for the record I encourage you to make the most of
13 your allotted time by moving directly to the issues or
14 subjects of the proposed rules you wish to address to the
15 RLD. At the conclusion of your five minutes your microphone
16 will be silenced. After a person has testified or offered
17 comment, as Hearing Officer I may ask questions for the
18 purpose of clarifying a person's comments.

19 This public hearing is intended to provide the
20 public with an opportunity to voice opinions on the proposed
21 rule. In order to maximize the amount of time available for
22 individuals to make public comment, only I will ask any
23 clarifying questions that are determined to be necessary.

24 At the conclusion of this rule hearing the Cannabis
25 Control Division staff will review the information received

1 and will conduct discussions and take final action, such as
2 amending, adopting, tabling, and so forth, on the proposed
3 rules.

4 This public hearing is now open. Ms. Bazzano, at
5 this time do you have any exhibits to introduce into
6 evidence?

7 MS. BAZZANO: Hearing Officer Sachs, I have the
8 following exhibits to enter into evidence:

9 Exhibit 1, Legal Notice of Proposed Rulemaking
10 published in the New Mexico Register, Volume 32, Issue 21
11 published November 9, 2021.

12 Exhibit 2, Notice of Proposed Rulemaking sent to
13 interested parties.

14 Exhibit 3, proposed draft Rule 16.8.1, Amendments.

15 Exhibit 4, proposed draft Rule 16.8.2, Amendments.

16 Exhibit 5, proposed draft Rule 16.8.3, Amendments.

17 Exhibit 6, proposed draft Rule 16.8.6, Amendments.

18 Exhibit 7, proposed draft Rule 16.8.7, Amendments.

19 Exhibit 8, proposed draft Rule 16.8.10. Amendments.

20 Exhibit 9, City of West Hollywood Ordinance.

21 Exhibit 10, Dakalb, Illinois Ordinance.

22 Exhibit 11, Sesser, Illinois Ordinance.

23 Exhibit 12, Resources for Testing Laboratory Rules.

24 Exhibit 13, Cannabis Rules, Alaska.

25 Exhibit 14, Cannabis Rules, California.

1 Exhibit 15, Cannabis Rules, Colorado.
2 Exhibit 16, Cannabis Rules, Maine.
3 Exhibit 17, Cannabis Rules, Massachusetts Medical.
4 Exhibit 18, Cannabis Rules, Massachusetts
5 Recreational.
6 Exhibit 19, Cannabis Rules, Michigan.
7 Exhibit 20, Cannabis Rules, Oregon.
8 Exhibit 21, Cannabis Rules, Washington.
9 Exhibit 22, Sampling for Testing, State Comparison.
10 Exhibit 23, Public Comment submitted by Leeland
11 Murray.
12 Exhibit 24, Public Comment submitted by John Grisham
13 of Ricci and Company.
14 Exhibit 25, Public Comment submitted by William
15 Woodall, Professor at the University of New Mexico.
16 Exhibit 26, Public Comment submitted by Alyson Noell
17 of Ricci and Company.
18 Exhibit 27, Public Comment submitted by Sam Shore of
19 Alchemy Wellness.
20 Exhibit 28, Public Comment submitted by Denise
21 Padilla.
22 Exhibit 29, Public Comment submitted by Michael
23 Chartrand of Cannect Premium Lounge.
24 Exhibit 30, Public Comment submitted by Chris
25 Mechels.

1 Exhibit 31, Public Comment submitted by Dayelle
2 Cueto of Argon Labs.

3 Exhibit 32, additional Public Comment submitted by
4 Michael Chartrand of Cannect Premium Lounge.

5 Exhibit 33, Public Comment submitted by James McCue.

6 Exhibit 34, Public Comment submitted by Kristina
7 Caffrey of Ultra Health.

8 Exhibit 35, Public Comment submitted by Milan Patel
9 of PathogenDx.

10 HEARING OFFICER SACHS: Exhibits 1 through 35 are
11 hereby admitted into the record. Ms. Bazzano, are there any
12 other exhibits to enter into the record at this time?

13 MS. BAZZANO: Hearing Officer Sachs, there are no
14 additional exhibits.

15 HEARING OFFICER SACHS: Any person wishing to
16 testify shall do so when they are recognized. For those
17 appearing via video conference who wish to provide public
18 comment, if you would like to provide public comment please
19 first open the participants section and raise your hand. To
20 do this first click on the participants button at the bottom
21 right of the WebEx window. Once you do that you will see a
22 small hand icon in the bottom right corner of the WebEx
23 window. If you click on the hand icon our staff will see
24 that you have raised your hand and will allow you to provide
25 public comment when it is your turn.

1 Please be aware that at this time it is estimated
2 that there are a total number of 104 people who are present
3 in today's hearing. If a person who testifies wishes to
4 submit an exhibit for this hearing which is not already been
5 admitted into the record, that person will be required to
6 identify the proposed exhibit and describe the contents of
7 the exhibit. As Hearing Officer I will then rule on the
8 admission of the proposed exhibit. Upon admissibility each
9 exhibit will be marked and numbered and entered into the
10 record.

11 If a person who testifies has submitted an exhibit
12 for this hearing, which has already been admitted into the
13 record, the person is requested to identify that exhibit at
14 the beginning of the person's testimony today.

15 At this time each proposed rule will be introduced
16 into the record. I will then open the floor to members of
17 the audience for testimony and comments on the proposed
18 rules. To be clear, this hearing is an opportunity for
19 testimony and comments to be presented by those who wish to
20 provide public comment on the proposed rules.

21 The hearing will not be conducted as a question and
22 answer session. If you have questions regarding the proposed
23 rules, you are certainly free to include those questions in
24 your public comment. The Division will respond to your
25 public comments at the time when the Division issues its

1 concise explanatory statement regarding all comments
2 received.

3 The Division will not be responding individually to
4 (Zoom disruption) on the proposed rules. The Division will
5 publish a comprehensive, concise explanatory statement
6 responding to all comments provided by the public at a later
7 time in keeping with the requirements of the New Mexico
8 Administrative Rule 1.24.25 NMAC.

9 Ms. Bazzano, please identify yourself for the record
10 and introduce each rule that has been proposed by the RLD and
11 is subject to public comment at today's hearing.

12 MS. BAZZANO: Nicole Bazzano, Licensing Manager of
13 the Cannabis Control Division. I would like to state before
14 we begin, I would like to let everybody know that the
15 Cannabis Control Division openly and honestly wishes to learn
16 from the public today about concerns and suggestions related
17 to the rules which have been proposed.

18 In recognition of the limited time we have available
19 today for public comment on those proposed rules and in order
20 to maximum the time available for the large number of
21 individuals wishing to submit public comment, I will endeavor
22 to keep my summary of the proposed rules brief.

23 The purpose of the rulemaking proposals NMAC 16.8.1
24 through 3, 6, 7 and 10 is to make public rules related to the
25 licensure as required by the Cannabis Regulation Act.

1 16.8.1, Definitions. The objective of Part 1 is to
2 set forth the general provisions that apply to all Chapter 8
3 and to all persons affected or regulated by Chapter 8 of
4 Title 16. Part 1 standardizes definitions in order to
5 provide clarity around the rules contained herein. Proposed
6 amendments to Part 1, Definitions, related to new licenses,
7 to be discussed in today's hearing.

8 16.8.2, Licensing and Operational Requirements for
9 Cannabis Establishments. The objective for Part 2 is to
10 ensure the safe production, testing, sale and consumption of
11 commercial and medical cannabis. Proposed amendments to
12 Part 2 have included additions of licensing requirements for
13 cannabis consumption areas, cannabis testing laboratories,
14 and cannabis research laboratories.

15 16.8.3, Packaging, Labeling, Advertising, Marketing
16 and Commercial Display Requirements for Cannabis Products.
17 The objective of Part 3 is to ensure cannabis and cannabis
18 products are properly labeled and packaged to ensure
19 consumers and medical patients have accurate understanding of
20 the products they are consuming. While ensuring
21 child-resistant packaging prohibits access of products by
22 minors. Advertising and marketing requirements set
23 guidelines for how cannabis and cannabis products may be
24 marketed to consumers. Additions to Part 3 will not be
25 discussed in today's hearing.

1 16.8.6, Health and Safety, Food and Product Safety,
2 Environmental Impacts, and Natural Resources. The objective
3 of Part 6 is to ensure the health and safety of employees of
4 licensees, to protect the health and safety of consumers
5 ingesting cannabis products, to reduce environmental impacts
6 and encourage sustainable practices among licensees and
7 protect natural resources used in the production of cannabis
8 products. Additions to Part 6 will not be discussed in
9 today's rule hearing.

10 16.8.7, Quality Control, Inspection, and Testing of
11 Cannabis Products. The objective of Part 7 is to ensure
12 cannabis products are subject to quality control through
13 means including inspection and testing of cannabis products.
14 Proposed amendments to Part 7 include additions to
15 requirements for track and trace and testing of cannabis and
16 cannabis products.

17 16.8.10, Cannabis Servers Licensing and Training
18 Program. The objective of Part 10 is to establish licensing
19 guidelines for cannabis server licensing and training and
20 education programs. Proposed additions to Part 10 include
21 requirements for cannabis server licensing.

22 HEARING OFFICER SACHS: Thank you, Ms. Bazzano. At
23 this point we will open the floor for public comment. As
24 each person is permitted to testify they are reminded as
25 follows: You will have five minutes for your presentation.

1 When your time ends your microphone will be muted.

2 So we will now go to our first public comment.

3 MS. BAZZANO: Matthew Munoz.

4 HEARING OFFICER SACHS: Matthew Munoz, we will
5 unmute your microphone and you may begin.

6 MR. MUNOZ: Thank you, Hearing Officer Sachs and
7 Nicole. I first want to say thank you to the Cannabis
8 Control Division for their new sense of urgency to get the
9 rules in place by January 1st and to try and reduce some of
10 the red tape that's affecting many of the potential cannabis
11 companies entering this market. We realize CCD was given a
12 huge mandate with little time to accomplish the task. Thank
13 you for listening to us over the past couple of weeks in
14 working with us on this process, it's greatly appreciated.

15 Regarding today's rule hearing, the Cannabis Control
16 Division must mandate that all cannabis sold in New Mexico is
17 tested. Without cannabis testing patients and consumers will
18 be at risk for mold, mildew, pesticides and other dangerous
19 toxins that can be present in untested cannabis. Patients
20 especially deserve to know what they're consuming.

21 Proposed Rule 16.8.7.xx.D(1)(10) allowed the
22 Division or one of their employees to make up requirements
23 that they see fit without input from producers or anyone, for
24 that matter. By leaving in the language other information
25 required or specified by the Division, CCD is skirting future

1 rulemaking requirements and can arbitrarily create new
2 mandates without informing the cannabis business community.
3 The cannabis industry needs stability, not mandates that can
4 be created without notice or input.

5 Regarding Rule 16.8.x.x(B).4(A) through (E),
6 staggering implementation. If the Cannabis Control Division
7 insists on staggering implementation of cannabis testing, CCD
8 needs to re-evaluate the standards of which products must be
9 tested. The testing standard must be about where the
10 cannabis is sold and not where the cannabis is produced. The
11 proposed rule exempts companies that are located either 100
12 miles or 200 miles by automobile from the nearest cannabis
13 testing lab. Cannabis companies in rural New Mexico will be
14 allowed to skip a test and still get their product on the
15 shelves in Albuquerque and Santa Fe. The proposed rules must
16 be changed to state that all cannabis sold within 100 to 200
17 miles by automobile from a licensed cannabis testing
18 laboratory location must be tested. If cannabis producers or
19 manufacturers can bring hundreds of pounds of cannabis to
20 Albuquerque to be sold at dispensaries, cannabis company can
21 bring the required testing samples to a lab before it's sold.

22 Regarding Rule 16.8.x.x.C, Collection and
23 Transportation of Samples. There are numerous contradictions
24 in this portion of the proposed rules. 16.8.x.x.C states,
25 quote, a cannabis laboratory is responsible for the

1 collection of samples for the performance of any required
2 test. Then 16.8.x.x.C(3) states, quote, nothing in these
3 rules shall be interpreted to require a cannabis testing
4 laboratory to collect samples. And then 16.8.x.x.C(4)(A)
5 states, quote, nothing in these rules shall be interpreted to
6 require a cannabis testing laboratory to accept samples from
7 a cannabis establishment. CCD must clarify who's responsible
8 for collection and who's responsible for transportation. CCD
9 must provide clear guidelines to all cannabis companies as
10 the proposed rules will cause mass confusion as written.

11 The section of proposed rules mentioned above seems
12 to state that only cannabis company laboratories shall
13 collect samples and then states that they're not required to
14 collect samples and then states that they're not required to
15 accept samples from cannabis establishments.

16 I hope that you will clarify this and also think
17 about what cannabis needs to be tested and how it needs to be
18 tested. It's a very important part of having a safe cannabis
19 program in New Mexico. I want to thank you for your time.
20 Appreciate the moment to speak.

21 HEARING OFFICER SACHS: Thank you, Mr. Munoz. We
22 next have up.

23 MS. BAZZANO: Hearing Officer, Kristina Caffrey.

24 HEARING OFFICER SACHS: Ms. Kristina Caffrey.

25 Ms. Caffrey, your microphone has been unmuted and you may

1 being.

2 MS. CAFFREY: Thank you. My name is Kristina
3 Caffrey. I am an attorney with Ultra Health. I just want to
4 address that there may be a bit of confusion amidst the
5 public about who needs a cannabis server permit. Within the
6 Cannabis Regulation Act, 26-2C-2N defines cannabis server
7 permit as an authorization that allows a person to directly
8 offer, sell or serve cannabis or cannabis products as part of
9 commercial cannabis activity in a cannabis consumption area.
10 So the server permit really applies to those employees who
11 are serving in an consumption area.

12 As I read the statute, an employee who is working in
13 a retail location who is selling cannabis for offsite
14 consumption does not need any specialized server permit. So
15 I would simply request that the Division offer some
16 clarification on who exactly needs the server permit and who
17 needs to complete the necessary training certification.

18 I would also like to respond to some other public
19 comments that may be somewhat alarmist regarding potential
20 risks to cannabis consumers. New Mexico has had a medical
21 cannabis program since 2007 and there has been a testing
22 program for all of that time and testing requirements before
23 cannabis is sold to medical patients. And during that time
24 the safety record of medical cannabis has generally been
25 excellent. And, in fact, I don't even think that the

1 Department of Health has ever published any statistics on how
2 many adverse effects there are from cannabis contaminants.
3 So that number is so low or even zero that we don't even have
4 statistics on it. And so we do have a very strong safety
5 record from the existing testing regime and I am confident
6 that that safety record can be extended when recreational
7 sales begin. Thank you.

8 HEARING OFFICER SACHS: Thank you, Ms. Caffrey. We
9 will now move to our next participant.

10 MS. BAZZANO: Hearing Officer Sachs, Chris Mechels.

11 HEARING OFFICER SACHS: Mr. Mechels, your microphone
12 has been unmuted and you may begin.

13 MR. MECHELS: The first issue I would raise and I
14 think is the most important issue is, that I consider that
15 this hearing that you're having today is illegal, or at least
16 minimum, invalid. You're in direct violation of the New
17 Mexico Rules Act because you have a notice failure. And
18 because the meeting has been improperly noticed, specifically
19 it's been improperly noticed in the Sunshine Portal, the
20 30-day notice requirement was not met, this meeting by
21 definition of the rules act is invalid.

22 The other thing I would notice is that the meeting
23 notice that you have posted on your website is not the
24 required meeting notice. What should be on the website and
25 was on the previous hearing on December 1st was the notice as

1 required and as was posted in the Register, and ought to be
2 posted on the Sunshine Portal. So your notice requirements
3 are just, of themselves, sufficient to make this meeting
4 invalid and I suggest it should have been rescheduled.
5 Unfortunately you chose not to do that.

6 This raises some very serious questions about the
7 integrity of your whole process. The cannabis meetings, to
8 this day, I can't find no evidence that any of your hearings
9 to date have been compliant with the New Mexico Rules Act.
10 So here we have the Cannabis Division under the RLD Division
11 putting forth rules to govern cannabis -- let's say cannabis
12 growing and processing and sale within our State, so you're
13 basically in the position of using illegal processes and
14 showing absolutely no respect for New Mexico laws and yet
15 you're putting forth laws that are supposed to govern the
16 cannabis industry. This is almost laughable. You're
17 breaking laws. You're breaking the laws which govern how
18 laws are put in place, to put in place laws that you're
19 presenting as having legal impact. Why would we expect any
20 of these laws that govern cannabis, which is, in fact,
21 setting up here a legalized recreational drug industry, why
22 would we expect that any of these laws will have effect if
23 the laws that we have in place are not followed by the
24 Division. I mean, this is really awful.

25 The other thing I would notice, as far as your

1 content is, for example, the first one, number 1, anyway,
2 whatever it is, whatever, is I notice what you're modifying
3 there or you're putting forth as the proposed modification
4 refers to an 8-8-22, 2001, 2021. Well, as many probably
5 don't know, is you just had a previous meeting on December
6 1st where you addressed that very, what am I trying to say,
7 the very, the very NMAC. So now you're coming back and
8 you're modifying a modification upon a modification. I mean,
9 you're stacking up modifications and there's no way that
10 anybody could follow this. So you're whole process just
11 seems to be hodge-podge and it looks like, as an observer and
12 a concerned citizen is, that what you're being driven by is
13 the dates which are embedded in the Cannabis Act. I
14 suggested if you use legal rulemaking, which I encourage you
15 to do, that you can't make those dates and you just at some
16 point have to realize that those dates were just ad hoc.
17 They were put in place by the legislature with no sense of
18 whether they're realistic and what you're doing is by forcing
19 those dates is you're destroying your process and you're
20 destroying any reasonable way of doing these modifications,
21 because you're stacking changes on top of each other and
22 there's no way to process them all at once.

23 So to this point, I just think your whole cannabis,
24 the whole implementation of the Cannabis Act in our State is
25 opening up a whole can of worms and you really should revisit

1 it and at minimum, get legal and don't, and don't use any
2 more emergency rulemaking, which you have, you have done one
3 to this point and it, as far as I can tell, is illegal and
4 invalid.

5 You must get legal if you're hoping to have any
6 legal cannabis regulations. You must get legal in your
7 process. I really encourage you to do so. I think what
8 you've done to this point is an absolute disgrace. Anyway,
9 thank you for listening to my comment. Bye.

10 HEARING OFFICER SACHS: Thank you, Mr. Mechels, for
11 your comment. I would encourage everyone who has already
12 submitted public comment who has their hand raised to remove
13 their hand from the WebEx function so that we can see the
14 most updated list. At this point we will move to the next
15 presenter.

16 MS. BAZZANO: Hearing Officer Sachs, Michael
17 Chartrand.

18 HEARING OFFICER SACHS: Mr. Chartrand, your
19 microphone has been unmuted and you may begin.

20 MR. CHARTRAND: Thank you for hearing our public
21 comments today. Thank you, Deputy Director Sachs, for taking
22 our comments and email. And I proposed updating to website,
23 they're supposed to be posted. For the record, my name is
24 Michael Chartrand. I represent Canna Lounge, LLC, doing
25 business at Cannect Premium Lounge in New Mexico. The focus

1 of my comments has been the definitions used for the proposed
2 rules 16.8.2.X.X., the minimum standards for cannabis
3 consumption areas, they are not covered with the actual
4 definition -- so the words used are not covered in the
5 definitions. One of those, which is a big deal is, licensed
6 premises and proposed premises.

7 The definitions of licensed premises don't include
8 consumption areas, that's a big deal because that word is
9 used a lot in the proposed rules. There are a few others
10 that I encourage you to look in my comments to see those.

11 Today my comments, I want to focus mostly on the
12 fact that the proposed rules are treating every cannabis
13 consumption area as a retailer or as a restaurant, where
14 you'll either be smoking or not smoking cannabis. Either
15 way, it comes from a retailer. So the requirements based on
16 the -- NMAC 16.8.2.36 requires a legible and accurate diagram
17 and description of the location of the land or facility used
18 as a cannabis establishment, including description of each
19 retail area and all security requirements. Now, the problem
20 with that is that not every cannabis consumption area is
21 going to have a retail area. There are many companies that
22 would benefit from the use of cannabis, for instance, mobile
23 massage therapists, wedding planners who want multiple venues
24 for their potential weddings that want to feature cannabis
25 consumption. There is a catering company who wishes to offer

1 cannabis-infused meals at different venues. These are all
2 cannabis consumption companies that don't have a retail
3 space, and they're not going to have a permanent location.

4 So I encourage the CCD to look at the way the rules
5 are written to understand that not every company is going to
6 have a retail area and that basing consumption areas solely
7 off of the retail purchase of cannabis is ill advised,
8 because many people will bring their own cannabis to a
9 consumption area.

10 So another thing that I wanted to bring up in this
11 comment is in reference to 16.8.2.x.x Section G, no visible
12 consumption of cannabis products, a licensed cannabis
13 consumption area shall ensure the display in consumption of
14 any cannabis product is not visible from outside of its
15 licensed premises. By doing this you're encouraging the
16 stigma on cannabis consumption. We do not want to do that if
17 we're going to make this a recreational drug in this State.
18 But hiding it you're telling people that there's something to
19 hide and thus you're increasing the stigma on the use of
20 cannabis in public areas and thus, hurting cannabis
21 consumption areas as a business. Thank you very much for
22 your time today.

23 HEARING OFFICER SACHS: Thank you, Mr. Chartrand,
24 for your comment. We will now move to our next presenter.

25 MS. BAZZANO: Hearing Officer Sachs, we have Duke

1 Rodriguez.

2 HEARING OFFICER SACHS: Mr. Rodriguez, your
3 microphone will be unmuted here momentarily. It looks like
4 you are now unmuted and you may begin.

5 MR. RODRIGUEZ: I just wanted to share we had delays
6 in testing at 450 total plants. We had delays in testing at
7 1,750 total plants. We will have even greater testing delays
8 at 10,000 mature plants. On top of delays due to a 10-fold
9 increase in plants being harvested, we will have increase in
10 the number of producers and locations all over the State
11 facing the same challenge. On top of a sheer volume
12 increase, we're introducing additional tests for pesticides
13 and heavy metals. There will be a bottleneck created and a
14 crisis of getting product with a testing cycle and on to the
15 shelves. It is simple math and cannot simply be denied.

16 Increased demand combined with increased testing
17 requirements will create the ultimate startup and launch
18 failure. Keep in mind, we have not spoken about the
19 increased cost to the industry and ultimately to the consumer
20 due to overzealous testing requirements. Cannabis testing
21 may be an exact science, cannabis regulations are not. I
22 strongly encourage you to increase the batch size to 25
23 pounds and delay or limit new testing standards until you can
24 demonstrate a real health and safety evidence-based need and
25 a verified capacity of licensed laboratories to process the

1 anticipated volumes.

2 We had previously provided written evidence to
3 support our comments, which hopefully will be posted soon.
4 Our written comments were submitted by Ms. Kristina Caffrey
5 or myself on behalf of Ultra Health. We also did provide two
6 additional exhibits, which were submitted at 4:17 p.m. last
7 night, which are apparently not in the record and we hope
8 they will get in there. So that they're properly identified,
9 they included a Colorado Department of Revenue Marijuana
10 Enforcement Division 2020 Annual Update, which clearly
11 demonstrates the point that Ms. Caffrey had made earlier,
12 that in Colorado with a \$2 billion market, they've clearly
13 demonstrated through repeated testing of high pass rates for
14 testing, which demonstrates that we don't have to do a lot of
15 testing. The testing we've done in the past is more than
16 adequate. We need more testing laboratories.

17 On top of that, I've also provided you a research
18 article provided called The Cost of Cannabis Testing
19 Compliance. Both of these continue to support that we need
20 to be well aware of the additional costs we're passing
21 through the industry, which will ultimately be borne by the
22 consumer, and we need to be very sensitive to the timing and
23 the extent of the testing regulations we're adopting. I do
24 appreciate having this time to make comment, and have a good
25 day.

1 HEARING OFFICER SACHS: Thank you, Mr. Rodriguez.
2 We will ensure that you're public comments and exhibits
3 submitted are properly included in our record. And I also
4 just wanted to provide all attendees with a reminder, that we
5 will be accepting written public comment through the end of
6 this rule hearing. Please submit any public comment to
7 ccd.publiccomment@state.nm.us. At this point we will move to
8 our next presenter.

9 MS. BAZZANO: Hearing Officer Sachs, we have Johnn
10 Osborn.

11 HEARING OFFICER SACHS: Mr. Osborn, you have been
12 unmuted and you may begin.

13 MR. OSBORN: Thank you, Hearing Officer. My name is
14 Johnn Osborn. I'm an attorney. I'll try to keep this brief.
15 First off, kind of piggybacking off of what Mr. Chartrand
16 already said, if we're going to be treating this as a
17 regulated open market like alcohol, there's not reason for
18 folks to have to hide in order to consume. And additionally,
19 if alcohol allows pop-up venues, I think cannabis should as
20 well.

21 Moving on to research. Without naming the
22 specificities of the rules, there are just a few things that
23 I would like to address. We want to ensure that the
24 research, if there is any research that deals with or
25 involves human subjects, that it follows the same best

1 practices for standards and protocols such as approval by
2 institutional boards or any other research on human subjects
3 that must be typically met, like informed consent, I didn't
4 see that anywhere in the rule.

5 In addition, in circumstances where federal
6 licensing, such as DEA research licensure has been granted,
7 there should be an early approval process; whereby, in those
8 cases the federal government has essentially already vetted
9 these applicants far more extensively than I think the State
10 has or the State would. So in an effort to expedite
11 licensure and to conserve resources for everybody, an early
12 approval process would be very helpful.

13 And on that point, because this research
14 infrastructure can be quite capital intensive, it would be
15 helpful to provide an extended form of the provisional
16 licensure approach; otherwise, taken under these rules, where
17 a provisional license or an amendment approval has an
18 extended timeline to complete so that applicants both have
19 certainty and are able to demonstrate viability to potential
20 investors or anyone else.

21 In conclusion, I just want to say thank you for all
22 that you guys have done. I know we're all on a short
23 timeline and this is hard to do, but we appreciate the
24 Division and you-all for taking the steps. Thank you.

25 HEARING OFFICER SACHS: Thank you, Mr. Osborn, for

1 your comment. We will now move to our next presenter.

2 MS. BAZZANO: Hearing Officer Sachs, we have Jason
3 Barker.

4 HEARING OFFICER SACHS: Mr. Barker, your microphone
5 has been unmuted and you may begin.

6 MR. BARKER: Good morning, my name is Jason Barker,
7 and thank you for this time to provide public comment. I
8 wanted to point out in regards to the training and education
9 program section of the rules, that in the Cannabis Regulation
10 Act, Chapter 4, Section 6, Part K, allows for the
11 grandfathering in of the producer licensure. These rules
12 should be amended to allow all current industry employees
13 through the end of this year to be granted a grandfather in
14 cannabis server permit.

15 Currently it is averaging 1,000 to \$3,000 cost to
16 sign up for any of these cannabis courses at UNM, CNM and
17 Northern New Mexico University. If I wanted to be a
18 bartender, once you take that test it's only \$7.95. It's a
19 self-paced, online course that's only two hours in length and
20 that certification is valid for three years. New Mexico has
21 the highest alcohol-related death rate in any U.S. state
22 since 1997. Only requires two hours of training to be a
23 bartender. In Oregon the fee is \$100 for the educational
24 training and that also includes the permit, all online.

25 So I would also like to suggest that since state law

1 makers on the Finance Authority Oversight Committee have
2 approved \$5 million loan program for the cannabis
3 micro-businesses, that the RLD should also be using part of
4 this funding to enable a scholarship program for the cannabis
5 training and education programs. And the education providers
6 would be a micro-business as well. That's all I have. Thank
7 you very much.

8 HEARING OFFICER SACHS: Thank you, Mr. Barker, for
9 your comment. At this point we will move to our next
10 presenter.

11 MS. BAZZANO: Hearing Officer Sachs, I do not see
12 any new additional people with hands raised at this time. We
13 just got one. Ben Lewinger.

14 HEARING OFFICER SACHS: At this point we will move
15 to Mr. Lewinger. Your microphone has been unmuted and you
16 may begin.

17 MR. LEWINGER: Good morning, Hearing Examiner Sachs.
18 My name is Ben Lewinger, I'm the Executive Director of the
19 New Mexico Cannabis Chamber of Commerce. We're an industry
20 association representing licensed operators and
21 cannabis-adjacent businesses.

22 I have a few specific things that I want to address,
23 but first, as always, thank you to the Cannabis Control
24 Division, to RLD, for the aggressive timeline. And I also
25 want to thank everybody who has taken the time to submit

1 comments through this rulemaking process that will help to
2 strengthen the rules.

3 Regarding the proposed rule 16.8.1, the promise of
4 this new cannabis industry is to create opportunities for all
5 New Mexicans, and I believe that some of the proposed rules
6 in this section, which deal with employee permitting, will
7 instead create barriers for every New Mexicans who want to be
8 part of this industry. Specifically, making required
9 training for cannabis employees unduly expensive or otherwise
10 difficult would create financial and time barriers.

11 The point of training for servers is to ensure
12 consume safety similar to the alcohol industry. There are
13 now numerous college courses costing upwards of \$1,500 that
14 would certainly benefit cannabis business employees, but they
15 shouldn't necessarily be a requirement. Similar to permits
16 for being a server in the alcohol industry, training should
17 account for consumer safety. Otherwise, cannabis businesses
18 should have the ability to train their employees how they see
19 fit. I urge the Division to look at everything relating to
20 employee training through the lens of not creating barriers
21 that will prevent everyday New Mexicans from securing jobs
22 within the industry.

23 Regarding proposed rule 16.8.2.20, Section G, about
24 the audit, requiring a biennial audit for licensees. A full
25 audit two times per year would put unnecessary and expensive

1 requirements on licensed cannabis businesses, particularly
2 new licenses, particularly new micro-licensed businesses.

3 On behalf of the existing and new licenses that are
4 members of the chamber, we recommend, similar to other
5 letters that have been offered as public comment, the
6 licensees perform regular, full yearly audit and instead of a
7 second audit obtain, and agreed upon procedures, report from
8 a licensed CPA. This would meet the State's need to ensure
9 good financial controls for licensed operators without
10 putting undue financial burden on cannabis businesses.
11 Again, particularly micro-licenses.

12 Regarding 16.8.7 and 16.8.2, proposed testing rules
13 and cannabis laboratory rules, respectfully. The proposed
14 rules regarding collection of samples, it's not clear exactly
15 how making laboratories responsible for sample collection
16 would work as it's written in the rules. Ms. Caffrey's
17 letter submitted on behalf of Ultra Health raises some
18 important questions that I think make me believe that more
19 work is necessary to refine and finalize these new testing
20 rules. I applaud the CCD for testing aspergillus and testing
21 mycotoxins. I think there's more work that needs to be done
22 with how mycotoxin testing takes place for manufactured
23 products.

24 As you know, we have standing rules for the Medical
25 Cannabis Program that have been discussed rigorously through

1 the rulemaking process the last few years, and I would advise
2 incorporating existing rules that would ensure consumer
3 safety by taking the time to ensure that rules in testing are
4 properly informed and that there's more discussion with the
5 existing testing facilities in our State. Thank you, Hearing
6 Examiner, have a great day.

7 HEARING OFFICER SACHS: Thank you, Mr. Lewinger, for
8 your public comment. At this point we will move to our next
9 presenter.

10 MS. BAZZANO: Hearing Officer Sachs, Larry Love.

11 HEARING OFFICER SACHS: Mr. Love, your microphone
12 has been unmuted and you may begin.

13 MR. LOVE: Thank you. I'm Larry Love. I've been a
14 patient in the Medical Cannabis Program here in New Mexico.
15 We still have a Medical Cannabis Program here in New Mexico.
16 I've been advocating for it for 13 years, and I am appalled
17 that Ultra Health is here trying to lobby for less testing.
18 Testing is very important. Look at the other states. You
19 have exhibits from other states.

20 Heavy metals, any kind of mycotoxins -- what the
21 gentleman just said before us, we have people in this State
22 with compromised immune systems. We want clean medicine. We
23 also want adult-use medicine, but not at the cost of the
24 medical cannabis industry. I'm finding that -- I believe our
25 medical cannabis industry will disappear. I'm hoping that

1 people that have been applying for licenses will get one of
2 those medical licenses that you're offering, which I think is
3 fantastic.

4 But to lobby for less testing is ridiculous. We
5 need more testing. The gentleman before me said everything
6 really well, and we just need more companies in here. I know
7 that the current one or two companies probably don't want
8 that and they complain that they don't have enough work now
9 from the current producers, which I think is not in reality.

10 So I implore you with the rules, to don't go light
11 on the testing. We don't want to get sick. Thank you very
12 much. I'm Larry Love.

13 HEARING OFFICER SACHS: Thank you, Mr. Love, for
14 your public comment. At this point we will move to our next
15 presenter.

16 MS. BAZZANO: Hearing Officer Sachs, Tony Martinez.

17 HEARING OFFICER SACHS: Mr. Martinez, your
18 microphone has been unmuted and you may begin.

19 MR. MARTINEZ: Thank you for hearing from me today.
20 I appreciate all the hard work going on behind the scenes to
21 get this cannabis program up and get it running. Today I
22 think many of the comments that have been made are very well
23 thought out and should be considered and I'm glad they've
24 been entered into public record. Previous statements I've
25 made show my support for many of them for testing procedures

1 that are ensuring consumer safety, but also happening in a
2 way that are feasible so that way there's no penalties for
3 people in the further regions not living in the Rio Grande
4 Corridor. Everything that Ben Lewinger said I agree with.
5 We definitely need to not be overly cumbersome upon the
6 people that are entering this workforce or the people that
7 have already invested in training, good employees that are
8 helping the medical patients of the State to understand what
9 goes into the medicine that they purchase and what medicine
10 may help them better or worse than what they've tried in the
11 past. So I'm very thankful for the program that we have and
12 am a big fan of moving slowly to adopt new regulations rather
13 than moving too quickly.

14 So today the point I would like to make is in
15 regards to 16.8.2.13, the Requirements for Transportation of
16 Cannabis. Under Section A, Number 5, it says that the
17 cannabis must be in a locked box inside of the transport
18 vehicle. I submitted previous public comment and I think
19 maybe it was too early in the time for the Cannabis Control
20 Division to understand the context. But I would really
21 encourage you to reach out to some of the current licensed
22 producers and ask to go on a ride-along the way that many
23 people do that are going through their leadership programs
24 and their individual counties going on ride-alongs with
25 police and fire to better understand their systems and why

1 some things work and others won't.

2 Requiring us to have an additional locking mechanism
3 in addition to the locking mechanism that standard vehicles
4 come with, I believe it puts the people entering this
5 workforce at great danger. We are unarmed. We are having to
6 move quite a bit of product in and out of retail locations,
7 in and out of our grows, and having these mobile delivery
8 vehicles have this robust of a storage system just really
9 adds time on the ground.

10 Instead of taking a moment to remove the product
11 from the vehicle, close the door, relock the vehicle, arm the
12 alarm, enter the facility, maybe come back for a second load
13 for that same facility, now we're going to be messing with an
14 entire interior locking system. So in order to remain
15 compliant we're going to take out this first load, then have
16 to relock this internal cage while the product is sitting
17 there or somebody has to meet you out front. The more of a
18 spectacle we create at these moments of exchange, create
19 safety hazards. There's no better term. But this is going
20 to put human lives in danger because it's adding a whole
21 layer of regulation where there's no need.

22 I'm not aware of armed robberies happening right now
23 or product going missing during these transfers. And if
24 there's not a problem, then I don't see any reason to try to
25 fix a situation that's working excellent. Whereas, I can see

1 how adding this time for us entering and exiting our vehicles
2 with product and/or cash, is not going to help anybody. All
3 this is going to do is put us as the owner/operators and
4 employees that join out teams, it's going to put everybody at
5 risk and not just safety, but possibly human lives.

6 So I appreciate you hearing this. I hope that this
7 advice is taken and that one of the operational producers
8 raises their hand to say, "yes, please, come on a ride-along
9 with us," see what it's like so you can understand how this
10 is going to play out if we don't just stick to the rules on
11 the books, which to my knowledge are functioning well. Thank
12 you for your time. I hope you all have a great day. Thank
13 you very much.

14 HEARING OFFICER SACHS: Thank you, Mr. Martinez, for
15 your comment. We will now move to our next presenter.

16 MS. BAZZANO: Hearing Officer Sachs, Jett Curtis.

17 HEARING OFFICER SACHS: Mr. Curtis, your microphone
18 has unmuted. Please remember to state your name for the
19 record, and you may begin.

20 MR. CURTIS: Hi, my name is Jett Curtis and I am the
21 founder and CEO of High Magik. I have been working with
22 Erica Rowland, the founder and CEO of Farm Flourish. Farm
23 Flourish is a cannabis country club and wellness retreat
24 compound offering cannabis education and lifestyle
25 experiences.

1 Erica was also the founding member of Seven Clover.
2 I've had the privilege of working with Erica in Farm Flourish
3 for many months now and can honestly say that I'm blessed to
4 be in her company and have her advice. She is truly one of
5 the most passionate advocates of cannabis in our State.

6 With that said, I would like to read a statement
7 from Erica that she prepared. Erica can't be with us today,
8 so I'm speaking on her behalf. To begin, we appreciate the
9 rules and process that allows for comments. We hope comments
10 are truly evaluated to ensure a viable and successful
11 cannabis program and industry. Our comments are as follows:

12 Regarding Section 16.8.2.xx, Minimums Standards for
13 Cannabis Consumption Areas, Subsection C(5). A licensed
14 cannabis consumption area may allow qualified patients to
15 bring previously purchased goods from licensed cannabis
16 consumption area for consumption, provided the cannabis
17 product is properly stored in the requisite resealable
18 packaging and the qualified patient provides proof of
19 purchase from the cannabis consumption licensee of the
20 product to be consumed.

21 Our comment, please consider homegrown product as
22 legal medicine for use in consumption areas and lounges. It
23 has been legal medicine for the last ten years for patients
24 and it should continue going forward.

25 Regarding Subsection F, Cannabis Product Display,

1 our comment is, as a consumer I like to see what I am
2 purchasing. As a producer I want to satisfy that request.
3 Please allow retailers to donate display cannabis material to
4 underserved markets or to misfortunate patients. This can be
5 done responsibly and officially through the State tracking
6 software. This appears to be an insult to both patients and
7 producers. There is a significant cost of sending product
8 out for testing and then having to destroy cannabis product
9 that was used for display from bags. This will probably have
10 an inadvertent affect on the price of goods with the
11 adjustment of cost to consumers. We would like to keep the
12 medicine affordable so as not to encourage an illegal market.

13 Regarding Subsection G, No Visible Consumption of
14 Cannabis Products. Our comment is, we appreciate the freedom
15 and the right as provided by the law passed earlier this
16 year, to consume responsibly outside. For the sake of
17 wellness, ventilation outside is the safest and least
18 invasive consumption method. Please speak with New Mexico's
19 municipalities and request the removal of indoor-only
20 language in support of legal cannabis and patient rights and
21 freedoms.

22 In closing, we would like to wish everybody a happy
23 and joyous holiday season.

24 HEARING OFFICER SACHS: Thank you, Mr. Curtis, for
25 your comment. We will now move to our next presenter.

1 MS. BAZZANO: Hearing Officer Sachs, T.J. Trujillo.

2 HEARING OFFICER SACHS: Mr. Trujillo, your
3 microphone has been unmuted. Please remember to state your
4 name for the record and you may begin.

5 MR. TRUJILLO: I just have a few brief comments. My
6 name is T.J. Trujillo, I'm an attorney for Pecos Valley
7 Production. As previously mentioned, Pecos Valley does have
8 concerns about greater delays for testing. While we're
9 definitely in support of consumer safety measures, we
10 encourage the CDC to adopt an evidence-based need approach
11 for testing requirements as you procedure forward in
12 evaluating the rules and the comments.

13 We would also echo the need to clarify the confusion
14 over cannabis server permits and how that's being
15 administered. Thank you, Mr. Hearing Officer.

16 HEARING OFFICER SACHS: Thank you, Mr. Trujillo. At
17 this point we will move to our next presenter.

18 MS. BAZZANO: Hearing Officer Sachs, at this time I
19 don't see any new participants with their hands up.

20 HEARING OFFICER SACHS: It appears that we don't
21 have additional comments. We will set a five minute break to
22 allow any additional comments, so we will go ahead and begin
23 that break now and resume at 10:07.

24 (Recess at 10:02 a.m. to 10:10 a.m.)

25 HEARING OFFICER SACHS: Hello, everyone. Thank you

1 all for your patience. At this point we will move to our
2 next presenter.

3 MS. BAZZANO: Hearing Officer Sachs, Robbie Tafoya.

4 HEARING OFFICER SACHS: Mr. Tafoya, we will go ahead
5 and unmute your microphone and you can give your public
6 comment. Give us just a moment.

7 (pause)

8 HEARING OFFICER SACHS: Mr. Tafoya, you are unmuted
9 and you may begin.

10 MR. TAFOYA: First off I want to tell you all, I
11 appreciate what you guys are doing for the State, even for
12 the naysayers. What our State is doing is something great
13 and I'm proud of everybody who's with involved in it, thank
14 you, guys.

15 Being a patient with a medical for over 13 years as
16 well, I just think our State has done a wonderful job. The
17 people that ran it before did great, and I think we can
18 continue to do so. The thing I am worried about is, we put
19 in for our micro-producer's license, but we're what we call a
20 devil's triangle down here in southern New Mexico, which
21 means we're not able to leave this area without going through
22 border checkpoints.

23 My question really is, how are we going to be able
24 to rectify this problem to work with the federal government.
25 If not, it's going to severely compromise the people here in

1 our area to try to move our products up for them to be able
2 to use them in the medical as well, or for recreational.

3 With that, I feel kind of bad that a lot of us that
4 were just growers for ourselves for the medical that had
5 their PPLs, lost them. And again, I've said this before, I
6 hope we give the opportunity to those people that have those
7 PPLs to participate as micro-growers as well. So anything
8 the State could do to actually get those people back
9 involved, I think it would be great.

10 Again, I just want to tell everybody, thank you very
11 much for your time in putting this on. We're just excited to
12 see you guys here in southern New Mexico. Thank you.

13 HEARING OFFICER SACHS: Thank you, Mr. Tafoya, for
14 your comments. At this point we will move to our next
15 presenter.

16 MS. BAZZANO: Hearing Officer Sachs, I do not see
17 any additional new participants that would like to
18 participate in public comment.

19 HEARING OFFICER SACHS: Seeing that there are no
20 additional commenters, we will go ahead and move to close the
21 hearing.

22 As described previously, the record of attendees
23 from the WebEx video conferencing technology will be utilized
24 to record the attendees at this hearing. That record will
25 serve as the attendance sheet and will be marked as an

1 exhibit and entered into the record.

2 At this point, Ms. Bazzano, would you like to enter
3 exhibits into the record.

4 MS. BAZZANO: At this time I have no additional
5 exhibits to enter.

6 HEARING OFFICER SACHS: Thank you, Ms. Bazzano. The
7 comments submitted and discussion heard during the rule
8 hearing will be considered by the Cannabis Control Division.
9 The Division will make a final decision on the proposed rules
10 after consideration of the rulemaking record.

11 Any rules adopted by the Cannabis Control Division
12 will be filed at State Records and Archives in accordance
13 with the State Rules Act and New Mexico Register Publication
14 deadlines. Publication of the rules will also be made via
15 the Regulation and Licensing Department's public website
16 through the New Mexico Sunshine Portal website.

17 The adopted rules become effective 30 days after
18 they are filed at Records and Archives unless otherwise noted
19 at the end of a section. Any rules not adopted may be
20 postponed for future discussion at a definite time in the
21 future or may be postponed indefinitely.

22 Let the record show that this hearing was adjourned
23 at 10:12 a.m. on December 9th, 2021. Thank you all for
24 attending and have a great rest of your day.

25 (Hearing adjourned at 10:12 a.m.)

REPORTER'S CERTIFICATE

I, Kim Kay Shollenbarger, Registered Professional Reporter, do hereby certify that I reported the foregoing proceedings in stenographic shorthand via WebEx remote platform and that the foregoing pages are a transcript of those proceedings taken to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties in this case and that I have no interest in the final disposition of this case.

Kim Kay Shollenbarger, RPR



NMRLD

NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Kristen Thomson, Director

- (4) Copy of all Comments and Other Material Received by the Agency During the Public Comment Period and at the Public Hearing



From: Leeland <leelandmurray@gmail.com>
Sent: Tuesday, November 9, 2021 9:55 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Comments

Hello,

My comments are below.

- 1) I believe NM should include language specifying that a third-party laboratory will conduct the randomized sampling of cannabis products to be tested. This prevents any issues with production bias of sampling and ensures accurate and representative samples are taken.
- 2) There is no specific mention of requiring testing of pesticides, fungicides, or heavy metals. I believe this should be a requirement going forward to ensure a safe product for all persons consuming.

See a recent article about heavy metals and pesticide in Marijuana. One of which is from NIH.

<https://www.forbes.com/sites/chrisroberts/2020/08/31/whats-in-your-marijuana-check-the-papers-study-finds-pesticides-heavy-metals-in-rolling-products/>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6177718/>

<https://www.encore-labs.com/the-importance-of-heavy-metal-testing-in-cannabis>

Thank you,

Leeland Murray

From: John Grisham <John.Grisham@riccicpa.com>
Sent: Monday, November 15, 2021 8:01 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Comment on Rule 16.8.2

I'm writing to comment on the rule 16.8.2. Specifically, I would like to comment on the rule under 16.8.2.20.

This rule reads:

G. Audit: Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

I am a partner of one of the largest CPA firms in New Mexico and have unique insight into this rule. We have been one of the only CPA firms in the state that have been servicing the larger legacy growers in the state. These companies were all subject to previous audit requirements under the department of health. Over the course of the years, we have done these audits for over 10 of the legacy growers in the state.

The original requirement was to have a financial statement audit as are in the current rules as stated above. However in 2012 the New Mexico Public Accountancy Board wrote in a letter to the department of health:

"At its meeting on February 7, 2012, the New Mexico Public Accountancy Board discussed at length the issues that have been raised by certified public accountants (CPAs) and by your office regarding the Department of Health's requirement that every medical cannabis producer in New Mexico undergo an audit by a CPA. Specifically, the Board considered your request that it issue a letter stating whether CPAs in New Mexico are or are not permitted to perform audits of these entities. "The Board reviewed information from the United States Department of Justice and the New Mexico Attorney General's Office regarding criminal implications, and it heard the concern of the New Mexico Society of CPAs and the American Institute of CPAs that an audit opinion might not even be possible in the case of a medical cannabis producer. Based on the information and the concerns that were raised, the Board determined that this is a legal issue that is beyond its scope. Accordingly, it has declined to issue a letter permitting CPAs in New Mexico to conduct audits of medical cannabis producers, as it has no authority to do so. An individual licensee who is considering conducting such an audit should seek independent legal advice and might discuss his or her concerns with the United States Department of Justice and the Drug Enforcement Administration."

The result of this is that the department of health then required all producers to obtain an agreed upon procedures report from a CPA. This is a much different type of assurance than a full financial statement audit.

We ask that you clarify the rule for the following reasons:

1. The fee of a full audit would be over \$15,000 for a small entity. Having a requirement of biennially does not save any fees as beginning balances for an audit must be audited as well essentially causing two years of audit to be completed. This would essentially double these fees every other year.
2. The fee for an agreed upon procedures report would be over \$7,500 for a small entity.

3. The rule does not separate micro producer from a fully licensed cultivator. Due to the procedures required these can become substantial costs for all licensees, but especially those with a micro license.
4. It is not clear that a CPA in the state of New Mexico can make an opinion of the audit. (see above)
5. Due to the potential of cash based businesses in this industry, having auditable books and records also becomes an expensive proposition.

If you have any questions or need additional clarification, please let me know.

Regards,
John



John A. Grisham, CPA/PFS
1030 18th Street NW
Albuquerque, NM 87104
[505.338.0800](tel:505.338.0800) office
[505.338.0819](tel:505.338.0819) direct

CONFIDENTIALITY NOTICE: This e-mail is only intended for the person(s) to whom it is addressed and may contain confidential information. Unless stated to the contrary, any opinions or comments are personal to the writer and do not represent the official view of Ricci & Company, LLC. If you have received this e-mail in error, please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Any advice or information in the body of this email is subject to, and limited by, the terms in the applicable engagement letter or statement of work, including provisions regarding tax advice. Ricci & Company, LLC is not responsible for, and no person should rely upon, any advice or information in the body of this email unless such advice or information relates to services contemplated by an engagement letter or statement of work in effect between such person and Ricci & Company, LLC.

From: William Woodall <wgwoodall@comcast.net>
Sent: Thursday, November 18, 2021 4:58 PM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] comment on rules for cannabis server training

Mr. Sachs,

I have been reviewing the rules proposed for applicability, licensing and training of cannabis servers – NMAC 16.8.10. The proposed regulations indicate that servers who work within a cannabis consumption area are required to be trained. I am assuming that this language describes onsite or on-premise cannabis use only. Does this mean that those sellers who sell cannabis in premises for offsite consumption are *not* required to be trained in responsible cannabis sales practices? It was my understanding from the original legislation that all cannabis sellers and servers will be required to undergo cannabis server/seller training, similar to what New Mexico has done for many years for alcohol servers and sellers. If I have misunderstood the situation for rule making and cannabis server training here, please let me know.

If only onsite cannabis servers are required to be trained, this is a serious error of omission in making sure that cannabis is sold and served carefully and responsibly. I have been a principle investigator and part of a larger research team examining responsible alcohol and cannabis sales practices for the past 15 years. Our work, funded by the National Institutes of Health (both the National Institute on Drug Abuse and the National Institute on Alcohol Abuse and Alcoholism) has demonstrated the importance of systematic training of those who sell and serve alcohol and cannabis. I would be happy to provide our published research to you, and also to present it to the CRAC at the appropriate time. Training of cannabis sellers in offsite premises is required in many states that have legalized cannabis sales (Massachusetts, Illinois and Oregon are examples). Please respond to my query here, and let me know if and when I may share our research results and training program with members of the Cannabis Control Division, and members of the Cannabis Regulatory Advisory Board.

Cordially,

Gill Woodall

W. Gill Woodall PhD
Professor Emeritus of Communication University of New Mexico
Senior Research Scientist
Klein Buendel, Inc
505 382 9796
wgwoodall@comcast.net

From: Alyson Noell <Alyson.Noell@riccicpa.com>
Sent: Friday, November 19, 2021 7:51 AM
To: PublicComment, CCD , RLD
Subject: [EXTERNAL] Comment on Proposed Rule 16.8.2

Dear Mr. Sachs,

I'm writing to comment on the proposed rule 16.8.2 under the Cannabis Regulation Act. Specifically, I would like to comment on the rule under 16.8.2.20, related to audit requirements for cannabis entities.

This rule reads: "G. Audit: Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports."

I am a senior manager of one of the largest CPA firms in New Mexico, and I have unique insight into this rule. We have been one of the only CPA firms in the state to provide services to the NM's larger legacy growers (LNPPs), all of whom were subject to previous audit requirements under the department of health (DOH). Over the years, we have performed these audits for over 10 of the LNPPs in the state.

The original requirement placed on these LNPPs was to have a financial statement audit, as is in the current rules stated above. However, this rule was changed in 2012, when the New Mexico Public Accountancy Board wrote in a letter to the department of health:

"At its meeting on February 7, 2012, the New Mexico Public Accountancy Board discussed at length the issues that have been raised by certified public accountants (CPAs) and by your office regarding the Department of Health's requirement that every medical cannabis producer in New Mexico undergo an audit by a CPA. Specifically, the Board considered your request that it issue a letter stating whether CPAs in New Mexico are or are not permitted to perform audits of these entities. The Board reviewed information from the United States Department of Justice and the New Mexico Attorney General's Office regarding criminal implications, and it heard the concern of the New Mexico Society of CPAs and the American Institute of CPAs that an audit opinion might not even be possible in the case of a medical cannabis producer. Based on the information and the concerns that were raised, the Board determined that this is a legal issue that is beyond its scope. Accordingly, it has declined to issue a letter permitting CPAs in New Mexico to conduct audits of medical cannabis producers, as it has no authority to do so. An individual licensee who is considering conducting such an audit should seek independent legal advice and might discuss his or her concerns with the United States Department of Justice and the Drug Enforcement Administration."

As a result of this letter, the DOH revised its requirement. Instead of a financial statement audit, DOH required all producers to obtain an Agreed Upon Procedures (AUP) report from a CPA. An AUP report provides a much different type of assurance than a financial statement audit, since its focus is on regulatory compliance instead of financial reporting.

The requirements under proposed rule 16.8.2.20, as currently written, would seem to imply that these entities are required to have a full *financial statement audit* biennially. We ask that you clarify, or consider modifying, the rule for the following reasons:

1. Since many licensees will operate all or mostly cash-based businesses, having auditable books and records becomes an expensive proposition for the licensees.
2. The rule does not separate micro producers from larger, fully-integrated cultivators. The procedures apparently required (see below) can become expensive for all licensees, but would be disproportionately burdensome for those with a micro license:
 - a. The fee of a full audit would be over \$15,000 for a small entity, if conducted annually. Requiring an audit only biennially would not decrease these fees, as a financial statement audit requires that both beginning-of-year and end-of-year balances be audited. So essentially the entity would be paying double the fee, every other year.
 - b. The fee for an AUP report would be over \$7,500 for a small entity.
3. It is not clear that a CPA in the state of New Mexico can provide an opinion with respect to a financial statement audit (see above).

For these reasons, we request that you consider providing additional clarification on the type of audit work required, and/or consider lessening the requirements placed on micro licensees, in order to ensure that an appropriate level and type of compliance burden is placed on all NM licensees.

If you have any questions or need additional clarification, please let me know. Thank you for your consideration.

Sincerely,
Alyson



Service plus value, it all adds up.



Alyson Noell, CPA, CVA
1030 18TH St. NW
Albuquerque, NM 87104
[505.338.0800](tel:505.338.0800) office
[505.338.0839](tel:505.338.0839) direct

CONFIDENTIALITY NOTICE: This e-mail is only intended for the person(s) to whom it is addressed and may contain confidential information. Unless stated to the contrary, any opinions or comments are personal to the writer and do not represent the official view of Ricci & Company, LLC. If you have received this e-mail in error, please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Any advice or information in the body of this email is subject to, and limited by, the terms in the applicable engagement letter or statement of work, including provisions regarding tax advice. Ricci & Company, LLC is not responsible for, and no person should rely upon, any advice or information in the body of this email unless such advice or information relates to services contemplated by an engagement letter or statement of work in effect between such person and Ricci & Company, LLC.

Valdez, Julia, RLD

From: PublicComment, CCD , RLD
Subject: FW: [EXTERNAL] Public Comment Cannabis Servers Licensing and Training Programs

From: Sam Shore <Sam@Alchemy-Wellness.org>
Sent: Sunday, November 28, 2021 11:03 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Public Comment Cannabis Servers Licensing and Training Programs

Please see my comments and questions regarding the proposed rules for the upcoming Cannabis Server Permit and training programs.

Section 16.8.10.8 Subsection A:

States Cannabis Consumption areas and all servers must satisfactorily complete Permit Program every 3 years. Does this also include medical and recreational dispensaries, or only consumption areas?

Section 16.8.10.8 Subsection B:

States a student must earn a score of 80% or higher on an approved test or completion of a module, however there is no direction as far as how many questions are required to be included on the individual modules and final exam?

How many questions does each module test and final test need to be?

Section 16.8.10.8 Subsection C. Providers duty to inform the division of student's satisfactory completion:

Is there a fee the provider/instructor is responsible for paying when submitting the server permit application?

Whose responsibility is it to inform and know that a person with a child support hold cannot be issued a cannabis server permit?

How will the Provider/Instructor know if a person has a child support hold against them?

Section 16.8.10.8 Subsection E. Temporary Server Permits:

Does the CCD have requirements for the look and verbiage which needs to appear on the temporary permit for classroom and online programs?

Does the temporary server permit also need to be numbered to assure a unique number to each student?

States temporary server permits will be valid for 90 days; however it also states students should be informed permanent permits may take up to 120 days? What happens if the temporary permit expires at 90 days but the permanent one still has not been received by the student?

Section 16.8.10.9 Subsection B (1) c: Fees that will be charged to take the program.

Does the fee also need to include the \$35 permit application fee, or is this paid directly to the state by the applicant?

Section 16.8.10.9 Subsections (2) b:

This section states the program must include a minimum of 4.5 hours classroom hours.

However, in following section 16.8.10.9 Subsection (2) c (iii), states proof that the average user will take 4 hours to complete?

Please advise does the CCD want 4.5 hours or 4 hours of coursework time?

Section 16.8.10.9 Subsection F Number (1)

Renewal applications must include proof of \$5,000 surety bond. Can you please provide additional information and direction as far as what exactly needs to be covered in this bond?

Section 16.8.10.10 Subsection D: Proctored Test

How many questions are required for the proctored Test?

Can the proctored test be online based or does it have to be paper test?

How many retakes is an applicant allowed to attempt on the final exam?

Section 16.8.10.9 Subsection C:

Fees which will be charged, previously the bill mentions the fee not to exceed \$35.00, is the \$35.00 the fee for the permit, or the max fee for course access?

Section 16.8.10.8 Subsection 2 D

“whether the program includes an up to date sample photo of a drivers license issued to a minor”.

There are multiple types of these license, “Provisional License”, which one does the CCD want covered in this training?

Section 16.8.10.9 Subsection 2 e

Management specific training.

Should this be included in the regular program or is this something separate offered only to managers during a different training? If this should be included for all, what section should this be a part of?

Section 16.8.10.10 Subsection D

Proctored Test: How many questions must the test include?

Does the proctored test need to be on paper or can it be electronic or either depending on the need of the student?

What time length should be allowed for proctored tests?

Can an applicant only retake the test once or are multiple attempts permitted?

Thank you for this opportunity.



Sam J. Shore
Co-Founder & Cannabis Educator

T: 310-383-2181 | E: Sam@Alchemy-Wellness.org | W: <https://Alchemy-Wellness.org>

WARNING: CONFIDENTIALITY NOTICE - The information enclosed with this transmission are the private, confidential property of the sender, and the material is privileged communication intended solely for the individual indicated. If you are not the intended recipient, you are notified that any review, disclosure, copying, distribution, or the taking of any other action relevant to the contents of this transmission are strictly prohibited. If you have received this transmission in error, please notify us immediately at (505) 225-1105

From: Denise P <denisedpadilla@gmail.com>
Sent: Tuesday, November 30, 2021 11:41 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] License

Good Afternoon,

My question is, are the requirements the same for a HEMP license as for a Cannabis license? If not, what's the difference?

I am gratefully for all your assistance. I look forward to attending your meetings and hearings, The information is helpful, Keep up the good work!

Denise

Sent from [Mail](#) for Windows

Valdez, Julia, RLD

From: PublicComment, CCD , RLD
Subject: FW: [EXTERNAL] Consumption Area Proposed Rules Comment

From: Michael Chartrand <connectinfo@gmail.com>
Sent: Wednesday, December 1, 2021 12:57 PM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Consumption Area Proposed Rules Comment

Deputy Director Sachs,

In review of the proposed rules for Cannabis Consumption Areas, my company, **Connect Premium Lounge**, noticed important terms and definitions that did not include Consumption Areas. This often created contradictory laws. Please review the following definitions as well as their proposed corrections.

Licensed Premises- HB2 Ch.4 Definition HH

(1.) *All enclosed public and private areas at the location that are used in the business.*

(2.) *All areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale, and retail sale of cannabis products.*

As written this would disable any licensed premises from having an outdoor consumption area. The appropriate second definition is

(2.) All areas outside of a building that are specifically included in the license for the production, manufacturing, wholesale sale, retail sale, and consumption of cannabis.

The term "Licensed Premises" is used many times in the Requirement for a Retail License (NMAC 16.8.2.36). The proposed rules (NMAC 16.8.2-2) state in section E. Cannabis Consumption Area License: Must meet all qualifications for a cannabis retailer to be approved for, and authorized to conduct, a cannabis consumption area.

Cannabis establishment- HB2 CH4 (p.3) Section E.

E. *"Cannabis Establishment" means:*

- (1) a cannabis testing laboratory;*
- (2) a cannabis manufacturer;*
- (3) a cannabis producer;*
- (4) a cannabis retailer;*
- (5) a cannabis research laboratory*
- (6) a vertically integrated cannabis establishment;*
- (7) a cannabis producer microbusiness; or*
- (8) an integrated cannabis microbusiness*

The term "Cannabis establishment" is used consistently throughout HB2 as well as the proposed rules. It does not include "consumption area". A definition adjusted to include consumption areas is

E. "Cannabis Establishment" means:

- (1) a cannabis testing laboratory;**
- (2) a cannabis manufacturer;**
- (3) a cannabis producer;**
- (4) a cannabis retailer;**
- (5) a cannabis consumption area;**
- (6) a cannabis research laboratory**
- (7) a vertically integrated cannabis establishment;**
- (8) a cannabis producer microbusiness; or**
- (9) an integrated cannabis microbusiness**

Facility- HB2 Ch4 (p.7) Definition AA

AA. "Facility" means a building , space or grounds licensed for the production, possession, testing, manufacturing or distribution of cannabis, cannabis extracts, or cannabis products.

The term "Facility" is used many times in reference to cannabis consumption areas. It does not, by definition, include consumption areas. An alternative definition is

AA. "Facility" means a building , space or grounds licensed for the production, possession, consumption, testing, manufacturing or distribution of cannabis, cannabis extracts, or cannabis products.

Thank you for your time and consideration.

Very Respectfully,
Michael Chartrand
Founder, CEO
Cannect Premium Lounge
863.242.7566



Virus-free. www.avg.com

From: Chris <cmechels@q.com>

To: rld.cannabiscontrol <rld.cannabiscontrol@state.nm.us>; robert.sachs <robert.sachs@state.nm.us>; Linda <linda.trujillo@nmlegis.gov>

Date: Tuesday, 23 November 2021 4:14 PM MST

Subject: Comment to the 9 December 2021 CCD Rules Hearing

Dear CCD,

I have examined the material provided for this hearing, and find it does not comply with the NM Rules Act, thus the hearing should be rescheduled.

There are THREE serious issues, each of which would justify rescheduling;

1) The required 30 day notice in the Sunshine Portal was not given. The current SSP notice was posted on 19 November, well short of 30 days.

2) The hearing notice was also not posted on the RLD website. This is strange as earlier CCD hearings met this requirement.

3) The content of the proposed changes does not agree with the notice, which is posted in the Register. The notice lists changes to 16.8. Part (1,2,3,6,7,9 & 10) The RLD website lists (1,2,3,6,7 & 10) with only "stubs" provided for 3 & 6, and no mention of 9. This seems a total disconnect. As the proposed changes are, per the Rules Act, to be make available at the time of the notice, it is hard to imagine how this came to pass.

4) As noted these are SERIOUS failings, showing ignorance or disregard of the Rules Act. This seems to demand attention

5) Especially troubling in the CCD context. Recreational Cannabis opens up serious ethical and legal concerns, and if RLD is establishing rules in an illegal process, we have given the responsibility to the wrong Department.

6) I look forward to better performance at a rescheduled hearing.

7) Regards,

8) Chris Mechels
505-982-7144

From: PublicComment, CCD , RLD
Subject: FW: [EXTERNAL] Testing requirements - Pesticides & Heavy Metals Comments

From: Argon Labs NM <info@argonlabsnm.com>
Sent: Tuesday, December 7, 2021 9:50 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Testing requirements - Pesticides & Heavy Metals Comments

Cannabis Control Division Public Comment

c/o Robert Sachs
P.O. Box 25101
Santa Fe, NM 87504

Dear CCD:

Staggered Testing – Pesticides

Just like producers were given high priority in the licensing process, I think laboratories should have been given also a high priority in the form of having disclosed testing requirements and fail limits at about the same time producer draft rules came out. Based on the current proposals, I would like to point out/suggest that Pesticides testing should be postponed and staggered/implemented at a later date. The reason is that the equipment required is fairly expensive and method development takes time to complete. In addition, if you are a startup business and if you are in the cannabis industry, it may be very difficult to obtain some sort of financing assistance – ultimately having to resort to private financing.

There is a lot of talk about the krispy kreme effect in the state regarding the availability of cannabis products shortly after April 1st, but nobody is talking about the funnel effect in testing should there be a shortage of laboratories. Other than pesticides, all other tests, including method development and equipment requirements should be fairly reasonable within the current time frame. Therefore, I recommend that Pesticides testing be postponed for at least 6 months to allow labs to develop and implement this method without having to rush it to the April 1st deadline and risk some labs not being ready by the current deadline.

Heavy Metals testing – Possible flaw the way the rule is drafted

The proposed rules for HM testing only require testing soil, water and growing media and does not required testing any of the final products ready for consumption – like flower, concentrates, edibles, topicals, etc. I strongly recommend revising this rule as I see the following flaws:

- i. The state is assuming that the current HM limits on soil and water will result in “clean” flower with low HM concentrations. Assuming clean flower the state is assuming clean concentrate and subsequently all other products as clean since concentrates are used for the production and manufacturing of edibles, topicals, etc. I don’t think there is any other state that has approved recreational cannabis that DOES NOT test cannabis products for Heavy Metals.
- ii. Concentrates- typically derived from flower or trim. The flower or trim may have decent levels of heavy metals, but once it is turned into concentrate oils, as the word implies, pesticides and heavy metals present in the flower or trim will also increase in concentration and possibly to a level that may be harmful. In any other state, producers tend to test their trim for heavy metals and pesticides to determine if concentration levels are suitable to make that product suitable for concentrate, knowing that levels will increase.

I recommend the CCD to reconsider the heavy metals rule based on the thoughts I have shared. Heavy metals, in my opinion, should be a requirement and hopefully the state will require it in the future.

Sincerely,

Dayelle Cueto
Laboratory Services
Argon Labs NM
Hobbs, NM

From: PublicComment, CCD , RLD
Subject: FW: [EXTERNAL] Cannabis Consumption Area Proposed Rules Comment

From: Michael Chartrand <connectinfo@gmail.com>
Sent: Tuesday, December 7, 2021 1:32 PM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Cannabis Consumption Area Proposed Rules Comment

Deputy Director Sachs,
In review of the proposed rules for Cannabis Consumption Areas, Connect Premium Lounge noticed a flaw that severely diminishes the potential for new, small business growth.

According to the proposed rules (NMAC 16.8.2.xx Cannabis Consumption Area Licensure General Provisions) " : Applicants for a cannabis consumption area must meet all qualifications for a cannabis retailer to be approved for, and authorized to conduct, a cannabis consumption area." This requires Cannabis Consumption Areas to maintain a permanent location:

NMAC 16.8.2.36 (3)

-legible and accurate diagram and ***description of the location*** of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

This implies that there must be a permanent location for cannabis consumption and that it must be accompanied by a retail area. This further hinders small business involvement in Cannabis Consumption Areas by requiring a cannabis retail storefront.

This prevents many companies from providing their service. A few examples:

A) Mobile Massage Therapist who would like to offer cannabis infused lotions as part of a massage/therapy package.

B) A catering company who wishes to offer cannabis infused meals at varying locations.

C) A wedding planner whose clients wish to have a consumption area present at their reception, or as part of their ceremony.

D) A small, family-owned cannabis retailer who could not afford to maintain a permanent consumption area, but wishes to have one available during a promotion.

E) An acupuncturist whose patients welcome the additional therapy of cannabis, but are not Cannabis Patients and do not want to be seen entering a cannabis retail store.

There are two solutions to this restrictive wording.

1. Remove the requirement for Cannabis Consumption Areas to meet Retail Area requirements, and write requirements specifically for Cannabis Consumption Areas.

2. Establish a third type of license with rules to govern the safe and appropriate use of cannabis in non-permanent settings.

We do not believe it is the intent of the Cannabis Control Division to legislatively prevent any company from providing their service legally and safely. Connect offers any assistance we may lend to establishing inclusive and equitable rules for the governing of Cannabis Consumption Areas. Thank you for your time and consideration.

Very Respectfully,
Michael Chartrand
Founder, CEO
Connect Premium Lounge



Virus-free. www.avg.com

From: James McCue <jamesmccue101@gmail.com>
Sent: Thursday, December 2, 2021 8:57 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Cannabis Control Division Questions Public Comment

James McCue

91 Armenta Road

Jemez Springs, NM 87025
575-829-0013

To: Robert Sachs, Deputy Director of Policy for the Cannabis Control Division

Cannabis Control public comment questions:

Village Cannabis Co-op: Are there established rules and regulations on Medical Cannabis Patient Cooperatives? Could multiple medical cannabis patients grow their allowed personal plants in one location, with site maintained and supervised by a master grower without full regulation and licensure? 10 "Patients" maximum. 60 maturing plants. Agriculture zoned property.

Site Certifications and watershed protections: What agency will provide initial site certifications and ongoing monitoring of production sites to ensure the safety of neighbors and sensitive watersheds?

Dark Skies protections: Are there established provisions for light pollution issues with greenhouse growers that utilize lighting to mature their plants? Village Dark Skies ordinance compliance. What is the enforcement/compliance agency?

Compliance training and consulting: Are there guidelines established for employment qualifications or certifications necessary to provide Inspections of Production and Manufacturing sites? Ensuring compliance to CC regulations. Will there be Compliance career opportunities for support personnel and Inspectors Tracking systems training and installation.

What software will be utilized? Will compliance be inspected and certified prior to licensure? Career opportunities for support personnel and Training/Installation/Compliance careers.

Thank you.

James McCue



December 8, 2021

Via Email

Cannabis Control Division
Regulation and Licensing Department
Ccd.publiccomment@state.nm.us
Rld.cannabiscontrol@state.nm.us

Re: Public Comments Regarding 16.8.2 and 16.8.7

Dear Cannabis Control Division,

Please accept these public comments from New Mexico Top Organics-Ultra Health, Inc., and Ultra Health, LLC sent in relation to the proposed Cannabis Control Division regulations 16.8.2 and 16.8.7 NMAC, to be considered ahead of the December 9, 2021 public hearing.

I. Testing Regulations Contained in 16.8.2

Ultra Health will first address the regulations regarding testing laboratory applications, which are contained in 16.8.2 NMAC. Because the draft does not contain complete numbers, Ultra Health will quote the text of the proposal and then provide the comment upon it.

Internal Quality Testing

“A cannabis establishment may conduct analytical testing using validated methods for internal quality control purposes without obtaining a cannabis testing laboratory license but may not offer testing services to another person or entity.”

This proposal could be interpreted too broadly and result in confusion regarding testing requirements. Some licensees could read this provision and believe that their own “internal” testing substitutes for third-party testing, or could believe that their own internal testing suffices for test results.

Ultra Health does not believe it is the Cannabis Control Division’s (“Division”) intention to allow internal testing to satisfy testing requirements. The Division should revise this provision to clarify that third-party testing is required: “A cannabis establishment may conduct analytical testing using validated methods for internal quality control purposes without obtaining a cannabis testing laboratory license but may not offer testing services to another person or entity. Internal quality control testing does not relieve a licensing from obtaining testing from a third-party licensed testing laboratory.”

Common Ownership

“No person with a direct or indirect interest in any cannabis establishment other than a

cannabis research laboratory may hold an interest in a Cannabis Testing Laboratory.”

This provision is confusing and departs from the statutory language. NMSA 1978, Section 26-2C-6(G) (2021) does say, “The division shall not allow a person that is licensed as any type of cannabis establishment other than a cannabis research laboratory to hold, directly or indirectly, a cannabis testing laboratory license.”

The Division must remember that when a statute uses the term “person” it means more than a human individual. The Uniform Statute and Rule Construction Act, NMSA 1978, Section 12-2A-3(E) provides that when the word “person” is used “in the statutes and rules of New Mexico,” the word “means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.”

The meaning of Section 26-2C-6(G) is therefore, “the Division shall not allow an individual, corporation, limited liability company, or other corporate entity that is licensed as any type of cannabis establishment to hold, directly, or indirectly, a cannabis testing laboratory license.”

The word “hold” here means that the license has been issued by the Division in the particular name of the licensed entity. The meaning of Section 26-2C-6(G) is therefore, “the Division shall not issue a cannabis testing laboratory license to any individual, corporation, limited liability company, or other commercial entity that is licensed as any other type of cannabis establishment.”

The Division has gone considerably beyond the actual statutory language. It prohibits a “person with a direct or indirect interest in any cannabis establishment” from “hold[ing] an interest in a Cannabis Testing Laboratory.” Now, the Division has not defined what an “interest” is. Does a 1% ownership share count as an interest? Does being an employee of a cannabis establishment count as an “interest?” Does being a former employee of a cannabis establishment mean the individual is “interested” in that establishment? The term is so vague that it will be sure to cause confusion and disruption.

The statute focuses on licensure: a cannabis establishment licensee may not *also* be licensed as a testing laboratory. The regulation, however, focuses on the elusive and undefined “interest:” persons with an interest in a cannabis establishment cannot be “interested” in a testing laboratory. In this way, the regulation departs from and expands the scope of the statute, but it does so in a vague and unintelligible way.

The Division should revise this regulation to conform to the statute, and if it continues to use the word “interest,” it must define that word.

Additionally, the Division has proposed a regulation that states, “for any initial or renewal application [for a cannabis testing laboratory],” applicants must “certify[y] that the applicant...will adhere to...the prohibition on any person holding an interest in one or more cannabis testing laboratories from holding an interest in any other cannabis license other than a

cannabis research laboratory.” For the same reasons described above, this provision is unintelligible and unworkable.

Labeling Claims

“For all required testing or testing for the purposes of labeling claims, a person authorized by this rule shall collect the required samples according to the following guidelines...”

This proposal references “labeling claims” without explaining what “labeling claims” are. Is a labeling claim something like, “the smoothest smoke,” or is it something more specific, like “organic” or “hypoallergenic?” Is a labeling claim something about the concentration of THC or CBD, or is it something like “nut-free?”

The Division could avoid confusion by explaining what it means by “labeling claims.”

Destructive Testing

“Samples testing positive for a prohibited pesticide must be retained for a minimum of 30 days. All other samples must be retained for a minimum of 15 days. Upon notification from the division that samples are needed for an investigation by the division, a law enforcement agency, or another department, the cannabis testing laboratory shall retain the sample until further directed by the division.”

The Division must remember that cannabis testing is, for the most part, destructive testing. It may be impossible to retain a sample testing positive for pesticides because that sample has been destroyed in the course of testing. The Division should verify with the laboratories themselves if they physically can retain any amount of the sample.

II. Testing Regulations Contained in 16.8.7

Ultra Health will now address the regulations regarding testing standards contained in 16.8.7 NMAC. Because the draft does not contain complete numbers, Ultra Health will quote the text of the proposal and then provide the comment.

BioTrack

A general comment on the track-and-trace regulations: within the medical cannabis program’s use of BioTrack, for many years there was a problem where licensees were showing product “in stock” that had not been tested or had failed tests and could not be remediated.

This problem with counting failed product as “in stock” led to terrible confusion regarding the actual amount of cannabis available in the medical cannabis program. For many years, the Department of Health reported massive amounts of cannabis “in stock,” but the known reality among licensees was that much of that cannabis stock was unavailable for sale, due it being untested or having failed tests. This confusion directly impacted calculations on plant

count, because it led the Department of Health to believe much more cannabis was available for sale than actually was available.

To avoid this confusion, the Division should add a regulation providing that if cannabis has failed tests, it must be moved out of the “in stock” category and into a different category. Additionally, the Division should require that cannabis that has not yet been tested cannot be listed as “in stock.” This way, the Division has a better chance of knowing the real amount of cannabis in stock throughout the system.

Who “Collects” Samples

“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.”

“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.x.x NMAC; or (b) Contractors who have completed the Sampling Agent Training offered by the U.S. Department of Agriculture’s Domestic Hemp Production Program.”

“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.”

These proposed regulations require that cannabis testing laboratory employees (or hemp sampling agents) “collect” samples for testing. With these requirements, the Division actually interprets statutory language too narrowly. The Division does have the ability to interpret the statutory language somewhat more broadly.

Section 26-2C-18(B) of the Cannabis Regulation Act directs the Division to “specify protocols for testing sample collection that ensure accurate test results, including requiring that testing **samples be collected by laboratory staff** trained in testing sample collection” (emphasis added).

However, the Cannabis Regulation Act has other provisions that generally indicate how the Division is to interpret statutory language and indicate the policy goals the Division should attempt to achieve. First, Section 26-2C-3(B) directs the Division to “promulgate rules that are consistent with industry standards.” Thus, regulations should be consistent with industry standards, and if the Division interprets statutory language to bring it into consistency with industry standards, that is an allowable interpretation.

Second, 26-2C-3(G) creates the Cannabis Regulatory Advisory Committee, which advises the Division on “protection of public health and safety while ensuring a regulated environment for commercial cannabis activity that does not impose unreasonable barriers that would perpetuate, rather than reduce and eliminate, the illicit market for cannabis.” This section

indicates that the Committee and the Division must balance public safety with the need for system that does not impose unreasonable barriers on licensees. If the Division interprets statutory language to avoid unreasonable barriers that might perpetuate, rather than reduce and eliminate, the illicit market for cannabis, that is an allowable interpretation.

Many New Mexico court decisions have noted that where a statute contains some ambiguity, an administrative agency has the authority to reasonably interpret that statute. “When an ambiguity such as this exists, the agency charged with effectuating the statute has authority to interpret it.” *Board of Educ. V. New Mexico State Dep’t of Pub. Educ.*, 1999-NMCA-156, ¶ 19, 128 N.M. 398; see also *State ex rel Helman v. Gallegos*, 1994-NMSC-023, ¶ 39 (“The Board’s interpretation of this ambiguous statute was entitled to be given ‘substantial weight’ by the reviewing courts”).

The statutory phrase “collected by laboratory staff” is ambiguous and is subject to the reasonable interpretation of the Cannabis Control Division. “Collected by laboratory staff” could mean a number of things. It could mean that cultivation employees place samples in a dropbox on the main door or gate of the cultivation facility and that laboratory staff drive by and pick them up. It could mean that a trained laboratory staff member receives the delivery of testing samples from the producer at the laboratory location. It could mean that laboratory staff have to physically come inside the cultivation facility on harvest days or thereafter to physically take a bit of cannabis flower from a curing rack, or that laboratory staff have to physically come inside the industrial kitchen to spoon out a sample of cannabis-infused chocolate.

Note that the statute is phrased in the passive voice (grammatically speaking). It does not say “requiring that testing employees take samples.” It says “be collected,” which renders the action of the testing employees passive. The testing employee is passively collecting, not actively collecting. Therefore, a reasonable interpretation of the statute is that the testing employee has a passive role to play: the testing employee waits at the laboratory location and, when a producer delivers samples to the laboratory, the testing employee receives the samples and observes chain-of-custody protocols.

Courts in New Mexico also allow interpretation of statutes to avoid absurd results. “If the strict wording of the law suggests an absurd result, we may interpret the statute to avoid such a result.” *Cummings v. X-ray Assocs.*, 1996-NMSC-035, ¶ 45, 121 N.M. 821. The best example of this comes from *Old Abe Co. v. Mining Comm’n*, 1995-NMCA-134, ¶ 18-19, where the Court of Appeals upheld a Mining Commission regulation because the Commission interpreted a statute in such a way as to avoid an absurd result.

In *Old Abe*, the statute defined “affected area” as “the area outside of the permit area where the land surface, surface water, ground water and air resources are impacted by mining operations within the permit area.” *Id.*, ¶ 17. A literal reading of the statute would require that the area contain land surface AND surface water AND ground water AND air resources. The Court of Appeals could not conclude that the Legislature wished to limit mining oversight to areas containing land surface AND surface water AND ground water AND air resources. Such areas would be exceedingly rare in the desert of New Mexico.

The Court of Appeals found that the “literal interpretation” of the statutory phrase would be “unworkable.” *Id.* ¶ 18-19. Therefore, the Court affirmed the Mining Commission’s regulation which changed the “and” to an “or,” thereby defining “affected area” to include land surface OR surface water OR ground water OR air resources.

The Court of Appeals emphasized that “[w]here the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others.” *Id.*, ¶ 19, quoting *Stanley v. Raton Bd. of Educ.*, 117 N.M. 717, 719, 876 P.2d 232, 234 (1994).

Of course, this principle is not a get-out-of-jail-free card for agencies. Agencies must use this principle sparingly, and only when literal use of words would lead to injustice, absurdity, or contradiction. Although most of the Cannabis Regulation Act is clear and direct and does not call for agency interpretation, this is one instance where the Division can and may take a closer look.

Here, literal use of the phrase “collected by laboratory staff” would lead to injustice, absurdity, and unreasonable barriers for cannabis licensees. If the phrase “collected by laboratory staff” means that laboratory staff have to come inside cultivation facilities to put their hands on samples, then that requirement will paralyze the entire cannabis distribution system. Harvests could not happen when the plants are ready, but would have to happen when testing staff is available. The testing employee would spend most of his/her time on transport, rather than testing, because of the rural location of many cultivation areas. Scheduling of all cannabis-related activities would revolve around laboratory staff availability, rather than biological readiness. If the laboratory staff is not able to come retrieve samples during curing, then the entire timetable of a harvest (from cutting to shelf) would be disrupted. The result could be that an army of laboratory staff scurries frantically around the 121,697 square miles of New Mexico chopping cannabis flowers off and then scurries frantically back to the laboratory itself.

Furthermore, requiring laboratory employees to travel to the cultivation site could even mean that those laboratory employees must shower and change clothes each time they go to a different cultivation site. If laboratory employees travel between cultivation sites, they could carry contaminants from one site to the other. For example, if one cultivation site has an infestation of dust mites, the sample gatherer could pick up the mites on her clothing, travel to the next cultivation site, and contaminate the second site with the dust mites from the first site. The transmission of contaminants or pollen from one cultivation site to the next could also jeopardize the trustworthiness of laboratory results, because the laboratory could not tell from where the contamination originally came.

Because of the risk of such contamination, laboratory employees entering cultivation sites would have to pass through some kind of decontamination protocol, adding yet more cost, time, and labor—costs which would have to be passed to consumers, resulting in higher prices for legal products.

It would be an absurd result if laboratory testing would actually cause contamination. That is, the goal of laboratory testing is to ensure cannabis is safe to consume. And yet having

laboratory staff travel to cultivation areas to pick samples presents a clear and present danger of cross-contamination. A traveling lab employee can easily pick up dust mites at one cultivation site and rapidly infect other cultivation sites, leading to widespread infection or infestation. Indeed, the best way to avoid cross-contamination is to avoid people traveling between cultivation sites.

The Division must realize that having laboratory staff travel to cultivation sites is an absurd interpretation of the statute, because if laboratory staff travels between sites, it will cause the very problem that testing is designed to avoid: contamination of cannabis with unwanted or unsafe elements. Indeed, one of the reasons New Mexico's medical cannabis supply has been so safe over the years is that cultivation sites are isolated and do not cross-pollinate (literally and figuratively).

As for the historical safety record, Ultra Health notes that New Mexico's medical cannabis supply has had an admirable safety record for 14 years. Ultra Health is not aware of any deaths or serious adverse reactions traceable to medical cannabis within the state. Furthermore, Ultra Health is not aware of any adverse reactions experienced as a result of contamination, rather than because of the inherent psychoactive components of cannabis itself. Many medical cannabis patients are immunocompromised but have not had any adverse effect from any contaminants.

Ultra Health does receive requests from sensitive patients for pesticide-free cannabis or cannabis grown with only responsible pesticide methods, and Ultra Health is all too happy to oblige. But a cultivator's efforts to maintain a low-pesticide site, or to use only certain mild pesticides, will be for naught if a laboratory employee tracks pesticides from one production facility to another. Indeed, in order to maintain the integrity of Ultra Health's cultivation campus, Ultra Health would require a testing laboratory employee to don full protective equipment.

Ultra Health suggests that the requirement that "testing samples be collected by laboratory staff trained in testing sample collection" may be fulfilled by 1) providing that if cultivation staff undergo training in testing sample collection, possibly by the laboratory staff, such training qualifies as "collection by laboratory staff" 2) the "collection" point be at the laboratory itself, where cultivation staff deliver samples "collected" at the laboratory itself; 3) the collection point be the perimeter of the cultivation site; 4) producers submit a quality control plan that describes how they take samples for testing, and the submission of such a plan satisfies the collection mandate; 5) some combination of these options.

Intermediate Testing

"The batch must pass all required tests **prior to** the sale, distribution, transfer, **extraction, or further manufacturing** of any cannabis product contained in the batch, except for the purposes of remediation as permitted by this section" (emphasis added).

"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...of any **cannabis flower and trim that it harvests prior to extraction**,

other manufacturing, transfer to another cannabis establishment, retail sale, or delivery to a patient or consumer” (emphasis added).

“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 **concentrate** that it manufactures using volatile solvents **prior to further manufacturing**, transfer to another cannabis establishment, retail sale, or delivery to a patient or consumer” (emphasis added).

“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 that it manufactures prior to** transfer to another cannabis establishment, **retail sale**, or delivery to a patient or consumer” (emphasis added).

All of these proposed regulations indicate that cannabis producers and manufacturers must obtain intermediate testing. That is, cannabis flower/trim must be tested before it goes to extraction, extracted concentrates must be tested before they go into manufactured products, and manufactured products must be tested before sale. Thus, an edible cannabis product would be tested three times: first the flower/trim would be tested prior to extraction, and second the extracted concentrate would be tested prior to manufacture of edibles, and third the edible batch itself would be tested before sale.

These intermediate testing requirements contradict what the Division has admitted in other regulations. For example, the Division allows that a “cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent.” This provision admits that the process of extraction with an approved volatile solvent kills and eliminates microbes. Indeed, the process of applying heated solvents kills any microbes. If the Division admits that the process of extraction removes microbes from flower/trim, then why must flower/trim be tested for microbes prior to extraction?

Likewise, the Division has stated, “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,” which suggests that if flower/trim has been tested for pesticides, the concentrate/extract/manufactured product need not be tested for pesticides again.

Rather than intermediate testing at every step, the Division should adopt a testing regime that recognizes the particular risks posed by each category of cannabis. Cannabis flower/trim sold directly, without extraction or further manufacturing, should be tested for potency, homogeneity, visual inspection, microbiological contamination, pesticides, and water activity.

However, if the cannabis flower/trim will go to extraction to be concentrated, the process of extraction changes the risk profile of the resulting product. Cannabis flower/trim that goes to extraction need not be tested *prior* to extraction. The resulting extract/concentrate should be tested for potency, homogeneity, visual inspection, residual pesticides, and residual solvents.

Now, the Division seems to suggest that if flower/trim has been tested for pesticides, the concentrate/extract need not be tested for pesticides again. This may not be appropriate. The process of extraction and concentrating can also concentrate pesticides. Thus, the action level of pesticides on unprocessed cannabis, which has a much larger volume, will be different than the action level of pesticides on concentrates, which as their name suggests, concentrates the mass into a smaller volume. Thus, pesticide testing may be needed on extracts/concentrates.

If the concentrate is the final product that is sold to consumers, then it does not require further testing. If the concentrate does go further into an edible or a topical, the process of manufacture further changes the risk profile. The final product should be tested for potency, visual inspection, water activity, and homogeneity.

Requiring testing of flower/trim prior to extraction will add unnecessary expense while making no difference in public safety or public health. Producers are adept at knowing which batches of flower/trim are not of the quality to put directly on shelves. Consider the apple analogy: some apples go directly on store shelves, some apples are destined for the apple sauce or apple juice pot, and some apples go into the cider pile. It is easy to distinguish which apples go where: the round, shiny, intact apples without bruises go on the shelves. The apples with a few bruises and some lumps and bumps go to make apple sauce or apple juice. And the disheveled, misshapen, bruised, partially decaying apples go to the cider distillery, because the process of distilling cider ensures that all decay and microbes will disappear. Given the differing levels of processing, the risk profile changes with each category. It would not make sense to test the cider apples for salmonella when the distillation process will turn the cider apples into sterile alcohol.

The same is true for tomatoes. Some tomatoes go directly on the shelf, even still attached to their vines. Some tomatoes go to a canning factory to be made into diced tomatoes, crushed tomatoes, tomato paste, or tomato sauce. Given the differing levels of processing, the risk profile changes with each category. It would not make sense to test the sauce tomatoes for salmonella when the cooking process sterilizes the tomatoes. However, cooking and canning can introduce a different risk of botulism toxin. It would make sense to test canned tomatoes for botulism, but it would make no sense to test intact, raw tomatoes for botulism.

The same is true with cannabis. Producers can easily identify the clean, intact flowers of highest quality that go directly on the shelves of stores. Producers can also easily identify the less intact flowers and the trim that will make wonderful extracts and concentrates. Because of this, producers know which cannabis they need to test for microbes, and they know that the batches destined for the extraction lab will be sanitized during the process of extraction. For these reasons, intermediate testing is unnecessary and will only add unreasonable barriers for legal licensees.

The Division should reevaluate its testing regime to avoid unnecessary intermediate testing.

Homogeneity Testing

“Batch-level homogeneity testing is performed by testing for total THC potency additional samples in addition to the sample tested for potency. The number of samples to be tested shall be based on the size of the batch according to the method validated by the cannabis testing laboratory; however, the total number of samples tested shall be not less than three for any batch of material five pounds or less.”

The first sentence of this provision simply does not make sense. It may be a typographical error, but Ultra Health requests the Division clarify what this sentence is supposed to mean.

Time Limitations on Remediation

The rules contain no time limitation for remediation. Can a failed batch be remediated and retested 30 days after initial testing? 60 days? 90 days? It may help to specify a time window during which failed batches may be remediated and retested.

Potency and Homogeneity Testing

“A set of samples shall pass homogeneity testing if the relative standard deviation of total THC potency of the samples is no more than 15%.”

Does this mean that the potency differences in the homogeneity tests cannot be more than 15 percentile points (i.e., first test potency results 25% but a second test on the same product shows results of 9%)? Or does this mean that the homogeneity potency numbers cannot have a margin of error greater than 15% (i.e. first test shows 25% potency and second test on same product shows 21%) If the Division means the latter, then the margin of error should be adjusted to 20%, as this is the most commonly used scientific margin of error in cannabis testing.

Sample Size Increments and Storage

“Samples shall be sealed in a single use, tamper-evident container...minimum quantity of sample increments.”

The rule requires that a minimum of 10 sample increments be taken from batches of dried cannabis greater than five pounds. What is not explained is whether each of those 10 increments must be sealed in individual containers. That is, will there be 10 sample containers for each five-pound batch, or only one sample container?

Requiring individual containers for each sample increment would be wasteful and time-consuming without improving testing protocol or affecting test results. The increments all come from the same batch, so it is not apparent what goal would be served by segregating them into separate containers.

Secure Versus Sealed Container

“After collection of samples, a batch of cannabis product shall be segregated in a **secure** container and stored under controlled environmental conditions... The **sealed** container shall be labeled with the identification number used in the track and trace system...” (emphasis added).

This provision is confused regarding the type of container that must be used to store batches after sampling: a sealed container, or a secure container?

It should be a *secure* container only, and *not* a sealed container. A sealed container presents problems for the drying/curing process. The entire point of drying/curing cannabis is to remove moisture. Removing moisture not only renders the cannabis flammable (making it smokable), but it renders it more resistant to microbial growth. Microbes need moisture to grow, and therefore, the lower the moisture content in cannabis, the lower the capacity for microbial growth. Thus, drying/curing is an essential part of making cannabis safer for consumption.

A sealed container, however, can lock moisture inside the container and discourage the essential drying. In fact, cannabis is best dried/cured on open racks inside a curing room or curing cabinet. A sealed container would entirely impede the process of drying.

Furthermore, the “secure” container should not only be a container, but an entire room. As harvests increase, space needed for drying/curing will increase as well. Producers will need not only a cabinet-sized curing space, but will need entire rooms. Now, rooms can certainly be secured with locks and keypads. And racks within a curing room can certainly be labeled with the batch number and other identifying information.

This provision needs revision to take into account the actual production practices of cannabis cultivators.

III. Batch Size

The Division should change the maximum batch size from 15 pounds to 25 pounds. Currently, 16.8.1.7(B)(1) NMAC defines “batch” as “an identified quantity of cannabis no greater than 15 pounds.”

The batch size has not increased commensurately with the increase in overall production volume. Within the medical cannabis program, the standard batch size was 5 pounds for quite a while, but that was when licensees had a maximum of 450 or 1,750 cannabis plants. When put into terms of mature cannabis plants, the batch size was 5 pounds when licensees had 800 mature cannabis plants.

Now, licensees can have many more plants—some licensees may have up to 10,000 mature plants, and many more licensees will have between 3,000 and 8,000 mature plants. Thus, the overall production volume has increased many times over. For a licensee who can now cultivate 10,000 mature plants, its capacity has increased more than 12 times. And of course,

with the new open licensing scheme, there will eventually be many more cultivators than merely the 33 legacy medical producers. Aggregate production volume will thus increase by at least ten times over the aggregate production volume in the medical program.

The batch size, however, has only increased from 5 pounds to 15 pounds. The two licensed testing laboratories already had challenges keeping up with 5 pound batches from 33 producers cultivating 1,750 plants each. The two licensed testing laboratories will therefore face a monumental task in keeping up with 15 pound batches from dozens of producers cultivating thousands of plants each.

More laboratories will hopefully come online prior to the start of non-medical sales on April 1st, 2022. However, even if new laboratories come online, testing will still be the bottleneck in recreational cannabis supply. This is simply due to the rapid increase in the volume of cultivation. Ultra Health has heard that the two licensed laboratories may be evaluating using more efficient equipment, but even an equipment upgrade cannot address a ten-fold increase in aggregate production volume. Furthermore, obtaining those instruments and putting them into service could take several months.

In essence, cannabis cultivation will transform from mere gardening to full-scale farming in the coming months. To deal with this transformation, the testing laboratories will need to rapidly scale up their operations. Increasing the batch sizes can assist with the onslaught of testing needs. By increasing the batch size, one can reduce the number of tests needing to be performed, and somewhat lessen the bottleneck that will emerge in 2022.

Ultra Health recommends a maximum batch size of at least 25 pounds, which is five times the medical programs 5-pound batches. Even when the medical program was testing 5 pound batches, there were no reports of adverse effects on patients from any contaminant. Other states with mature recreational programs have seen very few adverse effects and high passage rates. Millions of tests have been done without finding significant amounts of harmful cannabis contaminants.

Sincerely,

/s/ Kristina Caffrey
Kristina Caffrey
Chief Legal Officer
Ultra Health
kristina@ultrahealth.com
505-401-7847 (cell)

December 8, 2021
Cannabis Control Division

Comments on Proposed Rule 16.8.7

Quality Control, Inspection, and Testing of Cannabis Products

Cannabis Control Division

Submitted by:
Milan Patel, Founder & CEO
PathogenDx

Thank you for the opportunity to comment on the proposed regulations for New Mexico's adult use cannabis program. As a company focused on testing cannabis and hemp for harmful contaminants, we strongly support the proposed regulations, particularly the Microbiological Testing Requirements in Table 2. We believe that any cannabis products destined for human consumption should be tested for dangerous microbes, and urge you to maintain the current list of contaminants.

In particular, we commend your inclusion of *Aspergillus* species level testing, which is emerging as another standard across the country. As you may be aware, many mature markets are now even adding *Aspergillus* species (specifically *Aspergillus Flavus*, *Aspergillus Fumigatus*, *Aspergillus Niger* and *Aspergillus Terreus*) as a primary compliance test and not a screen to their testing programs, with Colorado recently finalizing the addition¹ and Oregon taking steps towards it.²

We also have one recommendation for strengthening these regulations to bring them into line with existing national standards.

Recommendation:

Lower the action level for *E. Coli* from "100 CFU/gram" to "Present in 1 gram" and require, not merely allow, speciation as Shiga-toxin producing *E. Coli*.

Reasoning:

As every state with legal, regulated cannabis has had to establish its own testing program, there is always some variation between states when it comes to policy specifics. However, there are also certain areas where best practices have emerged. For example, virtually every state tests for *E. Coli* and *Salmonella*.

Unfortunately, the proposed action level of 100 CFU/g for *E. Coli* would put New Mexico in a minority of states with such a high level.

¹ See <https://sbg.colorado.gov/med-2021-rulemaking-information>

² See <https://www.oregon.gov/oha/PH/DISEASES/CONDITIONS/CHRONIC/DISEASE/MEDICALMARIJUANAPROGRAM/Documents/rules/Summary%20of%20proposed%20testing%20requirement%20changes%2010-20-2021.pdf>

Of the 27 other states that establish action levels by regulation, 13 have either “absence” or “non-detection” in 1 gram,³ while five have “less than 1 CFU/gram”⁴ and one has 7 CFU/g.⁵

An action level of 100 CFU/g is used in only five states.⁶

Further, four states name external sources in their regulations, including the American Herbal Pharmacopoeia⁷ and the United States Pharmacopeia.⁸ These sources both recommend E. Coli be tested for its absence in 10 grams.⁹

When all 31 of these programs are considered, less than one in six states have action levels of 100 CFU/g for E. Coli. New Mexico establishing such a high action level would run counter to what has become a national standard, so we recommend lowering the action level to be in line with the over 80% of states that require either the absence of E. Coli or a single-digit CFU/g.

This lower action level becomes much more feasible when only considering shiga-toxin producing E. Coli, rather than all species. As these former are pathogenic and generic E. Coli is not, we therefore recommend changing “may” to “shall” in the statement “Cannabis product may be tested for shiga-toxin producing E. coli, rather than generic E. coli.”

Conclusion:

We thank you for including microbiological contaminants in these proposed regulations, and urge you to adopt them. Doing so will help protect people who consume cannabis products, and ensure New Mexico's new adult use industry is in line with national standards. Further, we respectfully request you lower the E. Coli action level as outlined above.

Thank you again for your consideration. Please do not hesitate to contact us if you have any questions or would like additional information.



Milan Patel
Founder & CEO
PathogenDx
<https://pathogendx.com/>

³ CA, HI, IL, MA, MI, MO, MT, NV, NH, NM, ND, PA, RI, and WA.

⁴ AK, CO, FL, ME, and OK.

⁵ MN.

⁶ AZ, AR, DC, MD, and OR.

⁷ IL and OH.

⁸ CT and UT.

⁹ https://www.ahpa.org/Portals/0/PDFs/Policies/14_0206_AHPA_micro_limits_comparisons.pdf

From: PublicComment, CCD , RLD
Subject: FW: [EXTERNAL] Public Comments Regarding Hearing December 9, 2021
Attachments: DOC120821-12082021155422.pdf; CostOfCannabisTestingCompliance.pdf

From: Duke Rodriguez <duke@ultrahealth.com>
Sent: Wednesday, December 8, 2021 4:17 PM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>; CannabisControl, RLD, RLD <RLD.CannabisControl@state.nm.us>
Subject: [EXTERNAL] Public Comments Regarding Hearing December 9, 2021

Attachments in connection with oral comments to be made at the public hearing on December 9th, 2021. The documents provide written evidence in support for raising the batch size to a maximum of 25 pounds for the same strain/ same harvest. Both the report generated by Colorado Department of Revenue Marijuana Enforcement Division for the year 2020 (Page 14, Table 15) and the published research [Citation:Valdes-Donoso P, Sumner DA, Goldstein R (2020) Costs of cannabis testing compliance: Assessing mandatory testing in the California cannabis market. PLoS ONE 15(4): e0232041. <https://doi.org/10.1371/journal.pone.0232041>] demonstrates the high cost of testing and critical importance for reasonable testing sizes while historically confirming a high percentage level of packages that passed testing. Cannabis testing is an exact science - regulations are not. Determination of the appropriate batch size should be more evidence based (i.e., based on scientific evidence) and integrated with the marketplace reality of existing throughput and testing capacity.

--

Duke Rodriguez
President & CEO
16624 N 90th Street
Suite 200
Scottsdale, AZ 85260
phone [480.404.6699](tel:480.404.6699)
cell [480.246.5700](tel:480.246.5700)



COLORADO
Department of Revenue
Marijuana Enforcement Division

MED 2020 Annual Update

Mark Ferrandino

Executive Director, Colorado Department of Revenue

Heidi Humphreys

Deputy Executive Director, Colorado Department of Revenue

Dominique Mendiola

Senior Director, Marijuana Enforcement Division

Kyle Lambert

Deputy Director, Marijuana Enforcement Division

Anthony Fisher

Manager, Data Analytics, Marijuana Enforcement Division

Benjamin Stuart

Senior Data Scientist, Marijuana Enforcement Division

September 17, 2021

Table 15: Marijuana Testing Results as of December 31, 2020 (Percentage of Packages that Passed Testing)

	Market	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Microbial Contaminants Results	Adult Use	99.19%	99.17%	97.34%	95.73%	99.02%	99.55%	95.93%	97.21%	98.50%	99.08%	99.61%	99.29%	98.28%
	Medical	99.65%	99.67%	99.23%	98.77%	98.38%	99.53%	100%	98.81%	100%	98.34%	99.60%	99.07%	99.21%
	Adult Use	99.62%	99.72%	99.83%	99.53%	99.58%	99.76%	99.82%	99.77%	99.72%	99.66%	99.88%	99.76%	99.72%
	Medical	99.94%	99.97%	99.70%	99.95%	99.86%	99.83%	99.91%	99.81%	99.96%	99.90%	100%	99.97%	99.90%
Residual Solvents Results	Adult Use	95.90%	95.25%	94.90%	93.92%	95.43%	95.66%	94.98%	95.03%	94.44%	94.86%	96.67%	96.04%	95.22%
	Medical	95.77%	96.31%	95.30%	95.27%	94.86%	95.51%	95.69%	95.27%	97.11%	95.56%	96.27%	96.07%	95.71%
	Adult Use	95.28%	96.62%	95.09%	98.66%	98.08%	98.88%	98.14%	98.74%	97.72%	98.87%	98.71%	98.02%	98.15%
	Medical	97.37%	96.47%	98.55%	99.13%	97.82%	99.36%	99.41%	98.61%	98.82%	97.86%	98.12%	98.55%	98.68%
Flower and Shake/Trim Microbial Contaminants Results	Adult Use	84.89%	82.25%	83.45%	86.99%	85.71%	84.44%	85.48%	82.93%	82.94%	82.59%	86.37%	85.25%	84.43%
	Medical	86.33%	86.04%	86.05%	85.42%	86.30%	87.76%	88.94%	84.65%	85.43%	85.87%	84.70%	81.93%	85.78%
	Adult Use	99.33%	99.25%	98.47%	98.20%	97.83%	98.87%	98.48%	98.25%	98.48%	96.75%	97.49%	97.95%	98.24%
	Medical	99.65%	99.48%	99.19%	98.20%	97.38%	97.97%	97.84%	98.20%	98.88%	98.79%	97.67%	99.08%	98.58%
Flower and Shake/Trim Potency Results	Adult Use	99.87%	99.56%	98.48%	99.28%	99.25%	99.73%	99.58%	99.09%	99.71%	99.17%	99.39%	98.96%	99.35%
	Medical	99.96%	99.83%	99.14%	99.19%	98.94%	99.33%	99.29%	99.42%	99.59%	99.47%	99.34%	99.44%	99.42%
	Adult Use	96.70%	95.88%	93.71%	91.15%	93.19%	95.54%	94.45%	91.57%	93.19%	91.31%	88.97%	90.53%	93.32%
	Medical	97.17%	95.89%	93.85%	91.56%	94.27%	94.72%	96.11%	97.58%	97.23%	92.90%	96.51%	97.37%	95.36%
Infused Edible Potency Results	Adult Use	86.10%	84.93%	84.27%	87.74%	74.42%	84.49%	86.44%	86.55%	90.64%	86.09%	84.97%	89.39%	85.48%
	Medical	91.75%	84.92%	89.59%	91.61%	87.70%	88.72%	88.01%	80.33%	93.56%	91.96%	88.07%	94.85%	89.38%
	Adult Use	87.79%	84.94%	83.18%	88.01%	72.82%	84.23%	86.19%	85.57%	89.08%	83.56%	83.91%	88.89%	84.77%
	Medical	93.26%	85.96%	89.30%	94.14%	88.41%	89.66%	88.21%	79.89%	93.21%	92.92%	90.39%	95.59%	90.25%
Infused Edible Homogeneity Results	Adult Use	99.84%	100.00%	99.05%	98.67%	99.31%	99.84%	99.84%	99.53%	99.36%	99.18%	99.81%	99.58%	99.50%
	Medical	100.00%	99.44%	97.81%	97.78%	99.46%	100.00%	99.39%	97.50%	100.00%	100.00%	100.00%	99.32%	99.23%
	Adult Use	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
	Medical	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Infused Non-edible Microbial Contaminants Results	Adult Use	90.85%	94.64%	83.33%	73.20%	85.94%	85.05%	92.91%	90.38%	87.23%	88.00%	80.65%	89.33%	87.44%
	Medical	88.68%	92.31%	92.00%	73.08%	88.89%	89.13%	74.29%	100.00%	100.00%	100.00%	80.00%	100.00%	89.01%

RESEARCH ARTICLE

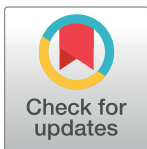
Costs of cannabis testing compliance: Assessing mandatory testing in the California cannabis market

Pablo Valdes-Donoso^{1*}, Daniel A. Sumner^{1,2}, Robin Goldstein¹

¹ Agricultural Issues Center, University of California, Davis, California, United States of America,

² Department of Agriculture and Resource Economics, University of California Davis, Davis, California, United States of America

* pvaldesdonoso@ucdavis.edu



Abstract

Most U.S. states that have regulated and taxed cannabis have imposed some form of mandatory safety testing requirements. In California, the country's largest and oldest legal cannabis market, mandatory testing was first enforced by state regulators in July 2018, and additional mandatory tests were introduced at the end of 2018. All cannabis must be tested and labeled as certified by a state-licensed cannabis testing laboratory before it can be legally marketed in California. Every batch that is sold by licensed retailers must be tested for more than 100 contaminants, including 66 pesticides with tolerance levels lower than the levels allowable for any other agricultural product in California. This paper estimates the costs of compliance with mandatory cannabis testing laws and regulations, using California's testing regime as a case study. We use state government data, data collected from testing laboratories, and data collected from lab equipment suppliers to run a set of Monte Carlo simulations and estimate the cost per pound of compliance with California's new cannabis testing regulations. We find that cost per pound is highly sensitive to average batch size and testing failure rates. We present results under a variety of different assumptions about batch size and failure rates. We also find that under realistic assumptions, the loss of cannabis that must be destroyed if a batch fails testing accounts for a larger share of total testing costs than does the cost of the lab tests. Using our best estimates of average batch size (8 pounds) and failure rate (4%) in the 2019 California market, we estimate testing cost at \$136 per pound of dried cannabis flower, or about 10 percent of the reported average wholesale price of legal cannabis in the state. Our findings explain effects of the testing standards on the cost of supplying legal licensed cannabis, in California, other U.S. states, and foreign jurisdictions with similar testing regimes.

OPEN ACCESS

Citation: Valdes-Donoso P, Sumner DA, Goldstein R (2020) Costs of cannabis testing compliance: Assessing mandatory testing in the California cannabis market. PLoS ONE 15(4): e0232041. <https://doi.org/10.1371/journal.pone.0232041>

Editor: Renuka Sane, National Institute of Public Finance and Policy, INDIA

Received: December 18, 2019

Accepted: April 5, 2020

Published: April 23, 2020

Peer Review History: PLOS recognizes the benefits of transparency in the peer review process; therefore, we enable the publication of all of the content of peer review and author responses alongside final, published articles. The editorial history of this article is available here: <https://doi.org/10.1371/journal.pone.0232041>

Copyright: © 2020 Valdes-Donoso et al. This is an open access article distributed under the terms of the [Creative Commons Attribution License](https://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

Data Availability Statement: All relevant data are within the manuscript.

Funding: The author(s) received no specific funding for this work.

Introduction

U.S. state markets for cannabis are evolving rapidly. As of mid-2019, 32 of 50 states had some form of legal medicinal cannabis system in place, and since 2012, 11 of those states had legalized and regulated adult-use cannabis [1].

Competing interests: The authors have declared that no competing interests exist.

California was the first U.S. state to decriminalize the sale of medicinal cannabis, with the 1996 passage of the Compassionate Use Act (Proposition 215). In 2003, a California state legislative act, Senate Bill 420, set out more specific rules for the operation of medicinal cannabis collectives and cooperatives. For the following 15 years, regulations on the cultivation, manufacturing, and sale of cannabis in California were largely limited to a wide variety of local ordinances, with little intervention from the state government.

In November 2016, California voters legalized adult-use cannabis by approving Proposition 64 (the Adult Use of Marijuana Act, or AUMA). Subsequently, the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA) created a unified framework for the state licensing of cannabis businesses and the taxation and regulation of adult-use and medicinal cannabis. MAUCRSA regulations went into effect on January 1, 2018 [2].

Safety regulations generally add costs to production. One of the most costly components of California's new system of cannabis regulation is the mandatory testing of all legal cannabis for more than 100 contaminants, including pesticides and heavy metals. This paper is the first to comprehensively examine the economic challenges of cannabis testing and estimate the cost of testing compliance per pound of cannabis marketed in a legal and licensed cannabis market. In a previous article [2], we provide a brief introduction to testing costs to which this paper supplies needed rigor.

We review and compare the allowable tolerance levels for contaminants in cannabis with allowable levels in other crops from California, and review rejection rates in California since mandatory testing began in 2018. We compare these with rejection rates in other U.S. states where medical and recreational use of cannabis are permitted. We use primary data from California's major cannabis testing laboratories, several cannabis testing equipment manufacturers, Bureau of Cannabis Control license data including geographical location information, and data from Cannabis Benchmarks on average wholesale batch sizes to estimate the testing cost per pound of cannabis legally marketed in California.

Background

At the U.S. federal level, cannabis is still classified as a Schedule I illegal narcotic, and its possession, sale, and even testing are serious criminal offenses under federal law [3,4]. Even cannabis businesses that are fully compliant with state regulations thus face legal risks, uncertainties, and obstacles to doing business such as a lack of access to mainstream banks [5]. In recent years, however, the conflict of state and federal laws has generally been mediated via a series of informal, non-binding agreements, letters, and memos of understanding between the U.S. Department of Justice and states. These understandings have enabled cannabis businesses to focus more on complying with state and local laws than on hiding from federal prosecutors.

All of the U.S. states that have legalized, taxed, and regulated recreational cannabis, and most states that have legalized and regulated medicinal cannabis, require testing for some contaminants (e.g. fungus, mold, bacteria, and mycotoxins) and testing and labeling of potency (as measured by concentrations of cannabinoids such as the phytocannabinoid tetrahydrocannabinol, or THC, and cannabidiol, or CBD). Colorado and Washington were the first states to vote to legalize and regulate adult-use cannabis, both in 2012. Colorado first introduced the enforcement of potency and homogeneity tests for retail cannabis products in 2014. Residual solvents and microbial contaminants were added to the testing requirements in 2015, and heavy metals and pesticide residues as of mid-2018 [6–8]. Washington State mandates that licensed testing laboratories must also perform potency tests, moisture analysis, foreign matter,

microbial and mycotoxin screenings, and (for extracted cannabis, e.g. cannabis oil) screenings for residual solvents [9].

Some states, including California and Colorado but not Washington, also require more sophisticated and costly wet-lab tests for pesticides and heavy metals. Per MAUCRSA, the California Department of Pesticide Regulation (DPR) established maximum allowable thresholds for 66 different pesticides, including zero tolerance for trace amounts of 21 pesticides and low allowable trace amounts of 45 other pesticides. MAUCRSA also established thresholds for 22 residual solvents plus a variety of heavy metals and other contaminants. The Bureau of Cannabis Control (BCC) was put in charge of licensing and regulating testing labs and enforcing the testing standards.

In the 2016 marketplace, prior to the passage of Proposition 64—which was unregulated at the state level and partially regulated (medicinally) at the local level—total California cannabis production was estimated at approximately 13.5 million pounds of raw flower, with roughly 80% of this production illegally shipped out of the state [10]. These out-of-state shipments may explain why California accounted for 70% of nationwide cannabis confiscations in 2016 [11]. Rough estimates suggest that only about one-quarter of California's in-state cannabis consumption, or less than 5% of total cannabis production, went to the legal medicinal market in 2016 [12].

Until 2018, there were no rules in place at the state or local levels in California for testing contaminants, even for products legally marketed as medicinal cannabis [5,13]. A minority of medicinal cannabis retailers in the pre-2018 state-unregulated market was routinely testing and labeling cannabis for THC potency, but few were voluntarily testing for contaminants. Informal evidence suggests that pesticide residues were common in cannabis products in the pre-regulated market. For example, in 2017 an investigation reported that 93% of 44 samples collected from 15 cannabis retailers in California had pesticide residues [14].

California's cannabis testing standards

The mandatory testing framework introduced under MAUCRSA is summarized in [Table 1](#), where we briefly describe the tests for specific types of batches and the standards for passing each test. Dried cannabis flower (or “harvest batches”) and cannabis products (or “manufactured batches”) must be tested for concentrations of cannabinoids and various contaminants in order to enter the legal market. Some tests (for cannabinoids, presence of foreign material, pesticides, heavy metals, mycotoxins, microbial impurities and terpenoids) apply to all batches, while some others (moisture content, residual solvents, processing chemicals) only apply to some forms of cannabis. Heavy metals tests (for traces of lead, cadmium, arsenic, and mercury) were not mandatory until December 2018.

[Table 2](#) shows the list of contaminants with their maximum tolerance levels allowed in California. Tolerance levels are generally lower for products that are inhaled than for products that are eaten or applied topically. For 21 pesticides, the maximum residual level is zero, meaning that no trace of those residues may legally be detected in a sample of cannabis.

MAUCRSA requires that all batches of cannabis flowers and products must be sampled and tested by licensed laboratories before being delivered to retailers. Distributors are responsible for testing (although cultivators, manufacturers, and retailers may also hold distributor licenses). [Fig 1](#) shows the flow of cannabis testing in California. The weight of a harvest batch cannot exceed 50 pounds; larger batches must be broken down into 50-pound sub-batches for testing. The sample size must be bigger than 0.35% of its weight. A processed batch cannot surpass 150,000 units.

Table 1. Summary of mandatory testing per batch type and criterion used to pass tests.

Type of Test	Description	Batch Tested	Criterion Required to Pass Test
Cannabinoids ¹	Measure concentration of THC, THCA, CBD, CBDA, CBG, and CBN	All	≤10mg of THC per serving of edibles. ≤100mg of THC per package of medical use only products. ≤500mg of THC per package of medical use only orally dissolving products. ≤1000mg of THC per package of topical products. ≤2000mg of THC per package of medical use only topical products.
Foreign material ²	Determine presence of foreign material (hair, insects, feces, packaging contaminants, and manufacturing waste)	All	≤ 1/4 of sample area covered by sand, soil, cinders, dirt, mold, or any imbedded foreign material. ≤ 1 insect fragment, hair, or count mammalian excreta per 3g
Pesticide ³	Absence of 21 and limited presence of 45 pesticide residues	All	Levels of specific contaminants below action levels (see Table 2)
Heavy metals ⁴	Limited presence of four heavy metals	All	Levels of specific contaminants below action levels (see Table 2)
Mycotoxins ⁴	Screening of Aflatoxin B1, B2, G1, and G2, and Ochratoxin A	All	Aflatoxin B1, B2, G1, and G2, and Ochratoxin A < 20 µg/g
Microbial impurities ¹	Screening of Shiga toxin - <i>Escherichia coli</i> , <i>Salmonella</i> spp., and pathogenic <i>Aspergillus</i> species	All [†]	Shiga toxin and <i>Salmonella</i> spp., and <i>Aspergillus</i> species (<i>A. fumigatus</i> , <i>flavus</i> , <i>niger</i> , and <i>terreus</i>), undetected in 1g
Moisture content ¹ and water activity ⁴	Measure of moisture content, and water activity (A_w) according with type of product	Flowers, solid edible products	$A_w \leq 0.65$ for dried flowers or ≤ 0.85 for solid and semi-solid edible products. Lab must report moisture content as a percentage.
Solvent and processing chemical ³	Absence of six and limited presence of 14 solvent and processing chemical residues	Cannabis products or pre-rolls	Levels of specific contaminants below action levels (see Table 2)
Terpenoids ⁴	Determination if sample conforms to the labeled content of terpenoids	All labeled products	The laboratory must report the result of the terpenoid testing as a percentage in mg/g or mg/mL depending on the type of product.

Source: MAUCRSA and California regulations (November 2018)

[†] Screening of *Aspergillus* species only in inhalable cannabis or inhalable cannabis products.

Phase-In of Testing Regime:

¹ All cannabis harvested or manufactured on or after January 1, 2018, must have been tested for this item.

² In addition to the analytical tests required in ¹, all cannabis harvested or manufactured on or after July 1, 2018, must have been tested for this item.

³ Category I of pesticides and II of and solvents-and-processing chemicals must have been tested for cannabis harvested or manufactured on or after January 1, 2018. Category II of pesticides and I of solvents-and-processing chemicals must have been tested for cannabis harvested or manufactured on or after July 1, 2018.

⁴ In addition to the analytical tests required in ¹, ³, and ³, all cannabis harvested or manufactured on or after December 31, 2018, must have been tested for this item.

<https://doi.org/10.1371/journal.pone.0232041.t001>

After testing each batch, laboratories must file a certificate of analysis (COA) indicating the results to distributors and to the BCC. If a sample fails any test, the batch that it represents cannot be delivered to dispensaries for marketing. Instead, it can be remediated or reprocessed (no more than twice) and fully re-tested again. If a batch fails a second re-testing after a second remediation, or if a failed batch is not remediated, then the entire batch must be destroyed.

Analyzing the cannabis market, compared with other agricultural markets, presents a unique challenge to researchers because of the rapidly changing legal environment, the lack of historical data or scientific studies, the lack of government tax data, and the cash nature of the business. Testing prices are not publicly advertised by licensed laboratories. Quotes are known to vary depending on the number of samples, the frequency of testing, the type of contract between the distributor and the laboratory, among others. Bulk pricing is common and is negotiated on a case-by-case basis.

We approximate the costs of testing by collecting detailed data on the testing process and constructing in-depth estimates of the capital, fixed, and variable costs of running a licensed testing laboratory in California. We use these results in a set of simulations that estimate the costs per pound generated by cannabis testing under the California regulations in place as of mid-2019. We make some market assumptions based on the most reliable industry data available as of this writing in order to estimate the current cost per pound of testing compliance.

Table 2. Tolerance levels for pesticide residues, heavy metals, residual solvents, and processing chemicals in cannabis and cannabis products in California.

Type of Contaminant	Tolerance Level ($\mu\text{g/g}$) ²
<i>Pesticide residues</i>	
Aldicarb, Carbofuran, Chlordane, Chlorfenapyr, Chlorpyrifos, Coumaphos, Daminozide, DDVP (Dichlorvos), Dimethoate, Ethoprop(hos), Etofenprox, Fenoxycarb, Fipronil, Imazalil, Methiocarb, Methyl parathion, Mevinphos, Paclobutrazol, Propoxur, Spiroxamine, Thiocloprid ¹	0 (I), 0 (O)
Acephate, Acetamiprid, Bifenazate	0.1 (I), 5 (O)
Abamectin	0.1 (I), 0.3 (O)
Acequinocyl	0.1 (I), 4 (O)
Azoxystrobin	0.1 (I), 40 (O)
Bifenthrin	3 (I), 0.5 (O)
Boscalid	0.1 (I), 10 (O)
Captan	0.7 (I), 5 (O)
Carbaryl	0.5 (I), 0.5 (O)
Chlorantraniliprole	10 (I), 40 (O)
Clofentezine	0.1 (I), 0.5 (O)
Cyfluthrin	2 (I), 1 (O)
Cypermethrin	1 (I), 1 (O)
Diazinon	0.1 (I), 0.2 (O)
Dimethomorph	2 (I), 20 (O)
Etoxazole	0.1 (I), 1.5 (O)
Fenhexamid	0.1 (I), 10 (O)
Fenpyroximate, Flonicamid, Hexythiazox	0.1 (I), 2 (O)
Fludioxonil	0.1 (I), 30 (O)
Imidacloprid	5 (I), 3 (O)
Kresoxim-methyl	0.1 (I), 1 (O)
Malathion	0.5 (I), 5 (O)
Metalaxyl	2 (I), 15 (O)
Methomyl	1 (I), 0.1 (O)
Myclobutanil	0.1 (I), 9 (O)
Naled	0.1 (I), 0.5 (O)
Oxamyl	0.5 (I), 0.2 (O)
Pentachloronitrobenzene	0.1 (I), 0.2 (O)
Permethrin	0.5 (I), 20 (O)
Phosmet	0.1 (I), 0.2 (O)
Piperonylbutoxide	3 (I), 8 (O)
Prallethrin	0.1 (I), 0.4 (O)
Propiconazole	0.1 (I), 20 (O)
Pyrethrins	0.5 (I), 1 (O)
Pyridaben, Spinetoram, Spinosad	0.1 (I), 3 (O)
Spiromesifen	0.1 (I), 12 (O)
Spirotetramat	0.1 (I), 13 (O)
Tebuconazole	0.1 (I), 2 (O)
Thiamethoxam	5 (I), 4.5 (O)
Trifloxystrobin	0.1 (I), 30 (O)
<i>Heavy metals (not mandatory until 12/31/2018)</i>	
Cadmium	0.2 (I), 0.5 (O)

(Continued)

Table 2. (Continued)

Type of Contaminant	Tolerance Level ($\mu\text{g/g}$) ²
Lead	0.5 (I), 0.5 (O)
Arsenic	0.2 (I), 1.5 (O)
Mercury	0.1 (I), 3 (O)
<i>Residual solvent and processing chemicals</i>	
1,2-Dichloroethane, Benzene, Chloroform, Ethylene oxide, Methylene chloride, Trichloroethylene ¹	1 (I or O)
Acetone	5000 (I or O)
Acetonitrile	410 (I or O)
Butane, Ethanol, Ethyl acetate, Ethyl ether, Heptane	5000 (I or O)
Hexane	290 (I or O)
Isopropyl alcohol	5000 (I or O)
Methanol	3000 (I or O)
Pentane, Propane	5000 (I or O)
Toluene	890 (I or O)
Total xylenes (ortho-, meta-, para-)	2170 (I or O)

Source: MAUCRSA and California regulations (November, 2018)

¹ These pesticides or residual solvents are categorized as I, while the rest of pesticides or residual solvents are categorized as II.

² I denotes the tolerance levels for inhalable cannabis, and O the tolerance levels for any other type of cannabis.

<https://doi.org/10.1371/journal.pone.0232041.t002>

Materials and methods

We construct a simulation model using R software [15] to assess the cost structure of cannabis testing in California under the current regulatory framework. We base our simulations on the number of testing labs ($n = 49$) and distributors ($n = 1,210$) that had been granted temporary licenses by the BCC as of April 2019. The number of labs and distributors in California will fluctuate as the industry continues to develop.

To estimate costs incurred by labs, we first construct estimates of fixed and variable costs for labs based on their testing capacities. We calculate the cost of testing a sample of dried cannabis flower considering the lab scale and the distances between labs and distributors. Based on meetings with representatives of California testing labs, we assume that 70%, 20%, and 10% of the labs are distributed into small, medium, and large size categories. We assume that the testing industry is like many others in that many small firms (that have relatively high costs) supply relatively little of the output. We run 1,000 simulations to estimate the cost of sampling and testing for a sample of a typical batch of dried flowers from each of the 49 labs, assuming that costs, working hours, testing capacities, etc., may vary from lab to lab.

Next, we use the weighted average of testing cost per sample to estimate cost per pound. We express total testing cost in dollars per pound of legal cannabis that reaches the market, after incorporating costs of remediating and re-testing failed batches and losses from batches of cannabis that cannot be remediated and must be destroyed.

Data

We used the list published by the BCC [16] to identify actively licensed testing labs and requested, to managers or representatives, a personal or phone-call interview based on a set of questions that we used as a guideline (S1 Appendix). We interviewed one-fourth of the

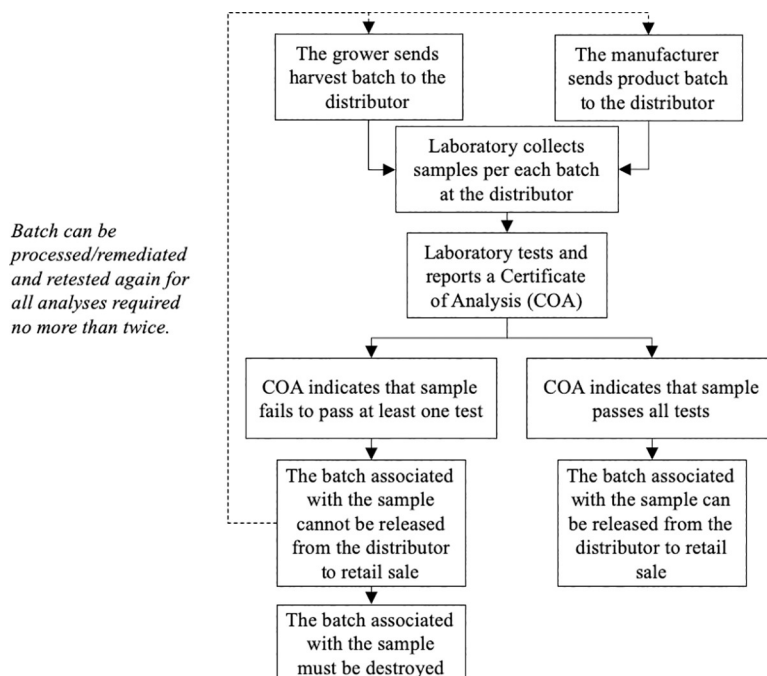


Fig 1. California's cannabis testing process.

<https://doi.org/10.1371/journal.pone.0232041.g001>

operating or prospective licensed testing labs listed by the BCC. We gathered data on market prices for testing equipment, supplies and chemical reagents consumed by equipment, equipment running capacities, and other cannabis testing inputs needed to build a compliant testing laboratory in California. Likewise, we collected financial, managerial, and logistics data. To complement licensed testing lab data, we also drew on personal interviews, phone calls, and email exchanges with sales representatives of three large equipment suppliers. Table 3 summarizes capital costs, other one-time expenses, and annual operational and maintenance costs used in our calculations. We report average cost and standard deviation for each estimate.

We assume that medium-sized and large labs receive discounted prices on equipment, given the larger scale of their purchases. Based on information provided by equipment suppliers, we expect these discounts to be between 1.5% and 2.5%. Different-sized labs have different capacities based on their scale. We assume that larger labs have made larger capital investments and are better able to optimize processes when supplying a larger volume of testing (for instance, by minimizing lab downtime through redundancy in equipment). On the other hand, small testing labs require less equipment and less capital investment, and operate with low annual costs, but their testing capacities are also low. Table 4 summarizes our estimates of running time for tests, the main consumables used by testing machines, and the expected cost of running a specific test per sample. In addition, we include a range of \$80 to \$120 per sample to cover general material and labor apparel (e.g., tubes, glassware, goggles, masks, gloves, etc.) used while preparing and processing samples.

Calculating laboratory cost per sample of cannabis

We break down the laboratory cost per successfully tested sample (C_i) of each lab ($i = 1, \dots, 49$) into two major components: the per-sample cost of testing itself (A_i), and the per-sample cost of collecting, handling and transporting samples from distributors to labs (S_i), thus $C_i = A_i + S_i$.

Table 3. Average expected costs of implementing a licensed cannabis testing laboratory in California.

Item	Range ¹	Cost ²
<i>Cannabis testing equipment costs</i>		
High-performance liquid chromatography (HPLC)	1–2	\$85,195 (\$20,261)
Inductively coupled plasma mass spectrometry (ICP-MS)	1–2	\$259,874 (\$11,847)
Liquid chromatography-mass spectrometry (LCMS)	1–3	\$502,807 (\$50,255)
Gas chromatography-mass spectrometry (GCMS)	1–4	\$135,258 (\$8,533)
Real-time polymerase chain reaction test (PCR)	1–2	\$50,071 (\$4,995)
Moisture balance (MB)	1–2	\$9,994 (\$1,019)
<i>Other one-time costs</i>		
Start-up and support equipment	2–4	\$237,284 (\$50,176)
Sampling equipment and vehicles	1–5	\$19,927 (\$4,011)
ISO implementation IQ&OQ protocols	1–2	\$249,257 (\$24,356)
<i>Annual costs of operations and maintenance</i>		
Compliance with ISO/IEC-17025 standards		\$24,990 (\$577)
Maintenance ³		\$347,785 (\$150,166)
Real estate		\$317,549 (\$124,284)
Utilities		\$72,535 (\$29,579)
Sales, general & administrative costs		\$89,335 (\$32,847)
Lab fees		\$51,667 (\$28,968)
<i>Annual salary and benefits</i>		
Director	1–1	\$133,274 (\$8,973)
Manager	0–3	\$94,867 (\$6,963)
Analyst	2–5	\$65,011 (\$6,470)
Technician	2–5	\$45,654 (\$3,784)
Sampler	1–5	\$45,993 (\$4,038)
Staff	2–4	\$44,000 (\$3,566)

Source: Equipment suppliers and licensed testing laboratories.

¹ Range (minimum and maximum) of equipment and labor used depending on the size of each lab (small, medium, or large).

² Values represent the average cost, with standard deviations in parentheses.

³ Maintenance cost depends on the number of equipment of each lab.

<https://doi.org/10.1371/journal.pone.0232041.t003>

First, we consider the cost of testing per sample, which is equal to the annual total cost of running a testing lab (AC_i), plus the associated total return to risk and profit for the lab, divided by Q_i , the number of samples successfully tested per year. Q_i is defined and explained below. The return to risk and profit is calculated as rate of return π (e.g. 15%), multiplied by the amount of invested capital (F_i).

$$A_i = \frac{AC_i + F_i\pi}{Q_i} \quad (1)$$

Notice that invested capital enters per-unit costs in two places: one is a separate term for the rate of return π times the amount of invested F_i , and the other is a component of the cost of operating the lab.

The annual cost of running a testing lab (AC_i) includes the annualized cost of capital invested (F_i) (equipment and other one-time expenses, including startup and sampling equipment, and implementation of ISO), annual operational and maintenance costs (OM_i), and annual labor costs (L_i), thus $AC_i = F_i + OM_i + L_i$ (see Tables 3 and 4 for detailed costs).

Table 4. Main consumables used by each cannabis testing lab machine, estimated testing time and cost per sample.

Machine	Type of Analysis	Testing Time	Consumables	Cost per test ¹
High-performance liquid chromatography (HPLC)	Cannabinoids	10 min	Water grade, acetonitrile, chemicals used for extraction and cleanup	\$1.57 (\$0.34)
Inductively coupled plasma mass spectrometry (ICPMS)	Heavy metals	5 min	Argon gas, chemicals used for extraction and cleanup	\$1.52 (\$0.29)
Liquid chromatography-mass spectrometry (LCMS)	Residual pesticides and mycotoxins	12 min	Liquid Nitrogen, water grade, methanol, chemicals used for extraction and cleanup	\$8.82 (\$1.05)
Gas chromatography-mass spectrometry (GCMS)	Residual pesticides and solvents	20 min	Helium gas, chemicals used for extraction and cleanup	\$2.52 (\$0.31)
Real-time polymerase chain reaction test (PCR)	Microbial	4 min	Chemicals used for extraction and cleanup	\$7.49 (\$0.87)
Moisture balance (MB)	Moisture	10 min	Chemicals used for extraction and cleanup	\$1.25 (\$0.15)

Source: Equipment supplier companies and licensed testing laboratories.

¹ Values represent the average cost, with standard deviations in parentheses.

<https://doi.org/10.1371/journal.pone.0232041.t004>

We calculate the annualized flow of capital invested (F_i) based on a formula typically used in budgeting studies (Eq 2):

$$F_i = \frac{rK}{1 - (1 + r)^{-h}}, \quad (2)$$

where K_i denotes the total cost of capital and one-time expenses, r denotes an assumed annual discount rate that reflects the combined effects of depreciation and interest (we use $r = 7.5\%$), and h denotes the number of years to the investment horizon (we use $h = 10$ years).

The number of samples successfully tested per year (Q_i), OM_i , and L_i all depend on the size of each lab, e.g. the number of pieces of each type of testing equipment, number of employees, working hours per employee, and so on. We assume that small-scale labs operate with the minimum necessary investment in testing equipment, maintenance, staff, and operating hours, while large-scale labs operate with much higher investment in testing equipment, maintenance, staff, and operating hours.

To estimate Q_i for each lab, we make four sets of assumptions about each lab's operational efficiency. Our efficiency assumptions depend on the lab's size. First, we estimate a lab's potential single-day testing capacity q_i , which is the maximum number of samples per day that could theoretically be tested (successfully or unsuccessfully) by a lab's machinery if it were operating continuously. We use the testing time per sample (TS_k) of each piece of equipment (see Table 4) and the total testing operational hours per day of each lab (TT_i) to calculate q_i . Because large-scale labs hire and manage more workers, we assume that they conduct testing for 14 hours per day (with a standard deviation of 0.06 hours); while small and medium-scale labs conduct testing for about 8 hours per day (with a standard deviation of 0.06 hours).

We assume that multiple tests can be run from a single sample, some machines can run simultaneously, and some machines run more than one type of test (see Table 4). Based on these assumptions, we calculate the total number of samples tested per day per one (or more) machines of the same type (nk), such that $q_i^{nk} = \frac{nk}{TS_k} TT_i$, where $n = 1, \dots, n$ (see Table 3), and $k = 1, \dots, 6$ (see Table 4). We then constrain the total number of samples tested per day by using the minimum number of samples tested per one (or more) machines of the same type, such that $q_i = \min\{q_i^{n1}, \dots, q_i^{n6}\}$.

Second, we assume that during each operating day, a lab runs at some percent operational efficiency R_i of its maximum daily testing capacity q_i . Efficiency percent R_i is defined as the ratio of actual tests per day performed by a lab to total possible tests per day q_i ; thus $(q_i * R_i)$ gives the number of actual tests per day performed by a lab. We assume that the operational efficiency ratio R_i is a function of equipment redundancy, maintenance-related downtime, efficient scheduling with customers, and other operational factors, which together are proportional to lab size. After many interviews with lab operators, we assume that R_i is about 55% (with a standard deviation of 2.9%) for small labs, 70% (with a standard deviation of 2.9%) for medium labs, and 80% (with a standard deviation of 2.9%) for large-scale labs.

Third, we assume that labs, even when fully operational, will perform some unsuccessful tests (e.g., where machines fail, errors are made by lab technicians, or results are ambiguous, such that the lab is unable to issue a certificate of analysis without re-testing the sample at its own expense). We assume that small and medium-scale labs, because they have less experience and are likely to have less well-trained staff, have higher rates of unsuccessful tests than large-scale labs. We denote the ratio of successful tests to all tests as E_i , and we assume that this successful testing ratio E_i is about 80% (with a standard deviation of 1.7%) in small- and medium-scale labs, and about 96% (with a standard deviation of 1%) in large-scale labs.

Fourth, we assume that small-scale labs operate fewer days per year than large-scale labs. In Eq (3), we denote the lab's operational days per year as D_i . Based on information provided by representatives of testing labs, we assume that D_i is 240–260 days for small-scale labs, 250–270 days for medium-scale labs, and 280–300 days for large-scale labs.

The total number of samples successfully tested per year (Q_i) is expressed in Eq (3) as a function of the four sets of operational assumptions described above:

$$Q_i = q_i * R_i * E_i * D_i \quad (3)$$

Next, we must estimate sampling cost (S_i), which includes transportation, labor, equipment, and material costs. We use the zip codes of active licensed testing labs (denoted by i) and distributors (denoted by j) published by the BCC [16] to estimate the distance from labs to distributors (d_{ij}). Using the R software [15] and the zip codes of active licensed testing labs and distributors [16], we generate a map that shows the geographical location of licensed labs and distributors in mid-2019 (Fig 2). We have no information about which labs served which distributors. However, we expect that labs are better able to compete for nearby distributors because they would have lower transportation time and cost and may be more likely to have closer business relationships.

In order to estimate average transport costs from distributors to labs, we randomly assigned distributors located within a 160 mi radius to each lab. Based on 2019 data, this was the longest travel distance from a distributor to the nearest lab. This travel distance radius ensures that each distributor in the sample is covered by at least one laboratory.

Based on the annual number of samples that we estimate each lab is able to test (Q_i), we estimate the share of total testing done by small labs, medium labs, and large labs. We then estimate the number of distributors per lab. In each of our 1,000 simulations, 70% of the 49 licensees (34 labs) with specific locations were randomly chosen to represent small-scale labs, 20% (10 labs) were randomly chosen to represent medium-scale labs, and 10% (5 labs) were randomly chosen to represent large-scale labs.

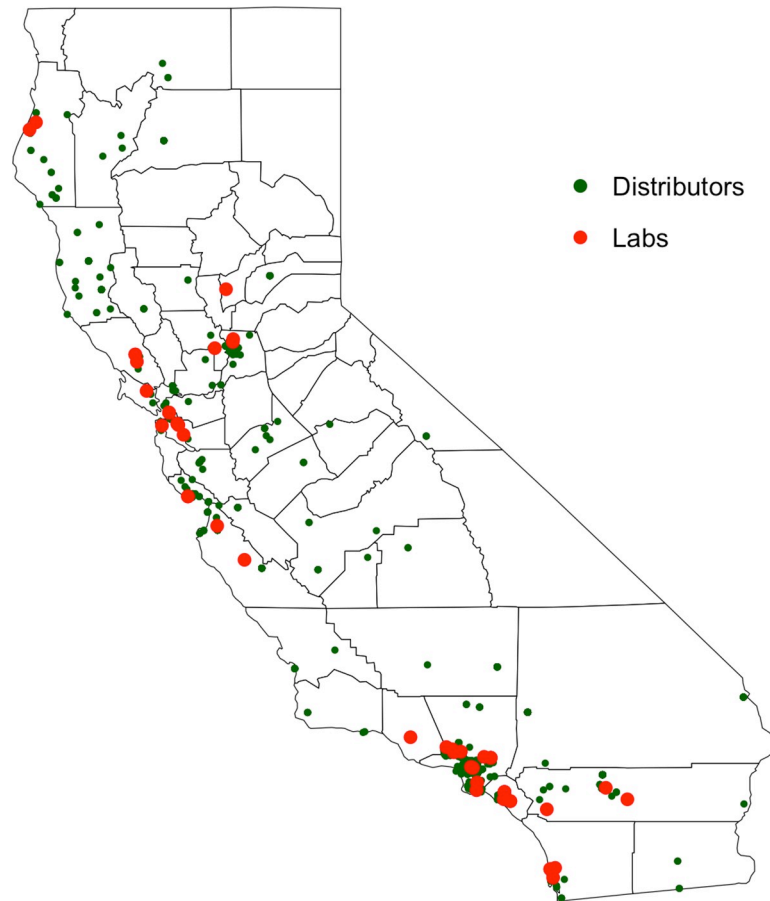


Fig 2. Locations of licensed testing labs and distributors in California. (Source: Bureau of Cannabis Control, April of 2019).

<https://doi.org/10.1371/journal.pone.0232041.g002>

Eq 4 shows our calculation of sampling cost as the average cost of sampling from each distributor supplied by sampling and testing from an i^{th} lab.

$$S_i = \frac{1}{n} \left(\sum_{j=1}^n \frac{0.535 * d_{ij} * TD_{ij}}{Q_{ij}} + \sum_{j=1}^n 4.5 + \frac{\frac{d_{ij}}{sp} * L_s * TD_{ij}}{Q_{ij}} + \sum_{j=1}^n \frac{50 * TD_{ij}}{Q_{ij}} \right) \quad (4)$$

The first term of the right hand side of Eq 4 shows transportation cost. The term d_{ij} denotes the distance, back and forth, from an i^{th} lab to a j^{th} distributor, and TD_{ij} the number of trips, per-sampler, needed to collect the total samples (Q_{ij}) from a particular distributor within a year. We use the cost of transportation as \$0.58 per mile, the Federal reimbursement rate per mile for California. The second term of the right hand side of Eq 4 shows the labor cost of sampling. We include the time spent sampling and traveling back and forth to distributors. We use \$18 per hour as the labor opportunity cost of sampling (L_s), and used 15 minutes as the average time used to retrieve one sample from a batch. We expect that a sampling employee will collect at least 10 samples from a distributor in one visit (i.e., $\frac{0.25hr * Q_{ij}}{Q_{ij}} * 18/hr = 4.5$). We used a range of speed (sp) between 50 and 60 miles per hour to calculate the time spent traveling (i.e., $\frac{d_{ij}}{sp}$). The third term of the right-hand side of Eq 4 shows the material cost of sampling. Based on

information provided by testing labs, we assume a \$50 cost of materials per visit, including disposables such as gloves, masks, etc.

Calculating cost per pound of cannabis marketed

Our estimates of cost per pound of cannabis that reaches the market (m) includes laboratory cost (c), the value of lost inventory (v), and the cost of remediation of failed batches (z): $m = c + v + z$. Laboratory cost per pound of marketed cannabis (c) is expressed by Eq 5:

$$c = \left(\frac{\bar{C}}{B} + \bar{G} \right) * TP, \quad (5)$$

where $\bar{C}$ is a weighted average of the lab cost per sample using the share of annual testing capabilities of each lab, B is the batch size or number of pounds of a batch of cannabis flower from which a sample is taken for analysis, $\bar{G}$ is the weighted average of per-pound cost of security compliance, and TP is the ratio of the number of pounds tested per pound that passes testing.

We use a range of values less than or equal to 50 pounds for B , as MAUCRSA sets a maximum batch size of 50 pounds of cannabis flower (or 150,000 units for processed cannabis products) [1]. We use a weighted average of security compliance cost of \$3.92 per pound (\$4.88 for G in small labs, \$4.06 in medium labs, and \$3.25 in large-scale labs). These costs include video surveillance and archival, disposal and quarantine, and other compliance estimated elsewhere [10]. Eq 6 shows the calculation of TP :

$$TP = \frac{1 + pre.test\% + fail\% * re.test\%}{1 - (fail\% - fail\% * re.test\% * fail.re.test\%)} \quad (6)$$

The numerator of Eq 6 expresses total pounds tested (including pre-tested and rejected pounds), and the denominator expresses total pounds that pass testing. Based on our best estimates after interviewing testing labs and gathering data from other states, we set the pre-test share at 25%, the re-tested share of failed samples at 50%, and the failure rate of re-tested samples at 50%.

We use a range of failure rates from 0% to 8% based on the ranges of cannabis testing failure rates that have been observed in California in 2018 and 2019 [17], and by comparing cannabis tolerance levels with data on pesticide residue detection in other crops of California [18]. Cannabis and cannabis products are offered to be consumed via edibles or inhalable. Here we treat cannabis like any other crop in California.

Table 5 shows the percent of California food products with any detection of pesticide residues and above the U.S. Environmental Protection Agency (EPA) tolerance levels, from 2015 to 2017. We estimate that about 13% of over 7,000 samples would have been above the inhalable cannabis product tolerance limits, whereas about 4% would have exceeded even the less stringent tolerance levels established for other (non-inhalable) cannabis products (Table 5).

The value of lost inventory (v) includes the cost of the cannabis used up in the testing procedures ($\bar{p} * s$) and the cost of cannabis that must be destroyed when it has failed testing twice ($\bar{p} * d$). We use a wholesale price of cannabis flower of \$1,360 per pound as a weighted average ($\bar{p}$) from outdoor, greenhouse, and indoor grow types [10]. Eq 7 expresses the value lost inventory per pound of cannabis that passes testing.

$$v = \frac{\bar{p}(s + d)}{1 - (fail\% - fail\% * re.test\% * fail.re.test\%)} \quad (7)$$

To calculate the amount of cannabis that must be removed from inventory for testing (s), we include a fraction (0.35%) of the batch size (B) that is removed for testing, and a fraction

Table 5. Percent of California food product samples indicating any detection of pesticide residues, above EPA tolerance levels, and percent above tolerance levels for cannabis products (2015–2017).

Food product	2015	2016	2017	Total
With any detection of pesticide residues*	60.35%	60.06%	61.46%	60.52%
With pesticide residues above EPA tolerance levels*	0.32%	1.51%	0.45%	0.79%
Food that would have exceeded cannabis tolerance levels				
Using criteria for inhalable cannabis products	12.86%	13.44%	12.79%	13.05%
Using criteria for other cannabis products	4.07%	3.62%	3.90%	3.86%

Source: California Department of Pesticide Regulation: Pesticide Residue Monitoring Program, and MAUCRSA and California regulations, 2018.

<https://doi.org/10.1371/journal.pone.0232041.t005>

that is retested after failing the first round of testing, and a fraction that is pre-tested (Eq 8).

$$s = (0.0035B + 0.0035B * \text{fail}\% * \text{re.test}\% + 0.0035B * \text{pre.test}\%) / B \quad (8)$$

We calculate the amount of cannabis that is destroyed after remediation (d) by using a fraction of cannabis that fails (between 0% and 8%) minus the share of cannabis that passes the second test (Eq 9).

$$d = \text{fail}\% - \text{fail}\% * \text{re.test}\% * \text{fail.re.test}\% \quad (9)$$

As for the value of lost inventory, Eq 10 shows how we estimate the remediation cost of failed batches at per pound of cannabis that passes testing (z). Based on our interviews with operators, we assume that the cost of remediation P (processing batches that did not pass the first round of testing) is \$20 per pound.

$$z = \frac{P * \text{fail}\% * \text{fail.re.test}\%}{1 - (\text{fail}\% - \text{fail}\% * \text{re.test}\% * \text{fail.re.test}\%)} \quad (10)$$

Results of simulations

Laboratory cost per sample of cannabis

The minimum capital investment in testing equipment needed to satisfy regulations is substantial. We estimate that in small labs ($n = 34$), capital investment in equipment is about \$1.1 million; in the medium-sized labs ($n = 10$), capital investment in equipment is about \$1.8 million; and in large-scale labs ($n = 5$), capital investment in equipment is about \$2.8 million. These capital costs, amortized over a 10-year time span with a 7.5% rate of depreciation and interest, represent less than 15% of total annual expenses. Annual costs of operating range from \$1.4 to \$2.2 million for small labs, \$2.7 to \$3.7 million for medium-sized labs, and \$6.2 to \$8.1 million for large labs. Consumables are the largest share of total annual costs in large-scale labs, whereas labor is the largest share of costs in small-scale labs. In medium-scale labs, consumables and labor have about equal shares of annual costs.

Different-sized labs differ in their capacity and efficiency. Large-scale labs test about four times the amount of cannabis per hour than medium labs, and more than 10 times what small labs test. The cost advantage of large testing labs comes from a more efficient use of inputs such as lab space, equipment, and labor. Table 6 summarizes the average of estimated testing capacities, annual costs, and testing cost per sample for each of the three lab size categories.

Cost of collection, handling and transport also vary by lab size. As of April 2018, the longest distance between a lab and a distributor in California was about 156 miles. Fig 3 shows the cost of collection, handling, and transportation (which we call the “sampling cost”) per sample for distances between labs and distributors, of less than 156 miles. As expected, the longer the

Table 6. Testing capacity, itemized annual costs, and testing cost per sample by laboratory scale.

Scale category	Large (n = 5)	Medium (n = 10)	Small (n = 34)
Mean number of effective samples analyzed year	23,312	5,895	2,173
Annual costs	(Thousands)		
Capital investment, interest plus depreciation ¹	\$562.02	\$378.87	\$235.38
Operating and maintenance costs			
Equipment maintenance and acquisition and maintenance of ISO/IEC-17025	\$615.76	\$422.16	\$233.07
Rent and basic utilities	\$484.95	\$332.71	\$228.41
Sales, general and administrative costs	\$129.96	\$88.01	\$49.99
License fees	\$90.00	\$45.00	\$20.00
Labor	\$1,721.89	\$895.77	\$518.68
Consumable costs	\$3,430.88	\$866.90	\$319.35
Return to risk and profit (15%)	\$84.30	\$56.83	\$35.31
Total costs	\$7,119.76	\$3,086.25	\$1,640.18
	Costs per sample		
Average cost per sample of within lab testing	\$306	\$525	\$757
Cost of sampling (collection, transport and handling)	\$8	\$13	\$21
Average cost per sample of testing	\$313	\$537	\$778

Values represent averages from 1,000 Monte Carlo simulations using distributions presented in Tables 3 and 4. Totals may not reflect sums of rows due to rounding.

<https://doi.org/10.1371/journal.pone.0232041.t006>

distance, the higher the sampling cost. Large labs have relatively low sampling costs even at long distances. The highest possible sampling cost we assume for small labs is about \$35 per sample if the distributor is located 156 miles away (Fig 3). On average, costs of collection, handling, and transportation represents a small share (about 2.5%) of total lab costs per sample.

Fig 4 shows the distribution of full testing cost per sample from 1,000 Monte Carlo simulations assuming 49 labs. Variability of the cost per sample within small labs is high, with the highest and lowest cost within that group differing by \$463. The difference between the highest and lowest costs in large labs is \$88, with a lowest cost per sample of about \$273. The average full cost per sample tested is about \$313 for large labs, \$537 for medium labs, and about \$778 for small labs (see Table 6).

Large cost differences per test and per batch document the large-scale economies and differences in operational efficiencies across labs of different sizes. The aggregate amount of cannabis flowing through licensed labs in 2019 remains relatively small relative to the anticipated amounts expected in the future. That means labs that may anticipate growth, operate well below capacity. Substantial scale economies suggest that, as the market settles, the smallest labs must either expand to use their capital investment more fully, leave the industry, or provide some specialized services to distributors that are not accounted for in the analysis presented here. Simply put, the average cost differences shown in Table 6 or the simulated ranges displayed in Fig 4 should not be understood as a long run equilibrium in the cannabis testing laboratory industry.

Testing cost per pound of cannabis marketed

Based on the shares developed based on current information, a few large labs are likely to supply almost half the testing services for cannabis sold through licensed retailers in California, while medium labs will test about 24% of cannabis and small labs about 30% of cannabis.

Using these shares and the cost information documented, the weighted average of testing cost from our simulations is about \$504 per sample.

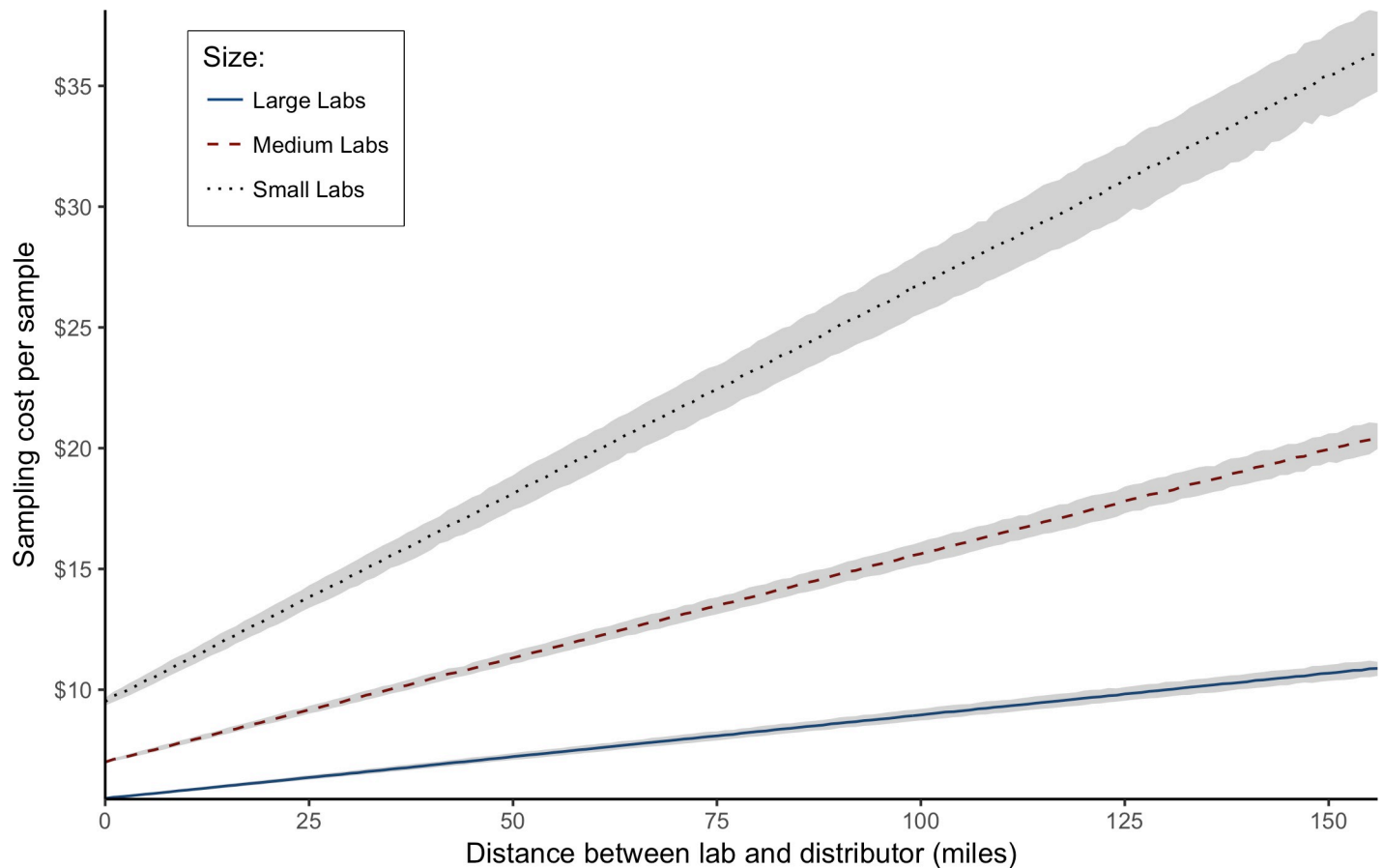


Fig 3. Sampling cost (collection, handling, and transportation) at different distances between a lab and a distributor.

<https://doi.org/10.1371/journal.pone.0232041.g003>

In 2018, the first year of mandatory testing enforcement, according to official data published by the California Bureau of Cannabis Control and posted publicly on its website, failure rates in California averaged about 5.6% (not including failures due to “label claims,” i.e. incorrect cannabinoid content reported on the label, which can be corrected at little cost by re-labeling without remediation). Failure rates for the first seven months of 2019, the second year of the testing regime, have averaged 4.1% [17]. We assume a 4% failure rate for the current market in California.

By comparison, in Washington State, in 2017, the second year after the testing began, 8% of the total samples failed one or more tests [19]. The Colorado Marijuana Enforcement Division reported that during the first six months of 2018, 8.9% of batches of adult-use cannabis failed testing, with infused edibles and microbial tests for flower accounting for the most failures [8].

Batch size significantly affects the per-pound testing cost of cannabis marketed, especially when batch size is smaller than 10 pounds. Fig 5 shows the costs of one pound of cannabis marketed coming from different sizes of batch flowers using 0%, 4%, and 8% rejection rates. As rejection rates increase, the differences between the costs per pound of testing different batch sizes decreases. For example, given a 0% rejection rate, the cost of testing per pound of cannabis marketed from a one-pound batch is about 27 times higher than the cost of a 48-pound batch; on the other hand, given an 8% rejection rate, the cost of testing per pound of cannabis marketed from a one-pound batch size is only seven times higher than the cost from a 48-pound batch size.

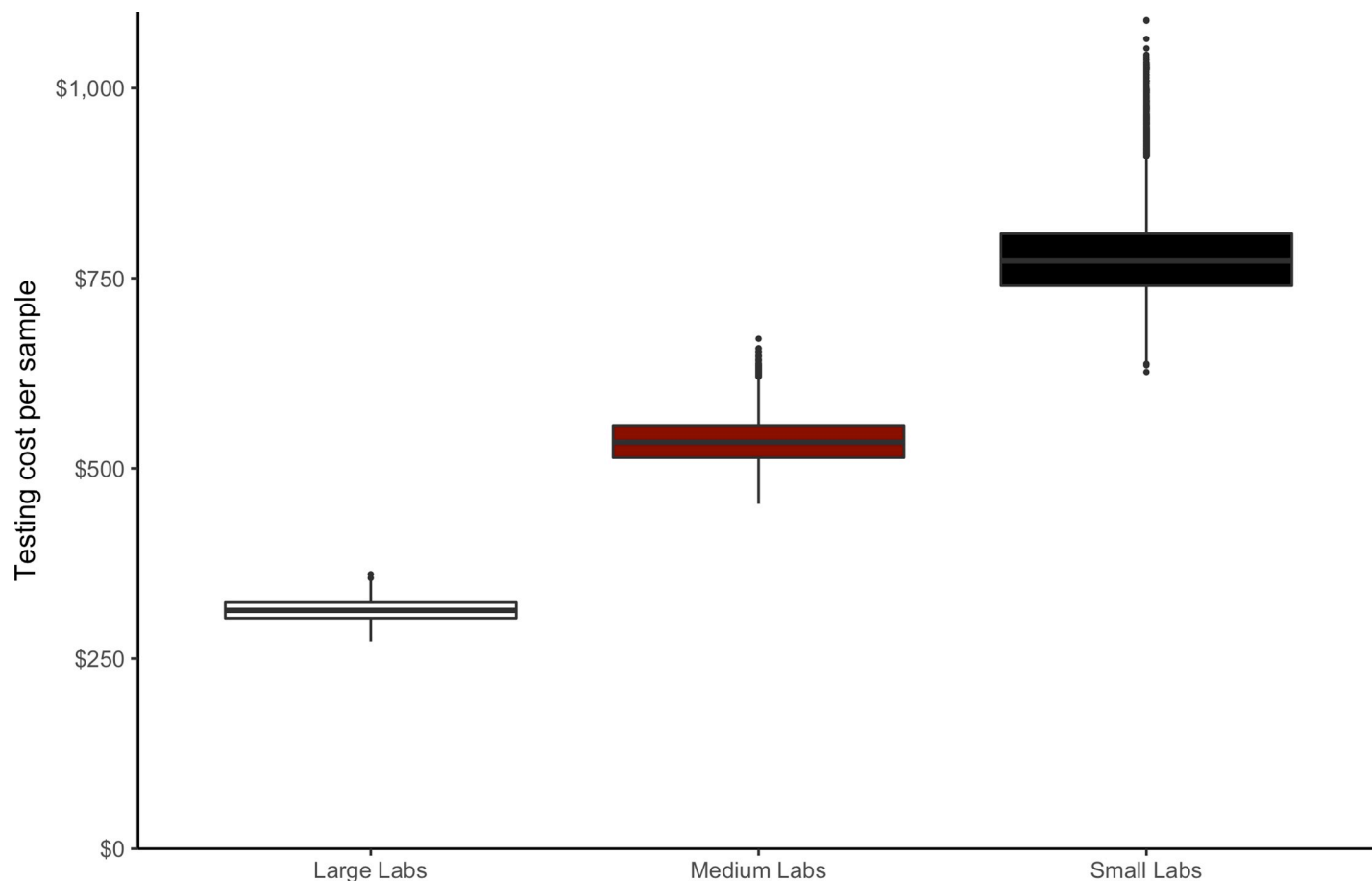


Fig 4. Testing cost per sample from a batch of cannabis flower (C_i) estimated for small, medium, and large labs using 1,000 Monte Carlo simulations.

<https://doi.org/10.1371/journal.pone.0232041.g004>

Table 7 shows costs per pound of cannabis testing itemized into laboratory cost, the value of lost inventory, and the cost of remediating failed batches, given different rejection rates and batch sizes. For small batch sizes, laboratory costs are a higher share of total testing costs than they are for large batch sizes. For a one-pound batch size, the total cost of testing of a pound of cannabis that reaches the market is about \$641 when the expected rejection rate is equal to zero. The cost increases to \$714 if the expected rejection rate is equivalent to 4%, and to \$791 if the expected rejection rate is 8% (Table 7).

The share of laboratory cost from total cost decreases as the rejection rate increases and the value of lost inventory therefore increases. Under an 8% expected rejection rate, the share of lost inventory is half of the total cost for eight-pound batches (Table 7).

Discussion

In this paper, we use a simulation model to estimate the costs per pound of mandatory cannabis testing in California. To do this, we make assumptions about the cost structure and estimated the testing capabilities of labs in three different size categories, based on information collected from market participants across the supply chain. For each lab, we estimate testing cost per sample and its share, based on testing capacity, of California's overall testing supply. We then estimate a weighted average of the cost per sample and translate that value into the cost per pound of cannabis that reaches the market.

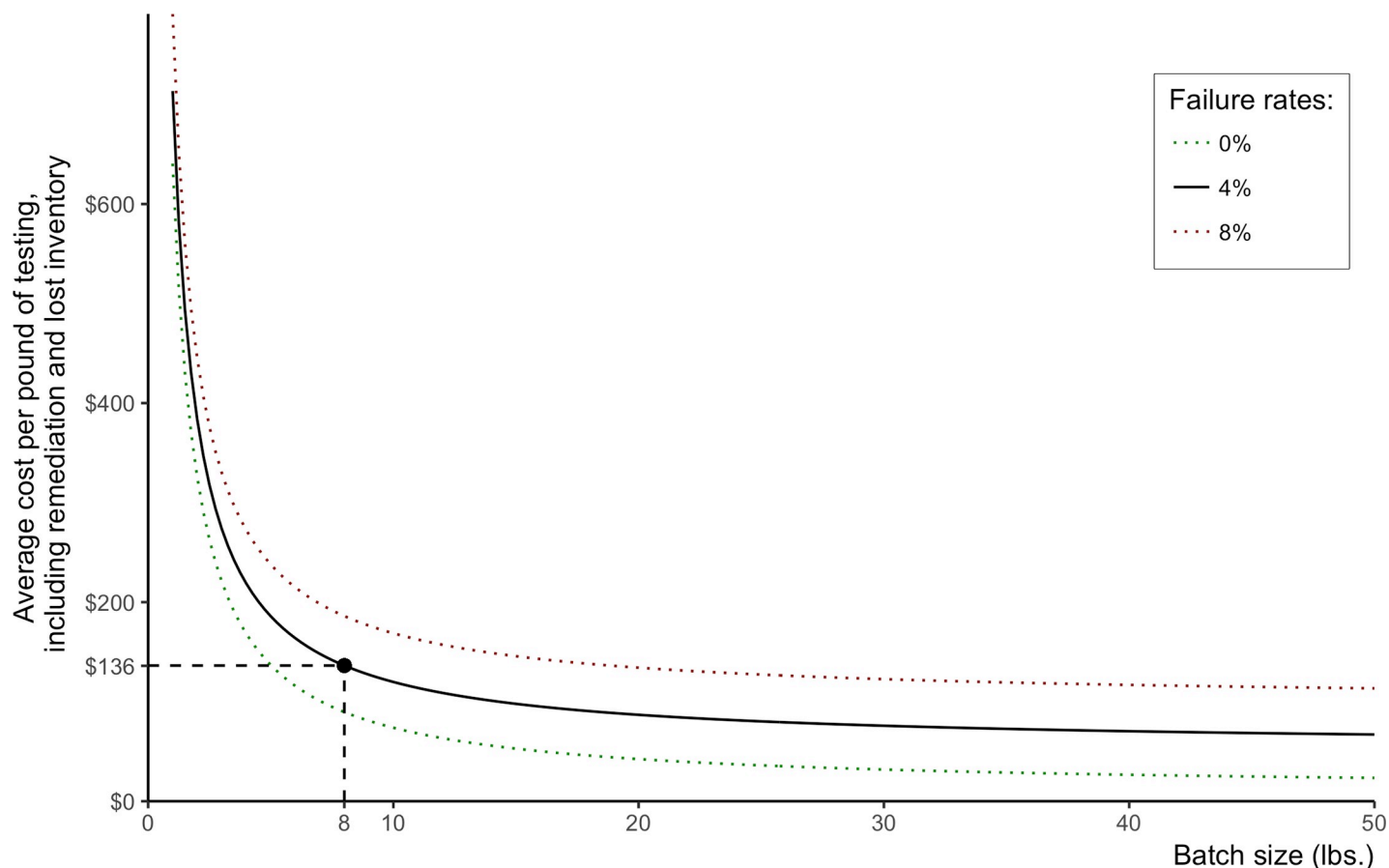


Fig 5. Testing costs per pound of cannabis marketed at different batch sizes and rejection rates.

<https://doi.org/10.1371/journal.pone.0232041.g005>

We use data-based assumptions about expected rejection rates in the first and second round of testing, pre-testing, and the remediation or processing of samples that fail testing. Our simulations rely on information collected from several sources, including direct information from testing labs in California, price quotes from companies that supply testing equipment, interviews with cannabis testing experts, data on testing outcomes for cannabis and other agricultural products from California and other states, data on pesticide detection in California crops, and data on average wholesale cannabis batch sizes.

Costs needed to start a testing lab that meets California regulations depend on the scale of the lab. As lab scale rises, testing capacity rises faster than do input costs, so average costs fall with scale. We find that a large lab has four times the total costs of a small lab but 10 times the testing capacity, in part because large labs are able to use their resources (equipment, lab space, labor) more efficiently.

Testing cost per pound of cannabis marketed is particularly sensitive to batch size, especially for batch sizes under 10 pounds. Testing labs report that batch size varies widely. The maximum batch size allowed in California is 50 pounds, but many batches are smaller than 15 pounds. We assume an eight-pound average batch size in the 2019 California market, but we expect that the average batch size will increase in the future as cultivators become larger and more efficient and take advantage of the opportunity to save on testing costs (and other costs that vary nonlinearly with batch size).

Table 7. Itemized costs per pound of cannabis that reaches the market at three rejection rates and different batch sizes.

Rejection Rate	Batch Size	Laboratory Cost	Value of lost inventory	Remediation Cost	Per pound cost of cannabis marketed
0%	1	\$634.71	\$5.95	\$0.00	\$640.66
0%	2	\$319.81	\$5.95	\$0.00	\$325.76
0%	8	\$83.63	\$5.95	\$0.00	\$89.58
0%	24	\$31.15	\$5.95	\$0.00	\$37.10
0%	48	\$18.03	\$5.95	\$0.00	\$23.98
2%	1	\$649.53	\$26.80	\$0.20	\$676.53
2%	2	\$327.28	\$26.80	\$0.20	\$354.28
2%	8	\$85.58	\$26.80	\$0.20	\$112.59
2%	24	\$31.88	\$26.80	\$0.20	\$58.88
2%	48	\$18.45	\$26.80	\$0.20	\$45.45
4%	1	\$664.81	\$48.29	\$0.41	\$713.52
4%	2	\$334.97	\$48.29	\$0.41	\$383.68
4%	8	\$87.60	\$48.29	\$0.41	\$136.30
4%	24	\$32.62	\$48.29	\$0.41	\$81.33
4%	48	\$18.88	\$48.29	\$0.41	\$67.59
6%	1	\$680.57	\$70.46	\$0.63	\$751.66
6%	2	\$342.92	\$70.46	\$0.63	\$414.01
6%	8	\$89.67	\$70.46	\$0.63	\$160.77
6%	24	\$33.40	\$70.46	\$0.63	\$104.49
6%	48	\$19.33	\$70.46	\$0.63	\$90.42
8%	1	\$696.83	\$93.34	\$0.85	\$791.02
8%	2	\$351.11	\$93.34	\$0.85	\$445.30
8%	8	\$91.82	\$93.34	\$0.85	\$186.01
8%	24	\$34.20	\$93.34	\$0.85	\$128.39
8%	48	\$19.79	\$93.34	\$0.85	\$113.98

<https://doi.org/10.1371/journal.pone.0232041.t007>

Testing itself is costly, but losses inflicted by destroying cannabis that fails testing is a major component of overall costs. Low or zero tolerance levels for pesticide residues are the most demanding requirement, and result in the greatest share of safety compliance testing failures [17]. Cannabis standards are very tight compared to those for food products in California. A significant share of tested samples from California crops have pesticide residues that would be over the tolerance levels established for California cannabis (see Table 5). Some foods that meet pesticide tolerance established by California EPA may be combined with dried cannabis flowers to generate processed cannabis products (such as baked goods, for example). Pesticide residues coming from the food inputs may generate detection levels of pesticide over the tolerance levels set by cannabis law and regulation, even if they are otherwise compliant as food products. Cannabis testing regulation is strict compared to tobacco, another inhalable crop. Tobacco has no pesticide tolerance limits because it is considered to be an inedible crop used for recreational purposes [5]. Cannabis has multiple pathways of intake, such as edibles, inhalable, patches, etc., and also may be prescribed for people with a health condition, searching for alternatives to traditional medicine.

Some labs report that when samples barely fail one test, they have a policy of re-testing that sample to reduce the probability of false positives. Some labs have reported up to 10% in variation in test results from the same sample. Some labs indicate that about 25% of samples need to be re-tested to be sure that results are accurate. Such concerns have been widely reported. In July 2018, some producers voluntarily recalled cannabis products after receiving inconsistent

results of contaminant residues from different laboratories [20]; and some California labs have also been sanctioned by the Bureau of Cannabis Control for failing state audits on pesticide residue tests.

A major issue for legal, taxed and licensed cannabis market is competition with cannabis marketed through untaxed and unlicensed segment. Higher testing costs translate into higher prices in the licensed segment. Safety regulations and testing may improve the perceived safety and quality of cannabis in the licensed segment, thus adding value for some consumers [21]. However, price-sensitive consumers move to the unlicensed segment when licensed cannabis gets too expensive. A useful avenue for further research is to investigate cannabis testing regulations and standards across states to assess implications for consumer and community well-being and competition with unlicensed cannabis.

Compared with other agricultural and food industries, the licensed cannabis industry in California has relatively little data. Banking is still done in cash, and sources of government financial data are less available for cannabis than they are for other industries. As the licensed cannabis segment develops, we expect that increased access to data on the market for testing services, including on prices, quantities, and batch sizes. Data from tax authorities, the track-and-trace system, and the licensing system will then help clarify the costs and implications of mandatory cannabis testing.

Supporting information

S1 Appendix.
(DOCX)

Author Contributions

Conceptualization: Pablo Valdes-Donoso, Daniel A. Sumner.

Data curation: Pablo Valdes-Donoso, Robin Goldstein.

Formal analysis: Pablo Valdes-Donoso, Daniel A. Sumner.

Funding acquisition: Daniel A. Sumner.

Investigation: Pablo Valdes-Donoso.

Methodology: Pablo Valdes-Donoso.

Project administration: Daniel A. Sumner.

Supervision: Daniel A. Sumner.

Validation: Pablo Valdes-Donoso, Daniel A. Sumner.

Visualization: Pablo Valdes-Donoso, Robin Goldstein.

Writing – original draft: Pablo Valdes-Donoso.

Writing – review & editing: Daniel A. Sumner, Robin Goldstein.

References

1. Government of California. Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). In: SB 94. [Internet]. U.S.: Government of California; 2018 [cited 1 Dec 2018] pp. 1–122. Available: <https://cannabis.ca.gov/laws-regulations/>
2. Valdes-Donoso P, Sumner DA, Goldstein RS. Costs of mandatory cannabis testing in California. *Calif Agric*. 2019; 73: 154–160. <https://doi.org/10.3733/ca.2019a0014>

3. Public Law 91–513. to amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing. 84 Stat. the 91st U. 1971;
4. Drug Enforcement Administration. Schedule of Controlled Substances: Maintaining Marijuana in Schedule I of the Controlled Substances Act. US Department of Justice; 2016.
5. Stone D. Cannabis, pesticides and conflicting laws: The dilemma for legalized States and implications for public health. *Regul Toxicol Pharmacol*. 2014; 69: 284–288. <https://doi.org/10.1016/j.yrtph.2014.05.015> PMID: 24859075
6. Colorado Department of Revenue. Marijuana Enforcement Division. Retail Marijuana Rules. 1 CCR 212–2 [Internet]. Code of Colorado Regulations. Secretary of State. State of Colorado; 2018 [cited 25 Feb 2018]. Available: <https://www.colorado.gov/pacific/sites/default/files/ColoradoRegister.pdf1> CCR 212–2 Retail Effective 02022018.pdf
7. Colorado Department of Revenue. Marijuana Enforcement Division. Medical Marijuana Rules. 1 CCR 212–1 [Internet]. Code of Colorado Regulations. Secretary of State. State of Colorado; 2018 [cited 25 Feb 2018]. Available: <https://www.colorado.gov/pacific/sites/default/files/ColoradoRegister.pdf1> CCR 212–1 Medical Effective 02022018.pdf
8. Colorado Department of Revenue. Marijuana Enforcement Division, Annual Updates [Internet]. State of Colorado; 2018 [cited 15 Apr 2018]. Available: <https://www.colorado.gov/pacific/enforcement/med-updates>
9. Washington Administrative Code. Washington State Legislature. Laws and Rules. Chapter 314–55: Marijuana licenses, application process, requirements, and reporting [Internet]. Washington Administrative Code. Liquor and Cannabis Board; 2018 [cited 25 Apr 2018]. Available: <http://apps.leg.wa.gov/wac/default.aspx?cite=314-55>
10. Sumner DA, Goldstein RS, Matthews W, Lee H, Pan Q, Medellin-Azuara J, et al. Economic Costs and Benefits of Proposed Bureau of Cannabis Control Regulations for the Implementation of the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA). Standardized Regulatory Impact Analysis. State of California D of F, editor. In: Prepared for the California Bureau of Cannabis Control by the University of California Agricultural Issues Center [Internet]. State of California, Department of Finance; 2018. Available: http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/
11. Drug Enforcement Administration. Cannabis Eradication. Domestic Cannabis Eradication and Suppression Program [Internet]. U.S. Department of Justice; 2018 [cited 14 May 2018]. Available: <https://www.dea.gov/ops/cannabis.shtml>
12. MacEwan D, Newman C, Howitt R, Noel J. Economic Impact Analysis of Medical Cannabis Cultivation Program Regulations. Standardized Regulatory Impact Assessment (SRIA). Morris A, editor. ERA Economics; 2017.
13. Lindsey TD. Medical Marijuana Cultivation and Policy Gaps [Internet]. Prepared for the Office of Assembly Member Linda Halderman from the California Research Bureau; 2012 [cited 23 Apr 2018] pp. 1–7. Available: http://www.canorml.org/prop/CRB_Pesticides_on_Medical_Marijuana_Report.pdf
14. Grover J, Glasser M. Pesticides and Pot: What's California Smoking? In: NBC4 [Internet]. 2017 [cited 20 Dec 2017]. Available: <http://www.nbctvlosangeles.com/news/local/1-Team-Marijuana-Pot-Pesticide-California-414536763.html>
15. R Development Core Team. R: A Language and Environment for Statistical Computing [Internet]. Vienna, Austria: R Foundation for Statistical Computing; 2015. Available: <http://www.r-project.org/>
16. Bureau of Cannabis Control. Cannabis License Search [Internet]. 2019 [cited 30 Apr 2019]. Available: https://cannabis.ca.gov/check_a_license/
17. Bureau of Cannabis Control. Weekly Reports [Internet]. 2019.
18. California Department of Pesticide Regulation. Pesticide Residue Monitoring Program [Internet]. 2019 [cited 21 May 2019]. Available: <http://www.cdpr.ca.gov/docs/enforce/residue/rsmonmnu.htm>
19. WSLCB. Response to Public Records Request: Data Installment of Records. Washington State Liquor and Cannabis Board; 2018.
20. Schroyer J. Second voluntary cannabis product recall issued in California [Internet]. Marijuana Business Daily. 2018. Available: https://mjbizdaily.com/second-voluntary-cannabis-product-recall-issued-in-california/?utm_medium=email&utm_source=newsletter&utm_campaign=daily_073118&elqTrackId=e70322751cc24e509b94dad07ea775f5&elq=5d154b64468e43bbb33a0867504ec1c&elqaid=509&elqat=1&elqC
21. Gray RS, Sumner DA, Alston JM, Brunke H, Acquaye AKA. Economic consequences of mandated grading and food safety assurance: ex ante analysis of the federal marketing order for California pistachios. *Giannini Found Monogr*. 2005; 46: 1–52.

Sent: Wednesday, December 8, 2021 3:29 PM
To: PublicComment, CCD , RLD
Subject: [EXTERNAL] Public Comments RE Tetsting Batch Size

Dear Cannabis Control Division:

Thank you for the hard work in transitioning the state into the recreational cannabis market. I know it is hard work and will continue to be a work in progress for quite some time.
My comment is in regards to the following subject, SAMPLE BATCH SIZE for testing purposes.

As an aspiring micro cultivator here in our state and also as a concerned citizen and founder of New Mexico Coalition For Responsible Cannabis, I have been following as much as I can the proposed regulations. The health and well being of consumers of cannabis products should be a top priority and testing is what guarantees that citizens are buying safe cannabis.
The state has increased the sample batch size from 5 lbs. to 15 lbs. and I suggest that, for the time being, to leave it at 15 lbs. The state must have come up with that number based on studies and projections, it was not a number pulled out at random. A previous comment on this matter talks about a 10 fold increase in product and the need to increase the batch size to 25 lbs.
In reality, yes, there has been a 10 fold increase in the number of plants that can be cultivated, but how many cultivators will have 8000 or 10,000 plants ready for testing come April 1st? Not many, only the ones that have already been involved in the medicinal market. Everybody else, from microcultivators to mid to large scale cultivators are in the initial stages of applying for a licence and many will not be ready until mid or late 2022 or even until 2023. Like any other state that legalizes cannabis, the first few months there will be some level of chaos but things will normalize eventually. I suggest to keep cannabis products safe by maintaining the 15 lb batch size for the time being and come back and revise it once more producers have entered the market and additional of laboratories have been established.

Cordially,

Ron "Bud" Simon
Loco Buds Farm
Las Cruces, NM

From: Jason Barker <jasonbarkerform@gmail.com>

Sent: Thursday, December 9, 2021 7:38 AM

To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>

Subject: [EXTERNAL] Public Comment For: TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS PART 10 CANNABIS SERVERS LICENSING AND TRAINING PROGRAM

Public Comment For:

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS

PART 10 CANNABIS SERVERS LICENSING AND TRAINING PROGRAM

<https://ccd.rld.state.nm.us/wp-content/uploads/2021/11/16.8.10.pdf>

Good Morning. My name is Jason Barker and thank you for the time to provide public comment.

The state's legalization law is slowly destroying the medical cannabis program and industry like a cancer.

\$1,000 to \$3,000 Cost Just To Apply For Work In NM Cannabis Industry - Thats discrimination, if I want to work as a bartender, once you pass that test, you are able to print your certification card directly from your account online. This self-paced online course is 2 hours in length. The fee for this course is just \$7.95. Certification is valid for a period of 3 years all from the RLD.

New Mexico has had the highest alcohol-related death rate of any state in the U.S. since 1997. New Mexico so far in 2021 has the seventh highest alcohol DUI severity score in the United States. Only 2 hours of training.

In Oregon, the fee for this is \$100 which includes the cannabis training classes and the permit to work in the cannabis industry.

The Answer Page has A Nationally Approved CME/CE Cannabis Course Bundle for \$210. TheAnswerPage is a medical education resource that has been providing the highest quality accredited education to the healthcare community for over two decades.

<https://www.theanswerpage.com/theanswerpage/>

Dr. Dustin Sulak, a renowned cannabis clinician has one of the nation's best cannabis education programs, already used in numerous states for only a \$249 yearly subscription.

<https://healer.com/cannabis-education-training-course-and-certification-program/>

The state of New Mexico is in violation of Federal and state anti-discrimination laws for employment/hiring in mandating the state cannabis educational requirement to work in the cannabis industry against people who's socio-economic status doesn't allow for them to even have this opportunity due to these high cost.

In the CRA Chapter 4 Section 6 Part K, this allows for the grandfathering of the MCP producer legacy licenses into the new legalization law. This grandfathering/ legacy licensure should also be provided to each and every cannabis industry employee that is currently employed in the industry by 11:59 pm December 31 2021. The RLD CCD should issue all the current industry employees a server permit valid for 3 years or valid thru 2025.

If the RLD CCD forces current industry employees into these costly educational programs, that is the state taxing these industry workers for no other reason than financial gain.

The State lawmakers on the Finance Authority Oversight Committee approved the \$5 million loan program for cannabis microbusinesses, the RLD CCD should be using part of this funding for educational licensure, those are microbusinesses too and for training scholarships to pay for educational training.

Any non profit seeking to offer free cannabis educational training should be issued a license for no fee if the prospective students are not charged a fee for the educational training.

It says in 16.8.10.8 Part B: "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." So a person with a debt is denied working income to pay off that debt - that makes no sense at all when people in that situation could get a job and have wages garnished for the child support debt - thats a win-win situation for all people, especially the child needing that support.

And In Part D of the same Section it says; the Division will distribute permits within 90 days; the state's medical cannabis program can process and issue registry cards for the MCP in under 30 days...the CCD should be able to do the same here and in under 15 days. And the best option for doing this would be to create an online portal that enables access online to the Server Permit.

Section 16.8.10.9 in section D. Standards for licensure; in subsection (1) Providers and instructors application standards states:

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

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

Irene Chavez from RLD CCD told me that the current educational programs at UNM, CNM, NNMC and any other educational program underway right now and in the past are being conducted without licensure and without approval from the CCD.

All these programs state that they qualify the student to work in the state's new cannabis industry. Once more in writing via Email, Irene Chavez told me, "You would need to be licensed prior to the training" for the student to qualify for the server permit and that none of the people who have paid all that money for these classes will have to retake another one in 2022.

"Learners who pass the final exam with an 80% or higher qualify to work in a retail dispensary, an indoor or outdoor cannabis farm, manufacturer, testing facility, a vertically integrated business, a micro business, consumption lounge, or for a courier."

<https://cnmingenuity.org/program/cannabis-technician/>

\$1000 to \$3000 for a college class that earns a "certificate" but no college credits.

How can a license be issued to any cannabis education provider when they are violating the same very law they are supposed to educate people about?

The RLD CCD has already taken criminal legal action against one person for operating without proper licensure, so is the CCD going to do the same for those operating without licensure for educational training - especially considering the amount of income from these educational classes going on now is much much greater than the other individual for busted for making..?

Or will the RLD CCD turn a blind eye to all this unlicensed activity..?

The state of New Mexico is discriminating against people who's socio-economic status doesn't allow for them to even have this opportunity due to cost nor does the state have any kind of fund established to help pay for this overpriced

education that is FREE all over the internet. And the Governor has promised Free Education for any New Mexican.

The legalization law requires that the state promote business opportunities for communities that were penalized disproportionately by past criminal enforcement of cannabis laws. The social-justice provisions also mandate some form of help for farmers from economically disadvantaged communities and residents of rural areas where the cannabis industry may take hold. The state of New Mexico is in clear violation of Federal and state anti-discrimination laws for employment/hiring in mandating this high priced fee based state cannabis educational requirement to work in the cannabis industry.

Economic discrimination is discrimination based on economic factors. These factors can include job availability, wages, the prices and/or availability of goods and services, and the amount of capital investment funding available to minorities and low income populations for business.

The New Mexico Human Rights Act protects people from discrimination in employment, places of public accommodation, housing, and in applications for consumer credit.

The state's legalization law is slowly destroying the medical cannabis program like a cancer, despite this provision in the new law.

26-2C-23. Medical cannabis provisions unaffected.

Nothing in the Cannabis Regulation Act shall be construed to limit a privilege or right of a qualified patient, a primary caregiver or a reciprocal participant participating in the medical cannabis program or the use, dispensing, possession, prescribing, storage or transport of a prescription drug containing cannabis that is approved pursuant to the Federal Food, Drug, and Cosmetic Act.

Most Respectfully,

Jason M. Barker

Disclosure: I'm Jason Barker, I am a cannabis policy expert who has successfully petitioned the state and had five new health conditions added to the state's medical cannabis program: sleep apnea, Autism Spectrum Disorder, Friedreich's Ataxia, Lewy Body Disease and Spinal Muscular Atrophy. I do not hold any ownership interest or investment in any licensed entity or ancillary entity pursuant to the current medical cannabis industry in New Mexico or the proposed Cannabis Regulation Act.

My policy work over the years has been used frequently by legislators in the Roundhouse and the policy group, Drug Policy Alliance. Two examples of this would be the base text from 2018 SM-105 Medical Cannabis Task Force and 2019 SB-406 Medical Cannabis Changes bill. And the Medical Cannabis in School law that was passed at the Roundhouse.

Jason M. Barker
8708 Palomar Ave NE
Albuquerque, NM 87109-7202

(Cell) 505.449.7460

Subject: FW: [EXTERNAL] ADULT-USE CANNABIS REMAINING LICENSING REQUIREMENTS & LABELING, PACKAGING, MARKETING, AND ADVERTISING.

From: erica rowland <erica4farmflourish@gmail.com>

Sent: Thursday, December 9, 2021 8:49 AM

To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>

Subject: [EXTERNAL] ADULT-USE CANNABIS REMAINING LICENSING REQUIREMENTS & LABELING, PACKAGING, MARKETING, AND ADVERTISING.

Thank you RLD, CCD for entertaining and pondering our comments.

My name is Erica Rowland, and I am here representing Farm Flourish. We are a Cannabis Country Club/ Wellness Retreat compound offering cannabis education and lifestyle experiences.

Our comments are as follows :

Regarding minimum standards for cannabis consumption areas

C.5. (5) A licensed cannabis consumption area may allow qualified patients to bring previously purchased goods from the licensed cannabis consumption area for consumption provided the cannabis product is properly stored in the requisite resealable packaging and the qualified patient provides proof of purchase from the cannabis consumption licensee of the product to be consumed.

Please consider home grown product as legal medicine. It has been for the last 10 years for patients, it should be continuing forward.

F. Cannabis product display: as a consumer I would like to see what I am purchasing, as a producer I want to satisfy that request. Please allow us to donate display material to underserved markets or misfortunate patients responsibly and officially through the state tracking software. The insult to both patients and producers is the cost of sending significant product out for testing and destroying display product inadvertently reflects on the price of goods. We would like to keep the medicine affordable so as not to encourage the illegal market.

G. No visible consumption of cannabis products:

Thank you for giving us the freedom and the right to consume responsibly outside. For the sake of wellness and ventilation outside is the safest, least invasive consumption method. Please speak with New Mexico's Municipalities and request the removal of "indoor only" language in support of legal cannabis and patient rights and freedoms.

Thank you again for your time and consideration. You do not have to use cannabis to support those that do.

Kindly,

Erica Rowland



ERICA ROWLAND
(505)681-4732



@FARMFLOURISH



Jason Marks

Attorney at Law
1011 Third Street NW
Albuquerque, NM 87102

Voice: (505) 385-4435
Fax: (505) 359-3245
lawoffice@jasonmarks.com

December 9, 2021

Cannabis Control Division
NM Regulation and Licensing Department
Santa Fe, NM
via email to ccd.publiccomment@state.nm.us

Re: Cannabis Control Division Public Comment
**Proposed Cannabis Testing Rules 16.8.7 NMAC,
and Cannabis Laboratory Rules 16.8.2.XX**
(Public Hearing December 9, 2021)

Dear Cannabis Control Division:

The comments that follow are submitted on behalf of this law firm's client, Scepter Lab, LLC. Scepter Lab has been licensed by the Department of Health (NMDOH) as a medical cannabis testing laboratory under the Lynn and Erin Compassionate Use Act since 2016. Scepter Lab has consistently serviced more than half of the medical cannabis testing market in New Mexico since its licensing. Scepter Lab's owner and manager is Kathleen O'Dea, who is academically trained in biochemistry and microbiology. Ms. O'Dea holds an M.S. degree from the University of Arizona, and has taught laboratory courses in general microbiology, pathogenic microbiology general mycology, and medical mycology to graduate students and medical students, conducted research in the areas of collagen biochemistry, environmental microbiology and pathogenic microbiology, and has authored peer reviewed articles.

Scepter Lab was a petitioner in the successful appeal of NMDOH's last set of medical cannabis testing rules. The CCD's proposed cannabis testing rules at 16.8.7 NMAC largely fix the problems that were the basis of that judicial appeal. For example, Scepter and others have been pointing out since 2015 that routine testing of cannabis for heavy metals was extremely wasteful, when most cannabis is produced using municipal water supplies and commercial growing media. In its proposed rules, the CCD uses the common-sense, risk based approach we have previously advocated: periodic testing of private water supplies and soils, if they are used. This is an approach actually protects cannabis consumers, because it can be cost-effectively implemented. Significantly, in arguing for testing of potentially suspect water and soils, instead of routine testing of produced cannabis for metals, Scepter advocated for an approach that sent that portion of the testing business to laboratories specializing in water and soil testing, and not to Scepter or other NM cannabis testing companies.

Scepter Lab commends and thanks the Cannabis Control Division for the process it used to formulate the proposed testing rules that will be considered in the public hearing on December 9, 2021. This process had ample opportunity for Ms. O'Dea, and the proprietor of Rio Grande Analytics, the other licensed cannabis testing lab, to provide

input and feedback to the consultants that CCD engaged to assist it drafting the proposed rules.

Scepter Lab also commends CCD and its consultants for producing a set of proposed that are comprehensive and generally reasonable.

Specific Comments

(The proposed rules as published in the pdf files lack individual numbers, so we will use the captions where needed to identify the rule being commented upon.)

16.8.2.7.X Required Testing of Cannabis Products

Subsection A of the proposed rule requires that every batch of cannabis biomass be tested “prior to the sale, distribution, transfer, extraction, or further manufacturing of any cannabis product contained in the batch, except for the purposes of remediation.” A blanket requirement for testing is straightforward and appropriate for cannabis intended to be distributed in the form of flower. Matters become more complicated for biomass intended for extraction, due to the tension between avoiding the expense of duplicate testing and preventing unsafe products from entering retail distribution. Historically, under the NMDOH rules, trim that was intended for extraction was not tested prior to being extracted, only the resulting concentrate was required to be tested. See 7.34.4.10 NMAC (“All dried usable cannabis produced by a non-profit producer that is not converted into a concentrated cannabis derived product, and all concentrated cannabis derived products manufactured by a non-profit producer or manufacturer, shall be sampled for testing purposes . . .”).

The proposed CCD rule addresses the interplay between duplication and safety by mandating that all raw material (biomass) is always tested on all applicable standards, and then mandating re-testing of extracts for potency and pesticides. The CCD could adopt this as its final rule, and it would ensure that all final products are fully safe. This is also an easy approach to explain and administratively implement. But, at the cost of adding complexity, the CCD could refine the rule to eliminate some duplicative and unnecessary testing.

For example, there is no regulatory benefit from mandatory potency and homogeneity testing of biomass that will be put through an extraction process. The potency and homogeneity of the extract or finish product are all that are meaningful for customer quality assurance purposes. Pesticide testing could also be bypassed at the biomass stage; it is more important to test for pesticides after extraction, as they can become concentrated.

Whether biomass destined for extraction can bypass microbiological screening is more complex. Mechanical concentration and extraction with non-volatile solvents does not inactivate microorganisms; thus, the proposed rules properly require microbiological testing for extract and/or finished products made in that manner. However, microbiological testing could be bypassed in the biomass stage.

Next, as proposed, the rules do not require microbiological screening of extracts made using ethanol and volatile solvents. Scepter believes that extraction via ethanol and other volatile solvents inactivates most harmful microorganisms, but is unsure as to whether that can be assumed for *aspergillus* spores, which could be very harmful if they are present in an inhaled concentrate. If the CCD can determine that extraction with volatile solvents inactivates all harmful microorganisms, it becomes unnecessary to conduct microbiological testing of biomass intended for such extraction prior to extraction. The panel of tests specified in the rule for such extracts will be sufficient for quality assurance and safety. That would be similar to the NMDOH approach.

However, if there is a possibility of harmful microorganisms surviving volatile solvent extraction, then either (1) biomass intended for extract still must be sent through microbiological testing, or (2) extracts made from biomass that has not previously been screened for microorganisms should be tested for the four *aspergillus* species identified in Table 2.

In sum, Scepter recommends that this rule and Table 1 be modified to permit transferring biomass for extraction without potency, visual inspection, and pesticide testing. Scepter recommends that microbiological testing of biomass for extraction only be bypassed if it can be assured that *aspergillus* spores are inactivated by the process.

Lastly, the rule as written appears inconsistent with the remediation rules. The remediation rule (subpart O) allows for growers to remediate by extraction, but if a grower is not vertically integrated, it is not going to be able make that transfer of a batch that fails screening. We believe that the intent was to allow transfers for remediation (as stated in this subpart A), but that should be clarified.

Section B. Staggered Implementation. This appears to be well thought out.¹

C. Collection of Samples. This is generally well thought out and a big improvement in assuring reasonably accurate labels and safe products. In the provision that the "cannabis testing laboratory may reject any sample that it suspects was collected outside its protocols," the word "suspects" should be replaced with "reasonably believes," which is a more defined legal standard and requires the laboratory to (i) have a factual basis for its concerns and (ii) assess that it is more likely than not that the sample is bad. This should be changed in C(1)(b) and C(4)(b).

¹ Related to implementation, however, Scepter reiterates its significant concerns that the Division's earlier promulgated definition of a testing batch in 16.8.1.7(B), to be up to 15 pounds in size, should not have been implemented on top of the NMDOH testing rules, and prior to the implementation of the new proposed CCD testing rules at 16.8.7 NMAC. Because the NMDOH rules do not include stratified sub-sampling, 15-pound testing batches permit open the door to very large deviations in potency and safety between the testing sample and the bulk of a batch that is offered for retail sale.

G(1) Microbiological Testing.

There is an apparent typo in the last sentence - "pesticide residues" should be "microbes"
Substantively, Scepter believes there is a problem in this footnote in Table 2:

†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.

We believe this requirement is targeting juices made from fresh cannabis and similar products. It makes sense in that context, however, it is unclear as written. All fresh cannabis has a water activity above 0.65. The rule should be reworded as follows:

†Testing for shiga-toxin producing E. coli, Clostridium botulinum, and Pseudomonas aeruginosa is required only for edible cannabis products with a water activity of 0.65 or greater, manufactured from fresh cannabis.

I (2) Potency and Homogeneity Testing.

The proposed generally approach to sample stratification test is good and must be retained in the final rule. Representative sampling of cannabis flower is already a distinct challenge, because the material is not inherently homogenous. NMDOH's rules enabled unrepresentative samples to be drawn from the portion of the harvest that visually appears to have high potency and to be unaffected by contamination. Tripling testing batch sizes to 15 pounds exacerbates the problems with representative sampling of cannabis. The proposed rule goes a long way toward ensuring that the testing results will be representative of the entire batch that is made available for sale.

The wording of I(2) should be improved for readability. We also recommend that "Table 1" from 16.8.2.X (the laboratory rules) be moved and incorporated here. It is confusing to have the sampling and increment standards spread across two distinct rules.

The first sentence is hard to understand, and the last sentence of I(2) appears to be incorrect. We believe the intent of the rule is correctly stated as

(2) Batch-level homogeneity testing is performed by testing additional samples for total THC potency ~~additional samples~~ in addition to the sample tested for potency. The number of samples to be tested shall be based on the size of the batch according to the method validated by the cannabis testing laboratory; however, the total number of samples tested shall be not less than three for any batch of material five pounds or more~~less~~.

Next, the portion of Table 1 (sampling increments in the laboratory rule) pertaining to "other products" should be modified. "Other products" could include finished products such as chocolate bars, etc., where sampling the required number of increments would cause the destruction of a major portion of a batch. The table should be expanded to

distinguish between bulk products such as concentrates, for which the increments stated are workable, and finished products.

For finished products, the sampling and increments could be as provided in I(3), below, with our suggestions.

Section I(3) - Product level homogeneity.

This rule is not clear. It appears to be designed to ensure that candies and baked goods are homogeneous. It is not clear which products require testing against this standard. The rule also appears to require that a single retail package is sampled for homogeneity, and then stands in for the whole batch. A single retail package is not sufficient to provide a representative sample.

Scepter recommends that this rule state a standard of a minimum of 3 finished products to be sampled from a batch for batch-level homogeneity analysis and 3 increments from one product for product-level homogeneity. For batches in excess of 10 pounds, the rule could require one additional finished product sample for every 10 pounds.

J - Pesticide Testing

Scepter Lab supports the proposed rule for pesticide testing as comprehensive and reasonable.

O - Remediation.

This rule appropriately allows for remediation via extraction, but as discussed above, growers who are not vertically integrated will not be able to do this so long as these rules prohibit transfers between establishments for batches that have not passed testing. The ability to transfer for remediation should be made express.

Prevention of Heavy Metal Contamination.

As discussed in our preface, CCD should be commended for adopting the risk-based approach we have been advocating for years. Subsection C, soil testing, should include a provision that a third party collect and submit the soil sample.

16.2.8.X Laboratory Rules

See preceding for recommendation to move Table 1 (increments) to the Testing Rule.

**16.2.8.X APPLICATION REQUIREMENTS FOR CANNABIS RESEARCH
LABORATORY LICENSE**

(A)(8) references manufacturers and extraction equipment. It appears to be compiled here in error.

Scepter supports the other parts of this rule, including the approach to initial demonstrations of capabilities and continuing demonstrations as reasonable.

Very truly yours,

/s/ Jason Marks

Jason Marks
Attorney for Scepter Lab, LLC

From: Sherman Hom <sherman.hom@medicinalgenomics.com>
Sent: Thursday, December 9, 2021 10:10 AM
To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>
Subject: [EXTERNAL] Comments on Table 2. Microbiological Testing Requirements

Good morning, Mr. Sachs (Deputy Director of Policy of the Cannabis Control Division)
We wholeheartedly support the testing of commercial and medical cannabis for the following human pathogens

1. Salmonella species
2. Aspergillus flavus, A. fumigatus, A. niger, and A. terreus
3. Shiga toxin producing E. coli (known as STEC)

We do not support the possibility of testing for generic E. coli <100 cfu, because a result exceeding this action level provides no information concerning the presence of pathogenic E. coli. Not all E. coli are pathogenic.

We do not support the testing for Clostridium botulinum in edible products. Although C. botulinum is a pathogen via the production of botulinum toxin, this bacterium is listed as a select agent poses a potentially harmful situation to the laboratory worker. There is no state that has C. botulinum in there required testing.

If you have any questions, please do not hesitate to ask
Respectfully
Dr. Hom

--

Sherman Hom, PhD
Director of Regulatory Affairs
Sherman.hom@medicinalgenomics.com
862-588-9898
www.medicinalgenomics.com



Coming to [CannMed 2022](#), May 3-5?

Please join the *greatest minds in cannabis science* for this premier event.

HIGH SCIENCE® is coming to CannMed 2022! Be a part of changing the narrative on cannabis science. - [BUY TODAY!](#)

From: Duke Rodriguez <duke@ultrahealth.com>

Sent: Thursday, December 9, 2021 9:41 AM

To: PublicComment, CCD , RLD <CCD.PublicComment@state.nm.us>; CannabisControl, RLD, RLD <RLD.CannabisControl@state.nm.us>

Subject: [EXTERNAL] Public Comments Regarding Hearing December 9, 2021

We had delays in testing at 450 total plants. We had delays in testing at 1750 total plants. We will have even greater testing delays at 10,000 mature plants.

On top of delays due to a 10 fold increase in plants being harvested, we will have an increase in the number of producers and locations all over the state facing the same challenge.

On top of a sheer volume increase, we are introducing additional tests for pesticides and heavy metals.

There will be a bottleneck created and a crisis of getting product through the testing cycle and onto the shelves. It is simple math and cannot simply be denied. Increased demand combined with increased testing requirements will create the ultimate start-up and launch failure.

Keep in mind, we have not even spoken about the increased cost to the industry and ultimately to the consumer due to overzealous testing requirements.

Cannabis testing may be an exact science --- cannabis regulations are not!

I strongly encourage you to increase the batch size to 25# and delay or limit new testing standards until you can demonstrate a real health and safety evidence-based need, and a verified capacity of licensed laboratories to process the anticipated volumes.

We have provided written evidence to support our comments which hopefully will be posted soon. Our written comments were submitted by Ms. Kristina Caffrey or myself on behalf of Ultra Health. Thank you for the opportunity to comment.

--

Duke Rodriguez

President & CEO

16624 N 90th Street

Suite 200

Scottsdale, AZ 85260

phone [480.404.6699](tel:480.404.6699)

cell [480.246.5700](tel:480.246.5700)



NMRLD

NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Kristen Thomson, Director

- (5) The Full Text of the Initial Proposed Rule and the Full Text of the Final Adopted Rule and the Concise Explanatory Statement Filed with the State Records Administrator or the Administrator's Designee



TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERICAL 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 08/22/2021]

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 08/22/2021]

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 08/22/2021]

16.8.1.4 DURATION: Permanent.

[16.8.1.4 NMAC - N 08/22/2021]

16.8.1.5 EFFECTIVE DATE: August 25, 2021, unless an earlier date is cited at the end of a section.

[16.8.1.5 NMAC - N 08/22/2021]

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 08/22/2021]

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”:

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

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

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

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

(3) **“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”: [RESERVED]

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.

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

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

(4) **“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.

(5) **“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.

(6) **“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”:

(1) **“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) **“Policy”** means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.

(4) **“POS”** means point of sale system.

(5) **“Produce”** means to engage in any activity related to the planting or cultivation of cannabis.

(6) **“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”: [RESERVED]

(1) **“Required testing”** means testing required to take place on samples of every batch of a particular type of cannabis product at a particular stage in production or manufacturing.

(2) **“RLD”** means the regulation and licensing department.

S. Definitions beginning with “S”:

(1) **“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.

(2) **“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.

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 administrator”** means the individual(s) selected by a cannabis licensee to train other employees on the proper and lawful use of the track and trace system.

(5) **“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”** (a_w) means the ratio between the vapor pressure of a substance and the vapor pressure of distilled water under identical conditions and is an indicator of ability to support growth of microorganisms.

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

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

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

[16.8.1.7 NMAC - N 08/22/2021]

16.8.1.8 SOCIAL AND ECONOMIC EQUITY:

A. Division mandate: Pursuant to the Cannabis Regulation Act, Section 26-2C-3 (B)(7) and (8), 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 50 percent of applicants for licensure, licensees, and cannabis industry employees will represent these groups.

C. Social and economic equity plan: The division, with the advice of the cannabis regulatory advisory committee, shall solicit public input to create and implement a social and economic equity plan. A plan shall be created no later than October 15, 2021, and will include guidelines to determine how to assess which communities have been disproportionately impacted, how to assess if a person is a member of a community disproportionately impacted, and proposed incentives to promote social and economic equity for applicants, licensees, and cannabis industry employees.

[16.8.1.8 NMAC - N 08/22/2021]

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 08/22/2021]

16.8.1.10 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.

[16.8.12.10 NMAC - N 08/22/2021]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 2 LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS
ESTABLISHMENTS

16.8.2.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.2.1 NMAC - N 08/22/2021]

16.8.2.2 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.
[16.8.2.2 NMAC - N 08/22/2021]

16.8.2.3 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.
[16.8.2.3 NMAC - N 08/22/2021]

16.8.2.4 DURATION: Permanent.
[16.8.2.4 NMAC - N 08/22/2021]

16.8.2.5 EFFECTIVE DATE: August xx, 2021, unless a different date is cited at the end of a section.
[16.8.2.5 NMAC - N 08/22/2021]

16.8.2.6 OBJECTIVE: The objective of Part 2 is to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis. Part 2 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.2.6 NMAC - N 08/22/2021]

16.8.2.7 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.
[16.8.2.7 NMAC - N 08/22/2021]

16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:

A. State and local laws: Pursuant to the Cannabis Regulation Act, applicants and licensees shall comply with all applicable state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act, including laws governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, construction and building codes, operation of a cannabis establishment, employment, zoning, building and fire codes, water use and quality, water supply, hazardous materials, pesticide use, wastewater discharge, and business or professional licensing.

B. Licensure on federally recognized Indian Nation, Tribe or Pueblo: The division shall not approve an application for licensure to operate within the exterior boundaries of a federally recognized Indian Nation, Tribe or Pueblo located wholly or partially in the state, unless the tribal government and the department have entered an intergovernmental agreement to coordinate the cross-jurisdictional administration of the laws of New Mexico and the laws of a tribal government relating to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

C. Age requirements: All applicants for licensure, including controlling persons of applicants, must be at least twenty-one years of age. All employees of a commercial cannabis establishment must be at least twenty-one years of age.

D. Consumption prohibited: Licensees shall prohibit the consumption of cannabis or cannabis products on or within the licensed premises unless a cannabis consumption area has been approved by the division.

E. Illegal sale or distribution: Licensees shall not knowingly and intentionally sell, deliver, or transport cannabis or cannabis products to any person that is not authorized to possess and receive the cannabis or cannabis products pursuant to state law or division rules.

F. Sales of alcoholic beverages prohibited: Licensees are allowed to conduct other licensed activities, including activities pursuant to the Hemp Manufacturing Act, Section 76-24-3 *et seq.*, NMSA 1978, except for sales of alcoholic beverages.

G. No guarantee of licensure: An applicant may not exercise any of the privileges of licensure until the division approves the license application and issues a license. The submission of an application is in no way a guarantee that the application will be accepted as complete. A license shall be granted or denied within 90 days upon acceptance of a completed application. Information provided by the applicant and used by the division for the licensing process shall be accurate and truthful. The division may initiate action to deny licensure, or other administrative action against an applicant or licensee, pursuant to the Uniform Licensing Act.

I. Computation of time: The word “days” as used in this rule means calendar days unless otherwise noted.

J. Display of license: A division license shall be displayed in a conspicuous place on the licensed premises and must be made available upon request by state and local agencies. If the licensed premises is open to the public, the license shall be displayed in an area that is within plain sight of the public.

K. Inventory and sales equipment: The division shall require licensees to utilize division approved track and trace equipment, software, and services.

L. Limitation of licensed premises: Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

M. Multiple licensee premises: Multiple licensees may occupy a single licensed premises, provided each is individually licensed by the division.

N. Reporting of theft or security incident to division: Licensees shall submit to the division written notification of any attempted theft, theft, assault of employees or patrons, robbery or attempted robbery, break-in, or security breach that occurs on the licensee’s premises, no later than 24 hours after the licensee first becomes aware of the event. The description shall include a description of any property that was stolen or destroyed, and the quantity of any cannabis plants, cannabis and cannabis products that were stolen. The licensee must provide a copy of the police report, video footage and any other supporting evidence requested by the division. The premises must be secured prior to continuing operations, including the replacement of locks, doors, windows, repair of damaged structures or access points with comparable or more secure replacement material.

O. Non-transferable or assignable license: A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license shall be void and returned to the division when any one of the following situations occurs:

- (1) **location of the licensed premises changes;**
- (2) **the discontinuance of operation at a licensed premises; or**
- (3) **suspension or revocation of the license by the division.**

P. Online application: All applications for initial licensure, amended licensure, additional premises, and renewal must be completed using the online application portal available on the division website. Applicants shall first register for a user account.

Q. Complete application and fees required: Applicants must submit a completed application to the division before it will be accepted by the division as complete and considered for approval or denial. License and additional premises application or renewal fees must be paid at the time of application submission. Annual plant fees must be paid upon the division’s approval of the initial application or renewal application and approval of the number of cannabis plants that a licensee may produce.

R. Process for incomplete application: In the event that an application for licensure is determined by the division to be incomplete, the division shall notify the applicant by email and specify the information or materials that remain to be submitted. If the applicant does not submit the required information or materials within 90 days of receiving notice of the deficiency, the application shall be closed as incomplete and the applicant will be required to submit a new application in order to resume the application process. All licensing or renewal fees are non-refundable and must be paid for each new application.

S. Provisional license with contingencies: Upon written request of the applicant, the division may issue a provisional license letter with defined contingencies that the applicant must obtain documents that may be pending approval of a cannabis establishment license or must be obtained from other state agencies or local jurisdictions for the application to be considered complete. The provisional license letter shall list the remaining items necessary for the application to be complete and shall expire 6-months from the date the provisional license letter was issued to the applicant. Upon written request of the applicant, the division may extend a provisional license letter for an additional 6-months. Final approval or denial of a license shall be stated on the provisional license letter as contingent on the applicant submitting all remaining items. Such a provisional license letter shall not authorize an applicant to begin licensed cannabis activity.

T. Request for clarifying information: Upon request of the division, an applicant shall provide additional information required to process and fully review the application. If the requested information is not received by the division within 90 days from the date the application was deemed to be complete, the division shall initiate action to deny licensure pursuant to the Uniform Licensing Act.

U. Physical and email address: Applicants and licensees must provide a physical mailing address and an email address. General correspondence from the division will be sent to the applicant or licensee's email address of record. Legal notice and determinations regarding an application, renewal or an administrative action, including an action taken by the division to deny, suspend, or revoke a license or impose a sanction and civil monetary penalty, shall be sent to the last mailing address and to the last email address furnished to the division. Licensees must inform the division in writing of any change to its physical mailing address and/or email address within 10 days of the change. If applicable, such changes may be submitted via the online licensing portal. An applicant or licensee's failure to notify the division of a change in physical or email address does not relieve the applicant or licensee from the obligation of responding to a division communication.

V. Electronic signature: The division will accept an electronic signature that complies with the Uniform Electronic Transactions Act, Section 14-16-1 *et seq.*, NMSA 1978, or the Revised Uniform Law on Notarial Acts, or rules promulgated pursuant thereto, on any documents required to be submitted to the division and that are submitted electronically.

W. Withdrawal of Application: An applicant may withdraw an application at any time prior to the division's issuance of a license or denial of a license. Requests to withdraw an application must be submitted to the division in writing, dated, and signed by the applicant. Withdrawal of an application shall not, unless the division has consented in writing to such withdrawal, deprive the division of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground. The division shall not refund application fees for a withdrawn application. An applicant may reapply at any time following the withdrawal of an application and shall be required to submit a new application and fee.

X. Closure of a licensed cannabis establishment: A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

Y. Persons licensed pursuant to the medical cannabis program: In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the effective date of this rule. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules

adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

Z. Application for variance:

(1) Any applicant or licensee may seek a variance from division rule(s) and shall do so by filing a written petition with the division. The petitioner may submit with the petition any relevant documents or material, which the petitioner believes would support the petition.

(2) Petitions shall:

- (a) state the petitioner's name and address;
- (b) state the date of the petition;
- (c) describe the facility or activity for which the variance is sought;
- (d) state the address or description of the premises upon which the cannabis establishment or activity is located;
- (e) identify the rule(s) from which the variance is sought;
- (f) state in detail the extent to which the petitioner wishes to vary from the rule(s) and how the petitioner will ensure public health and safety is not negatively impacted;
- (g) state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and
- (h) state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

(3) At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division.

(4) Prior to a final decision, the division will hold a public hearing pursuant to the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978. The purpose of the hearing is to provide interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed variance. The division, at its sole discretion, may determine whether to hold more than one hearing. The division may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide comments for clarification purposes. The hearing officer shall identify and mark all written comments submitted during the hearing. The public comments should be labeled as exhibits for reference, but do not require formal admission into the hearing record. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath. Any individual who provides public comment at the hearing may be questioned by the hearing officer. The hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the format in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment. The rules of evidence shall not apply and the hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

(6) The division shall set forth in the final order the reasons for its actions and shall not be subject to review.

AA. Application for additional licensed premises: Licensees must apply for the specific cannabis establishment license type intended for each additional licensed premises as defined in the Cannabis Regulation Act.

BB. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:

(1) Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for each type of cannabis establishment that is authorized pursuant to the Cannabis Regulation Act.

(2) An initial applicant for an integrated cannabis microbusiness or a vertically integrated cannabis establishment license, must submit an application for authorization to conduct one or more of the following:

- (a) production of cannabis;
- (b) manufacturing of cannabis products;
- (c) retail establishment; or
- (d) courier of cannabis products.

(3) Applicants or licensees shall request authority to add or remove a cannabis establishment activity by submitting an amended application, and any required additional fees.

(4) If a vertically integrated cannabis establishment applicant or licensee will not conduct all cannabis establishment activity on a single premises, each additional premises shall require an additional premises fee.

(5) An applicant or licensee shall not conduct any activity for which additional authority is required until it has received written approval from the division.

[16.8.2.8 NMAC - N 08/22/2021]

16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:

A. Initial licensure: Applicants for initial licensure shall consent to and undergo a national criminal history background check and department of public safety (DPS) statewide criminal history screening background check no more than ninety days prior to submitting an application. For purposes of this rule, background checks shall be required for:

- (1) each partner of a limited partnership;
- (2) each member of a limited liability company;
- (3) each director, officer, or trustee of a corporation or trust; and
- (4) any controlling person of the applicant.

B. Authorized change: If there is a change in membership of any of the above listed person(s), an amended application and background check documentation shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.

C. Procedure for applicants:

(1) an applicant shall submit a request to the federal bureau of investigation, the New Mexico department of public safety, or a designee vendor for a current criminal history report through the national crime information center (NCIC);

(2) the division shall provide applicants the division's originating agency identification (ORI) number;

(3) an applicant shall provide to the department of public safety, or its designated vendor, a criminal background screening request, fingerprints, and supporting documentation, including an authorization for release of information to the division in accordance with the procedures of the department of public safety or its designated vendor;

(4) the department of public safety or its designated vendor will review state records and shall transmit the fingerprints to the federal bureau of investigation for a national screening; and

(5) the results of the screening will be made available to the division for review.

D. Fees: All applicable fees associated with the national criminal history background check and New Mexico department of public safety statewide criminal history background checks shall be paid by the applicant or licensee.

E. Substantially related convictions: The division shall review felony convictions pursuant to the Cannabis Regulation Act and the Criminal Offender Employment Act. The following are considered substantially related to the qualifications, functions, or duties of an applicant or person:

- (1) a felony conviction involving fraud, deceit, or embezzlement;

(2) a felony conviction for hiring, employing, or otherwise using a person younger than eighteen years of age to:

(a) **prepare for sale, transport or carry a controlled substance; or**

(b) sell, give away or offer to sell a controlled substance to any person; and

(3) a felony offense for the possession, use, manufacture, distribution or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance. For purposes of this rule, a controlled substance shall not include cannabis.

F. Duty to report potentially disqualifying event: Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any crime specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.

[16.8.2.9 NMAC - N 08/22/2021]

16.8.2.10 SECURITY AND LIMITED-ACCESS AREA: All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids. For purposes of this rule, cannabis or cannabis products are not visible if it cannot be reasonably identified. Licensees shall comply with the security requirements set out in this rule to ensure that licensed premises and limited-access areas, including a vault, are secure.

A. Security alarm system: Licensees shall install and maintain at each premises an operational security alarm system. The security alarm system must be continuously monitored, whether electronically, by a monitoring company, or other means determined to be adequate by the division, and provide an alert to designated employees of the licensee and, if necessary, law enforcement within 5 minutes after a notification of an alarm or a security alarm system failure, either by telephone, email, or text message. Monitored sensors are required on all perimeter entry points and perimeter windows, if applicable. The system must include an audible alarm, which must be capable of being disarmed remotely by the designated employee or the security company. Licensees shall maintain, and make available to the division upon request, a description of the location and operation of the security system, including the location of the central control, a schematic of the security zones, and the name of the security alarm company and monitoring company, if applicable.

B. Security alarm system maintenance and failure: Licensees shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security alarm system. In the event of a security alarm system failure due to a loss of electrical power or mechanical malfunction that is expected to exceed an eight-hour period, the licensee shall immediately notify the division within 48 hours following the discovery of the failure, and provide alternative security that may include closure of the premises. All security system equipment shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.

C. Inspection of security alarm system records: Licensees shall maintain documentation for a period of at least 12 months of all maintenance inspections, servicing, alterations, and upgrades performed on the security alarm system. All documentation must be available during a division inspection.

D. Digital video surveillance: Licensees shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:

(1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;

(2) each camera shall be permanently mounted and in a fixed location;

(3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

E. Areas of digital video surveillance: Areas that shall be recorded on the digital video surveillance system include the following:

- (1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
- (2) limited-access areas;
- (3) areas storing a digital video surveillance-system storage device;
- (4) entrances and exits to the licensed premises; and
- (5) all point of sale (POS) locations to capture sale transactions.

F. Digital Video Surveillance Recording: Licensees shall comply with the following digital video surveillance recording requirements:

- (1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);
 - (2) the physical media or storage device on which digital video surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft;
 - (3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;
 - (4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;
 - (5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;
 - (6) recorded images shall clearly and accurately display the time and date of the recording;
- and
- (7) time shall be measured in accordance with the United States National Institute Standards and Technology standards.

G. Failure notification: A digital video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the digital video surveillance system or digital video surveillance-system storage device. A digital video surveillance system failure shall be reported to the division immediately and operations shall cease as soon as safely possible until the system is again operational.

H. Multiple licensees premises: If multiple applicants or licensees seek to operate, or operate, within the same premises, a single security system and digital video surveillance system covering the entire premises may be used by all of the licensees under the following conditions:

- (1) each applicant or licensee shall disclose on their premises diagram where the security alarm system and the digital video surveillance cameras are located and where digital video surveillance recordings are stored;
- (2) each applicant or licensee shall include in their application a certification that all licensees shall be individually responsible for the operation, maintenance, and record keeping requirements of the security alarm system, and that all licensees shall have access to live monitoring of the digital video surveillance system;
- (3) each applicant or licensee shall include in their application an explanation of how the security alarm system and digital video surveillance system will be shared with the division and authorities, as well as who is responsible for maintenance of the security alarm system and the digital video surveillance system, who is authorized to monitor the video footage and who is responsible for storing any digital video surveillance recordings;
- (4) each applicant or licensee shall have immediate access to the digital video surveillance recordings to produce them pursuant to subsection F of this section; and
- (5) each applicant or licensee shall be held responsible for any violations of the security system or digital video surveillance requirements.

I. Locks: Licensees shall ensure that limited-access areas can be securely locked using commercial-grade locks that meet applicable building and fire codes. Licensees shall also use commercial-grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

J. Limited-access areas: A limited access area shall only be accessible to a licensee and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited-access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity, or volunteers specifically permitted by the licensed cannabis establishment. Licensees shall ensure:

(1) only authorized employees of the licensee and other authorized individuals have access to the limited-access areas of the licensed premises;

(2) a daily record log, which may be a sign-in and sign-out sheet at the entrance of a premises, of all authorized employees and authorized individuals that are not employees of the licensee who enter the limited-access areas is maintained;

(3) limited-access record logs are kept for a minimum of 90 days, or 12 months if a theft or security incident occurs, and must be made available to the division within 48 hours upon request;

(4) entrances to all limited-access areas have a solid door, or if appropriate, a gate adequate to block access, and a lock meeting the requirements set forth in subsection I of this section, and unless prohibited by building or fire codes, the entrance shall remain locked when not in use during regular business hours;

(5) all limited-access areas are identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height;

(6) authorized employees of the licensee visibly display an employee identification badge at all times while present within a limited-access area;

(7) other authorized individuals obtain a visitor identification badge prior to entering a limited-access area, the visitor identification badge shall be visibly displayed at all times while the visitor is in any limited access area, and all visitor identification badges shall be returned to the cannabis establishment on exit.

K. Licensee identification badge requirement: Licensees shall issue a laminated or plastic-coated identification badge to all agents, officers, or other persons acting for or employed by a licensee, which shall, at a minimum, include the licensee's "doing business as" name and license number, the individual's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

L. Lighting: Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.

M. Doors and windows: All external entrances to indoor facilities on the licensed premises must be able to be locked and all perimeter doors and windows of indoor facilities must be in good condition and lockable.

N. Fencing requirements for outdoor areas or greenhouses: Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and

(2) a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

O. Security guards: Security guards are permitted but not required. Contract security guards must be licensed under the Private Investigations Act, Section 61-27B-1 *et seq.*, NMSA 1978. Security guards must not consume cannabis or cannabis products or be intoxicated while performing any duties for a licensee. Security guards must comply with all laws related to firearms and other weapons.

P. Vault: Licensees may store all non-growing cannabis, cannabis products, or cash not being actively handled for purposes of cultivating, packaging, processing, transporting, or selling within an adequately sized vault.

[16.8.2.10 NMAC - N 08/22/2021]

16.8.2.11 RECALL OF CANNABIS:

A. Written procedures: Licensees shall establish and implement written procedures for recalling cannabis and cannabis products that have been sold or otherwise distributed to the public or other cannabis establishments. Recall procedures shall be made available for the division's inspection upon request.

B. Recall procedures: The recall procedures shall identify:

- (1) the circumstances in which a recall will be conducted, including the circumstances involving the mislabeling or contamination of products;
- (2) personnel responsible for implementing the recall procedures;
- (3) procedures for notification of all customers who have, or reasonably could have, obtained an affected product, including communication and outreach via broadcast media, as appropriate;
- (4) procedures for notification of any other cannabis establishment that supplied or received the recalled product;
- (5) instructions to be provided to customers or other cannabis establishments for the return or destruction of the recalled product; and
- (6) procedures for the collection and wastage (as may be required by the division) of any recalled product.

C. Destruction of recalled product: All recalled products that are intended to be destroyed shall be wasted in accordance with the wastage requirements of the division.

D. Division notification: The licensee shall notify the division of any recall within 24 hours of initiating the recall.

E. Division recall order: The division may order the immediate recall of cannabis or cannabis products if it deems such action necessary to protect public health and safety.

[16.8.2.11 NMAC - N 08/22/2021]

16.8.2.12 CHAIN OF CUSTODY:

A. Licensees shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and tracing of cannabis and cannabis products. Licensees shall use a paper-based or electronic chain of custody form that documents the possession of cannabis or cannabis products, and includes the following:

- (1) the originating location of the cannabis or cannabis products;
- (2) the time and date of transfer of the cannabis or cannabis products;
- (3) the size, number of boxes, and number of pieces of cannabis or cannabis products;
- (4) the internal batch or lot numbers, and if different, the track and trace batch or lot numbers;
- (5) a dated signature of the person receiving the cannabis or cannabis products; and
- (6) for cannabis samples, in addition to the above, the types of containers, mode of collection, the authorized individual who collected the sample, the date and time of collection, preservation, and requested analyses of the sample.

B. Licensees shall also adopt, maintain, and enforce security requirements to ensure security and the safety of cannabis and cannabis products and transport personnel.

[16.8.2.12 NMAC - N 08/22/2021]

16.8.2.13 REQUIREMENTS FOR THE TRANSPORTATION OF CANNABIS:

A. General requirements: The following requirements apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises:

(1) transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under the Cannabis Regulation Act or designated employees, or contractors, of a licensee;

(2) prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins;

(3) transportation of cannabis or cannabis products by means of a human powered vehicle or unmanned vehicle is prohibited;

(4) cannabis or cannabis products shall only be transported inside of a motor vehicle or trailer in reasonable operating condition and shall not be visible or identifiable from outside of the vehicle or trailer;

(5) cannabis or cannabis products shall be locked in a box, container, or cage that is secured within the inside of the vehicle or trailer, including when such a box, container, or cage is located inside of the trunk;

(6) vehicles and trailers shall be locked and secured while left unattended;

(7) licensees shall not leave a vehicle or trailer containing cannabis or cannabis products unattended in a residential area;

(8) vehicles shall have a vehicle alarm system ;

(9) packages or containers holding cannabis or cannabis products shall not be tampered with, or opened, during transport;

(10) when engaged in the transportation of cannabis or cannabis products, a licensee shall only travel between licensees shipping or receiving cannabis or cannabis products and its own licensed premises;

(11) licensees may transport multiple shipments of cannabis or cannabis products at one time in accordance with applicable laws;

(12) licensees shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops;

(13) under no circumstances may alcoholic beverages be transported with cannabis or cannabis products;

(14) vehicles and trailers transporting cannabis or cannabis products are subject to inspection by the division at any licensed premises or during transport at any time;

(15) notwithstanding subsection A of this section, cannabis or cannabis products may be transported by foot, hand truck, forklift, or other similar means if it is not operationally feasible to transport cannabis products inside of a vehicle or trailer because the licensed premises that the cannabis products will be transported from and the licensed premises that will be receiving the cannabis products are located within the same building or on the same premises;

(16) storage and transportation of cannabis and cannabis products shall be under conditions that will maintain and protect the cannabis or cannabis products against physical, chemical, and microbial contamination as well as against deterioration of the cannabis or cannabis products and the container;

(17) the vehicle must be properly registered with the New Mexico motor vehicle division; and

(18) the driver of the vehicle must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement and the division when requested.

B. Shipping manifest: Prior to transporting cannabis or cannabis products, a licensee shall generate a shipping manifest through the track and trace system for the following activities:

(1) testing and sampling of cannabis or cannabis products;

(2) sale of cannabis or cannabis products to a licensee;

(3) destruction, wastage, or disposal of cannabis or cannabis products; and

(4) any other activity, as required by the division or any other government authority.

C. Transmittal of manifest: Licensees shall transmit the shipping manifest to the division and (if applicable) the licensee that will receive the cannabis or cannabis products via the online track and trace portal prior to transporting the cannabis or cannabis products.

D. Verification of manifest: Licensees shall ensure and verify that the cannabis or cannabis products being taken into possession for transport at the originating licensed premises are described and accurately reflected in the shipping manifest. For purposes of this section, the licensee may verify that the cannabis or cannabis products are accurately reflected in the shipping manifest by confirming that the number of boxes of cannabis or cannabis products, type of cannabis or cannabis products, or the units of cannabis or cannabis products matches the label on the boxes containing the cannabis or cannabis products.

E. Rejection of shipment: Licensees shall not take into possession or transport:

(1) Any cannabis or cannabis products that are not on the shipping manifest; or

(2) Any cannabis or cannabis products that are less than or greater than the amount reflected on the shipping manifest, with the exception of marginal weight difference due to curing during transport.

F. Responsibility for discrepancy: The licensee transporting the cannabis or cannabis product is responsible for any discrepancies between the shipping manifest and the cannabis or cannabis products in its possession during transport, and subject to any enforcement or disciplinary action related to such discrepancy.

G. Void or change prohibited: Licensees shall not void or change a shipping manifest after departing from the originating licensed premises.

H. Documentation of all transport: A shipping manifest and chain of custody form shall accompany every transport of cannabis products.

I. Alternative notice of shipment: Notwithstanding any provision of this section to the contrary, if a transporting licensee cannot obtain access to the track and trace system, the licensee shall complete the shipping manifest outside of the track and trace system and promptly transmit it to the division and the licensee receiving the shipment by electronic mail. If the transporting licensee has access to the track and trace system and the licensee receiving the shipment does not have access to the track and trace system, the transporting licensee shall complete the shipping manifest in the track and trace system, transmit it to the division, and send a copy to the licensee receiving the shipment by electronic mail.

[16.8.2.13 NMAC - N 08/22/2021]

16.8.2.14 LICENSURE PERIOD, EXPIRATION AND RENEWAL:

A. License period: The licensure period of a license shall be from the date of approval of the license application for a period of 12 months.

B. Automatic expiration of license: Unless otherwise renewed, suspended, or revoked, a license shall expire at 11:59 p.m. on the day indicated on the license as the expiration date or other written notification by the division.

C. License renewal: To timely renew a license, a completed license renewal application and annual license fee set forth in 16.8.11 NMAC shall be received by the division from the licensee no earlier than 60 calendar days before the expiration of the license and no later than 30 days before the expiration of the license through the division's electronic licensing portal. Failure to receive a notice for license renewal from the division does not relieve a licensee of the obligation to renew all licenses as required. In the event a license renewal application is not submitted and approved prior to the license expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any medical or commercial cannabis or cannabis products until the license is renewed. Upon the nonrenewal of a license, the division may initiate disciplinary action pursuant to the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA 1978.

[16.8.2.14 NMAC - N 08/22/2021]

16.8.2.15 WASTAGE OF CANNABIS OR CANNABIS PRODUCTS; PERMITTED METHODS:

Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the division. Wastage of cannabis or cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.

A. Permitted methods of wastage: Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume;

B. Disposal of wasted cannabis: Disposal of wasted cannabis or cannabis plants shall be conducted in accordance with all applicable waste disposal laws, including hazardous waste disposal laws.

C. Holding time: Cannabis or cannabis products that a licensee intends to waste shall be held in a secured designated holding area for a minimum of 72-hours prior to being wasted. Licensees shall affix to each batch that is held for wasting documents that record information concerning the batch, including batch number or code, plant number, and weight. The batch to be wasted shall not be handled, moved, or wasted during the 72-hour period, unless by specific instruction of the division. Cannabis or cannabis products that are intended to be wasted may be subject to inspection by the division.

D. Documentation of wastage; retention: Licensees shall record the wastage of cannabis or cannabis products, including batch number, weight, plant number, the name of the receiving solid waste facility, dates of wastage and disposal, and any test results associated with a wasted batch, using an electronic system specified by the division, and shall deduct any wasted usable cannabis or cannabis plants from the licensee's inventory. The electronic record shall be retained for no less than two years following the disposal. Licensees shall additionally document the wastage of any cannabis using a video recording and shall retain the video recording of the destruction for no less than 120 days. Licensees shall make the video recording of the destruction available for the division's inspection and copying upon the division's request.

E. Notice to division: Licensees shall notify the division of the wastage of cannabis within five business days of the wastage.

[16.8.2.15 NMAC - N 08/22/2021]

16.8.2.16 QUALITY ASSURANCE TESTING; COMPLAINT PROCEDURE:

A. Quality assurance testing by the division: The division or its representative may conduct quality assurance sampling and testing of cannabis or cannabis products, and may require a licensee to provide samples of cannabis or cannabis products for this purpose. The division may additionally adopt and enforce a randomized testing schedule for the sampling and testing of cannabis or cannabis products. The division may prohibit the sale or transfer of cannabis or cannabis products that are determined by the division to contain prohibited levels of contaminants, or that is found to have been improperly tested, or may require remediation of such cannabis that is consistent with the remediation standards of the division.

B. Complaints: If the division receives a verified complaint regarding the presence of mold, bacteria, or another contaminant in cannabis or cannabis products, or if the division has reason to believe that the presence of mold, bacteria, or another contaminant may jeopardize public health and safety, the division or its representative may conduct an inspection and may require a licensee to provide samples of cannabis or cannabis products for testing by the division. Licensees shall allow the division or its representative access to a facility or to collect cannabis or cannabis product samples. To be considered verified, a complaint must be made on a form provided by the division that at a minimum identifies:

- (1) date the complaint is filed;
- (2) location of the cannabis or cannabis product;
- (3) any identifiable features of the cannabis or cannabis product at issue, including the type and amount;

- (4) the nature of the complaint;
- (5) name and contact information of the complainant; and
- (6) complaint must be emailed to the licensee within 5 business days of the division receiving the complaint.

C. Division sampling and testing requirements: Division employees may possess cannabis samples for the sole purposes of establishing compliance with the Cannabis Regulation Act or division rules. The division shall comply with the following testing requirements:

- (1) the division shall maintain chain of custody documentation for any cannabis or cannabis product samples taken;
- (2) a written receipt shall be given to the licensee for all testing samples;

- (3) all testing samples shall be placed into a sealed container and clearly labeled;
- (4) all testing samples shall be tested by the division or a designated testing facility; and
- (5) the quantity of cannabis or cannabis products that is gathered by the division from a licensee for testing purposes shall not exceed the applicable sample sizes required by division rules.

D. Cost of testing: The licensee shall bear the cost of any testing required by the division.

[16.8.2.16 NMAC - N 08/22/2021]

16.8.2.17 FIRE SAFETY LAWS: Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting.

[16.8.2.17 NMAC - N 08/22/2021]

16.8.2.18 CONSTRUCTION OR ALTERATION OF CANNABIS ESTABLISHMENT BUILDINGS:

If applicable, licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978 and the LPG and CNG Act, Section 70-5-1 *et seq.*, NMSA 1978, including associated rules, as well as applicable codes, standards, zoning laws, licensing laws, and fire codes. If applicable, licensees shall further ensure that each structure, including manufactured homes used pursuant to Section 60-14-4(S), NMSA 1978, obtains a Certificate of Occupancy pursuant to 14.5.3.13 NMAC prior to occupancy and use of the structure.

[16.8.2.18 NMAC - N 08/22/2021]

16.8.2.19 OCCUPATIONAL SAFETY: Licensees shall comply with the Occupational Health and Safety Act, Section 50-9-1 *et seq.*, NMSA 1978 and any associated rules.

[16.8.2.19 NMAC - N 08/22/2021]

16.8.2.20 MONITORING OF LICENSEE:

A. Monitoring: The division may perform on-site assessments of an applicant or licensee during normal business hours to determine compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. Record access and review: The division may review any and all records related to the operations of the licensee and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with division rules or applicable laws. The division shall have access to the financial records of a licensee, including sales records and data from point-of-sale systems, and shall be granted immediate access to inspect or copy those records upon request.

C. Access to premises: Licensees shall provide the division timely access to any material and information necessary for determining compliance with division rules or applicable laws. Failure by a licensee to provide the division access to the premises or materials may result in disciplinary action.

D. Monitoring documents: Any failure to adhere to division rules or applicable laws documented by the division during monitoring may result in disciplinary action.

E. Report to law enforcement: The division shall refer suspected criminal activity or complaints alleging criminal activity that are made against a licensee to appropriate federal, state, or local law enforcement authorities.

F. Financial records: Licensees shall maintain detailed sales records in a manner and format approved by the division, inform the division of the location where such records are kept, and promptly update the division if the records are removed.

G. Audit: Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

H. Producer reports: A cannabis producer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- (1) number of cannabis plants and cannabis inventory;
- (2) revenue from the wholesale of cannabis;
- (3) total number of transactions;
- (4) number of units provided without charge;
- (5) number of cannabis plants in production, including mature and immature plants;
- (6) number of cannabis plants harvested;
- (7) total yield of usable cannabis harvested from cannabis plants (in grams);
- (8) average yield per plant (in grams);
- (9) amount of cannabis (in grams) sold by wholesale;
- (10) amount of cannabis (in grams) purchased by wholesale;
- (11) number of live cannabis plants (including clones) and cannabis seeds sold;
- (12) amount of dried cannabis leaves and flowers in stock;
- (13) average price per gram of dried cannabis leaves and flowers;
- (14) total amount of dried cannabis leaves and flowers sold (in units);
- (15) total sales of dried cannabis leaves and flowers (in dollars and units);
- (16) actual water and energy use in the preceding 12 months;
- (17) demographic information required pursuant to the Cannabis Regulation Act, including

data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; and

- (18) all quality testing reports, to be included as attachments.

[16.8.2.20 NMAC - N 08/22/2021]

16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:

A. License types: The division may license two classes of producers:

- (1) A cannabis producer; and
- (2) A cannabis producer microbusiness.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

C. License required: Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

D. Other activities prohibited: Except as provided in subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

E. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness: Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for a cannabis producer or cannabis producer microbusiness to be approved for, and authorized to conduct, cannabis producer activities.

[16.8.2.21 NMAC - N 08/22/2021]

16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:

A. An initial application or renewal for cannabis producer licensure shall include the following:

- (1) Contact information for the applicant and the cannabis establishment, to include:
 - (a) applicant's full legal name;
 - (b) applicant's date of birth, if applicable;
 - (c) applicant's mailing address;
 - (d) applicant's contact telephone number;
 - (e) applicant's contact email address;
 - (f) applicant's business physical address and mailing address, if different;

- (g) applicant's business legal name, including a DBA name if applicable;
 - (h) applicant's business web address, if applicable;
 - (i) applicant's business hours of operation;
 - (j) name and contact information for each controlling person; and
 - (k) demographic data pursuant to the Cannabis Regulation Act;
- (2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
- (3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;
- (4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;
- (5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:
 - (a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or
 - (b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:
 - (i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;
 - (ii) a subfile order or decree issued by a water rights adjudication court;
 - (iii) the findings of an office of the state engineer hydrographic survey; or
 - (iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.
- (6) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:
 - (a) drip irrigation and water collection;
 - (b) natural lighting and energy efficiency measures;
 - (c) renewable energy generation; and
 - (d) estimated water and energy use related to the applicants cultivation plan;
- (7) a copy of a current business license, fire inspection report, and zoning approval;
- (8) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;
- (9) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;
- (10) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;
- (11) if applicable, a description and legible electronic image of the labeling and packaging of the cannabis or cannabis products that the producer shall utilize, which satisfies the labeling requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;
- (12) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of medical or commercial cannabis sold;

(13) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

(14) a summary of the proposed operations, including a list of cannabis or cannabis products produced at the location;

(15) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

(16) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

(17) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

(18) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

(19) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

(20) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(21) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(22) applicant's social and economic equity plan to encourage economic and social diversity in employment, 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;

(23) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(24) payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

B. Verification of information: The division may verify information contained in each application and accompanying documentation, including:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE:

A. Application: A licensed producer shall submit to the division an application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size or location of the premises;
- (2) change of licensee's legal or business name;
- (3) change in water source, or licensee's water and energy conservation plan, including, the reuse of water and disposal of effluent;
- (4) increase in plant count beyond which licensee is currently licensed to produce;
- (5) addition of a controlling person;
- (6) material or substantial change to a licensee's security system;
- (7) material or substantial modification of the premises; or
- (8) engaging in an activity which requires an addition or change of a license type.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall prorate required fees to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if approved. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;
- (2) a change in the licensee's access to the water source submitted with an application for initial, amended, or renewal licensure or a 10 percent, or more, increase in the licensee's water usage;
- (3) change to a licensee's security system, including relocation or security points or installation of a new security system; or
- (4) modification of the premises to relocate cannabis activities.

[16.8.2.23 NMAC - N 08/22/2021]

16.8.2.24 PRODUCER PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.
[16.8.2.24 NMAC - N 08/22/2021]

16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES

A. Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises from the premises diagram filed with the division.

B. Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.

C. Material or substantial changes, alterations, or modifications requiring approval include:

(1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;

(2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;

(3) re-roofing and application of roof coatings that requires a building permit and inspections; or

(4) changing the occupancy activities conducted in or the use of an area identified in the last premises diagram provided to the division that requires a new certificate of occupancy or fire inspection.

D. Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:

(1) a new premises diagram that conforms to requirements set forth in 16.8.2.18 NMAC;

(2) a copy of the applicable building permit; and

(3) a new certificate of occupancy, if applicable.

E. Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;

F. Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and

G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.

[16.8.2.25 NMAC - N 08/22/2021]

16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

- (d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;
- (e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;
- (f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;
- (g) protocols for testing sample collection that ensures accurate test results; and
- (h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;
- (2) employee policies and procedures to address the following minimum requirements:
 - (a) adherence to state and federal laws;
 - (b) responding to an emergency, including robbery or a serious accident;
 - (c) alcohol and drug-free workplace policies and procedures;
 - (d) safety and security procedures;
 - (e) occupational safety;
 - (f) crime prevention techniques; and
 - (g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and
- (3) training documentation prepared for each employee and statements signed by employees indicating the topics discussed, names and titles of presenters, and the date, time, and place the employee received said training.

B. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.26 NMAC - N 08/22/2021]

16.8.2.27 MINIMUM REQUIREMENTS FOR THE PRODUCTION OF CANNABIS:

- A.** General requirements: Licensees shall ensure the following:
 - (1) all production activities are done on premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Acts;
 - (2) the licensee's right to use the quantity of water sufficient to meet the production facility's needs remains in good standing;
 - (3) plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility, including sufficient quantities of water to properly convey sewage and liquid disposable waste from the facility; and
 - (4) all weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture.
- B.** Cultivation plan: Licensees shall create and maintain a cultivation plan, which shall include all of the following:
 - (1) a detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet.
 - (2) square foot measurement of mature cannabis plant cultivation area(s), including aggregate square footage if the mature cannabis plant cultivation areas are noncontiguous;
 - (3) area(s) outside of the mature cannabis plant cultivation areas where only immature plants shall be maintained, if applicable;
 - (4) designated pesticide and other agricultural chemical storage area(s);
 - (5) designated processing area(s) if the licensee will process on site;
 - (6) designated packaging area(s) if the licensee will package products on site;

site;

- (7) designated composting area(s) if the licensee will compost plant or cannabis waste on site;
- (8) designated secured area(s) for cannabis waste if different than composting area(s);
- (9) designated area(s) for harvested cannabis storage;
- (10) designated seed production area(s) which may contain mature plants for nursery purposes only.

C. Lighting: For indoor and mixed-light cultivation, a licensee shall create and maintain a lighting diagram, which shall include the following:

- (1) location of all lights in the cannabis plant cultivation area(s); and
- (2) maximum wattage, or wattage equivalent, of each light.

D. Pest management: Licensees shall create and maintain a pest management plan, which shall include product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth. Licensees are encouraged to create and implement integrated pest management protocols, including chemical, biological, and cultural methods to control or prevent the introduction of pests on the cultivation site.

E. Cannabis waste: Licensees shall create and maintain cannabis waste procedures meeting the requirements set forth in 16.8.2.22 NMAC.

F. Safety and health requirements: Licensees shall ensure the following:

(1) all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

(2) production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(3) any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is corrected;

(4) hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;

(5) all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:

(a) maintaining adequate personal cleanliness;

(b) wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;

(c) possessing a valid New Mexico environment department food handler card if handling processed cannabis or unpackaged but processed cannabis products; and

(d) washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;

(6) operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;

(7) water damage is properly and timely treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;

(8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;

(9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;

(10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;

- (11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;
 - (12) only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;
 - (13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;
 - (14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and protect the cannabis or cannabis products against physical, chemical, and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and
 - (15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.
- [16.8.2.27 NMAC - N 08/22/2021]

16.8.2.28 USE OF PESTICIDES BY LICENSED PRODUCERS: The use of any pesticide by a licensed producer in the growth of cannabis shall be in accordance with the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978, and any associated rules.

[16.8.2.28 NMAC - N 08/22/2021]

16.8.2.29 CANNABIS MANUFACTURER LICENSE; GENERAL PROVISIONS:

- A. License Types:** The division may license four classes of manufacture:
 - (1) Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;
 - (2) Class II: A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;
 - (3) Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and
 - (4) Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO₂.
 - B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.
 - C. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.
 - D. Other activities prohibited:** Except as provided in subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.
 - E. Prohibited additives:** A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.
- [16.8.2.29 NMAC – N/E, 09/08/2021]

16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:

- A.** An initial application or renewal for cannabis manufacturer licensure shall include the following:
 - (1) Contact information for the applicant and the cannabis establishment, to include:
 - (a) applicant's full legal name;
 - (b) applicant's mailing address;
 - (c) applicant's contact telephone number;
 - (d) applicant's contact email address;

- (e) applicant's business physical address and mailing address, if different;
- (f) applicant's business legal name, including a DBA name if applicable;
- (g) applicant's business web address, if applicable;
- (h) applicant's business hours of operation;
- (i) name and contact information for each controlling person;
- (j) demographic data pursuant to the Cannabis Regulation Act; and
- (k) license type sought (Class I, Class II, Class III, or Class IV);

(2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(3) legible and accurate diagram containing information required by subsection 16.8.2.32 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(5) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, as evidenced by either:

(a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water for cannabis manufacturing is compliant with provider's rules, or

(b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, at the proposed place of use of the cannabis establishment. The documentation may include any of the following:

(i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;

(ii) a subfile order or decree issued by a water rights adjudication court;

(iii) the findings of an office of the state engineer hydrographic survey; or

(iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.

(6) a copy of a current business license, fire inspection report, and zoning approval;

(7) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) a list of the types of products that will be manufactured, packaged, or labeled;

(11) a complete written description of good manufacturing practices (GMPs).

(12) a complete written description of the means that the manufacturer shall employ to safely manufacture cannabis products, including hygiene standards consistent with the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to manufacturing;

(13) A detailed description of the licensee's proposed plan for obtaining cannabis from a licensed cannabis producer or cannabis microproducer.

(14) legible electronic images of the labeling and packaging of the cannabis or cannabis products that the manufacturer shall utilize, which satisfies the labeling and packaging requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;

- (15) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;
- (16) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis sold;
- (17) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (18) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (19) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (20) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (21) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;
- (22) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;
- (23) certification the applicant is not licensed under the Liquor Control Act.
- (24) applicant's social and economic equity plan to encourage economic and social diversity in employment, 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;
- (25) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;
- (26) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and
- (27) for a class IV license, a signed attestation from a licensed engineer stating the chemical extraction equipment is a closed loop system, is being utilized for its intended use and meets requirements of subsection I of 16.8.2.34 NMAC;
- (28) for class II, III, and IV licenses, evidence that the applicant has obtain all necessary permits required for the production of edibles and topicals from the New Mexico environment department and that such permits are valid at the time the license application is submitted; and
- (29) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
- (2) conducting an on-site visit;
- (3) requiring a face-to-face or virtual meeting and the production of additional documentation; or
- (4) consulting with state or local governments.

C. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's

good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.30 NMAC – N/E, 09/08/2021]

16.8.2.31 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS MANUFACTURER LICENSE:

A. Application: A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size or location of the premises;
- (2) change of licensee's legal or business name;
- (3) change or modification in extraction type(s) or equipment;
- (4) material or substantial change in water source;
- (5) addition of a controlling person;
- (6) material or substantial change to a license's security system;
- (7) material or substantial modification of the premises; or
- (8) engaging in an activity which requires an addition or change of a license type.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall prorate required fees to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if approved. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;
- (2) a modification in the licensee's access to the water source submitted with an application for initial or renewal licensure or a 10 percent, or more, increase in the licensee's water usage;
- (3) change to a license's security system, including relocation or security points or installation of a new security system; or
- (4) modification of the premises to relocate cannabis activities.

[16.8.2.31 NMAC – N/E, 09/08/2021]

16.8.2.32 PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.32 NMAC – N/E, 09/08/2021]

16.8.2.33 CANNABIS MANUFACTURER POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A manufacturer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

(b) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

(c) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;

(d) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(e) protocols for testing sample collection that ensures accurate test results; and

(f) procedures for destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident or incident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational health and safety;

(f) crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program:

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

- (d) training requirements for the proper use of health and safety measures and controls;
 - (e) emergency procedures;
 - (f) security procedures; and
 - (g) record keeping requirements.
- (2) Prior to independently engaging in any cannabis manufacturing process, including but not limited to extraction:
 - (a) an overview of the process and standard operating procedure(s);
 - (b) quality control procedures;
 - (c) hazard analysis and control procedures as appropriate;
 - (d) proper and safe usage of equipment or machinery;
 - (e) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;
 - (f) cleaning and maintenance requirements;
 - (g) emergency operations, including shutdown; and
 - (h) any additional information reasonably related to an employee's job duties.

(3) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training documentation:

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. This annual refresher training must be completed within 12 months of the previous training completion date. The licensee shall maintain a record which contains at minimum:

- (a) an annual attestation by licensee that they received and understood all information and training provided in the training program;
- (b) a list of all personnel at the premises, including at minimum, name and job duties of each;
- (c) documentation of training topics and dates of training completion for all personnel;
- (d) training topics and dates of refresher training completion for all personnel;
- (e) the signature of the individual personnel and the licensee verifying receipt and understanding of each training or refresher training completed by the personnel;
- (f) any official documentation attesting to the successful completion of required training by personnel.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section. Assigned supervisory personnel must have the education, training, or experience (or a combination thereof) necessary to ensure the production of clean and safe cannabis products by all personnel. The designated training personnel shall sign and date a document on an annual basis attesting that they have received and understood all information and training provided in the training program. This documentation shall be maintained as part of the record requirements.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.33 NMAC – N/E, 09/08/2021]

16.8.2.34 MINIMUM STANDARDS FOR THE MANUFACTURE OF CANNABIS PRODUCTS:

A. General requirements: Licensees shall ensure the following:

- (1) manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;
- (2) the licensee's right to use the quantity of water sufficient to meet the manufacturing facility's needs remains in good standing;

(3) weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and

(4) licensee shall notify the division of any changes to the days or hours of business operation;

B. Permissible Extractions:

(1) Except as provided in subsection (2), cannabis extraction shall only be conducted using the following methods:

(a) Mechanical extraction, such as screens or presses;

(b) chemical extraction using a nonvolatile solvent such as a nonhydrocarbon-based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, or food-grade glycerin, (nonhydrocarbon-based solvents shall be food grade);

(c) chemical extraction using a professional closed loop CO2 gas extraction system;

(d) chemical extraction using a volatile solvent; or

(e) any other method authorized by the division pursuant to subsection (2).

(2) To request authorization from the division to conduct cannabis extraction using a method other than those specified in paragraphs (a) – (d) of subsection (a), the applicant or licensee shall submit a detailed description of the extraction method, including any documentation that validates the method and any safety procedures to be utilized to mitigate any risk to public or worker health and safety.

(3) Extraction equipment shall be used and operated in accordance with its intended manufacturer use and design.

C. Volatile Solvent Extractions: Chemical extractions using volatile solvents shall be subject to the following requirements:

(1) hydrocarbon-based solvents shall be at least 99 percent purity;

(2) ethyl alcohol must be food grade, and non-denatured in composition;

(3) all extractions shall be performed in a closed loop extraction system as described in subsection I of 16.8.2.34 NMAC; and

(4) Manufacturers shall not use ignition sources including but not limited to a heat gun or any open flame source next to extraction equipment that utilizes volatile solvents, including in rooms designated solely for extraction or in areas that contain or uses flammable liquids and gasses.

D. Closed-Loop Extraction System Requirements:

(1) Chemical extractions using CO2 or a volatile solvent shall be conducted in a professional closed loop extraction system. The system shall be commercially manufactured and bear a permanently affixed and visible serial number. The system shall be certified by a licensed engineer that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, or listed, or approved by a nationally recognized testing laboratory.

(2) The certification document must contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

(3) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) National Fire Protection Association (NFPA) standards;

(b) International Building Code (IBC);

(c) International Fire Code (IFC); or

(d) Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.

[16.8.2.34 NMAC – N/E, 09/08/2021]

16.8.2.xx CANNABIS CONSUMPTION AREA LICENSURE; GENERAL PROVISIONS:

A. License types: The division may license two classes of cannabis consumption areas:

(1) Type I permit: A licensed cannabis consumption area where cannabis products may be consumed on the licensed premises, except for products consumed through the respiratory system.

(2) Type II permit: A licensed cannabis consumption area where cannabis products may be consumed, including products that are consumed through the respiratory system.

B. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

C. License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

D. Other activities allowed: A licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises; provided that the licensee is not a licensee pursuant to the Liquor Control Act.

E. Cannabis consumption area license: Applicants for a cannabis consumption area must meet all qualifications for a cannabis retailer to be approved for, and authorized to conduct, a cannabis consumption area. [16.8.2.xx NMAC - N xx/xx/2021]

16.8.2.xx APPLICATION REQUIREMENTS FOR CANNABIS CONSUMPTION AREA LICENSE:

A. An initial application or renewal for cannabis consumption area licensure shall include the following:

(1) Contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's date of birth, if applicable;
- (c) applicant's mailing address;
- (d) applicant's contact telephone number;
- (e) applicant's contact email address;
- (f) applicant's business physical address and mailing address, if different;
- (g) applicant's business legal name, including a DBA name if applicable;
- (h) applicant's business web address, if applicable;
- (i) applicant's business hours of operation;
- (j) name and contact information for each controlling person;
- (k) demographic data pursuant to the Cannabis Regulation Act; and

(2) license type sought;

(3) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;

(4) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each consumption or retail area and all security requirements, in a portable document format (.pdf), and if requested by the division, digital photographic photos;

(5) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(6) a copy of a current business license, fire inspection report, and zoning approval;

(7) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;

(8) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(9) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(10) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of cannabis purchased for retail sale;

(11) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(12) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(14) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(15) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(16) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

(17) certification the applicant is not licensed under the Liquor Control Act;

(18) applicant's social and economic equity plan to encourage economic and social diversity in employment, 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;

(19) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(20) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

[16.8.2.xx NMAC - N xx/xx/2021]

16.8.2.xx SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS CONSUMPTION AREA LICENSE:

A. Application: A licensed cannabis consumption area shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size or location of the premises;

(2) change of licensee's legal or business name;

(3) addition or elimination of a controlling person;

(4) material or substantial change to a license's security system; or

(5) material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended

license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) change to a license's security system, including relocation or security points or installation of a new security system; or

(3) modification of the premises to relocate cannabis activities.

[16.8.2.xx NMAC - N xx/xx/2021]

16.8.2.xx PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is a type II cannabis consumption area permit, the diagram shall clearly show the location of the designated smoking area or the area immediately surrounding the building to ensure smoke will not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act.

I. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.xx NMAC - N xx/xx/2021]

16.8.2.xx CANNABIS CONSUMPTION AREA POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A licensed cannabis consumption area shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis handling criteria and procedures, which shall be consistent with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) if applicable, recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

(d) recordkeeping and chain of custody protocols for transportation of cannabis products to another cannabis establishment for any purpose;

(e) protocols to ensure that cannabis products, including any samples of cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(g) if applicable, protocols for testing sample collection that ensures accurate test results; and

(h) if applicable, procedures for remedial measures to bring cannabis products into compliance with division standards or destruction of a tested batch of cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) confidentiality laws, including the Health Insurance Portability

and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program:

(1) Licensee shall implement a training program to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) health and safety hazards;

(b) security procedures; and

(c) record keeping requirements.

(2) Prior to engaging in any cannabis consumption area process:

(a) an overview of the process and standard operating procedure(s);

(b) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(c) cleaning and maintenance requirements;

(d) emergency operations, including shutdown; and

(e) any additional information reasonably related to an employee's job duties.

(3) A licensee that retails unpackaged edible cannabis products shall ensure that all personnel who handle edible products successfully complete a food handler course accredited by the American National Standards Institute (ANSI). Such training shall be maintained while employed by a cannabis consumption area. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training documentation:

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel;

(d) the signature of each employee verifying receipt and understanding of each training or refresher training completed by the personnel;

(e) any official documentation attesting to the successful completion of required training by personnel.

(2) Licensee may assign responsibility for ensuring compliance by individual personnel with the requirements of this section to supervisory personnel.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and for at least six months after the termination of an employee's employment.
[16.8.2.xx NMAC - N xx/xx/2021]

16.8.2.xx MINIMUM STANDARDS FOR CANNABIS CONSUMPTION AREAS:

A. Access to cannabis consumption area premises prior to authorization of consumption or retail sale of commercial cannabis: Prior to the division authorizing the consumption or retail sale of commercial cannabis, pursuant to Sections 26-2C-6 (K) and 26-2C-7 (B)(5) of the Cannabis Regulation Act, access to the licensed premises of a retailer shall be limited to:

- (1) individuals who are at least 21 years of age and possess a valid form of identification;
- (2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

B. Access to cannabis consumption area premises upon authorization of consumption or retail sale of commercial cannabis: Upon the division authorizing the retail sale of commercial cannabis, pursuant to Sections 26-2C-6 (K) and 26-2C-7 (B)(5) of the Cannabis Regulation Act, access to the licensed premises of a retailer shall be limited to the following:

- (1) individuals who are at least 21 years of age and possess a valid form of identification; and
- (2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

C. Customer access to the consumption area:

(1) Individuals shall be granted access to consume or purchase cannabis goods only after the licensed cannabis consumption area or an employee of the licensed cannabis consumption area has confirmed the individual's age and identity, and if applicable, the individual's status as a qualified patient, primary caregiver, or reciprocal participant.

(2) The licensed cannabis consumption area or at least one employee shall be physically present in the consumption area at all times when individuals who are not employees of the licensed retailer are in the retail area.

(3) All sales of cannabis goods, with the exception of cannabis goods sold through delivery, must take place within the retail area of the retailer's licensed premises.

(4) A licensed cannabis consumption area shall only allow cannabis consumption between the hours reported to the division as regular business hours.

(5) A licensed cannabis consumption area may allow qualified patients to bring previously purchased goods from the licensed cannabis consumption area for consumption provided the cannabis product is properly stored in the requisite resealable packaging and the qualified patient provides proof of purchase from the cannabis consumption licensee of the product to be consumed.

D. Requirements while not open for business:

(1) At any time the licensed premises is not open for cannabis consumption, a licensed cannabis consumption area shall ensure that:

(a) the licensed premises is securely locked with commercial-grade, nonresidential door locks;

(b) the licensed premises is equipped with an active alarm system pursuant to section 16.8.2.10 of this rule, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and

(c) only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

E. Commercial and medical cannabis consumers:

(1) A licensed cannabis consumption area shall only sell and allow for the consumption of commercial cannabis and cannabis products to individuals who are at least 21 years of age after confirming the customer's age and identity by inspecting a valid form of identification provided by the customer as required by subsection B of this section.

(2) A licensed cannabis consumption area shall only sell and allow for the consumption of cannabis and cannabis products to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program, after confirming the customer's age, identity, and valid registry identification.

(3) Acceptable forms of identification include the following

(a) a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, and photo of the person;

(b) a valid identification card issued to a member of the Armed Forces that includes the person's name, date of birth, and photo; or

(c) a valid passport issued by the United States or by a foreign government.

F. Cannabis product display:

(1) Cannabis and cannabis products for customer inspection and sale shall only be displayed in the area where retail activities take place.

(2) Cannabis and cannabis products may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to customers without assistance of cannabis consumption area personnel. A container must be provided to the customer by the licensed cannabis consumption area or its employees, who shall remain with the customer at all times that the container is being inspected by the customer.

(3) Cannabis and cannabis products removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed, pursuant to section 16.8.2.15 of this rule, when the cannabis or cannabis products are no longer used for display.

F. Cannabis server permit requirements: all employees of the licensed cannabis consumption area who directly offer, sell or serve cannabis must hold a current and valid cannabis server permit according to 18.8.10 NMAC.

G. No visible consumption of cannabis products: a licensed cannabis consumption area shall ensure that the display and consumption of any cannabis product is not visible from outside of its licensed premises.

(1) a licensed cannabis consumption area may be located outdoors provided that:

(a) all cannabis product is kept out of plain sight and is not visible from a public place without the use of optical aids, such as telescopes or binoculars, or aircraft; and

(b) the licensed cannabis consumption area shall ensure that the outdoor consumption area is surrounded by a sight-obscuring wall, fence, hedge, or other opaque or translucent barrier.

H. Required signage: a licensed cannabis consumption area must post, at all times and in a prominent place inside the consumption area, a warning that is at minimum twelve inches high and twelve inches wide that reads as follows:

"Cannabis may only be consumed in designated areas out of public view

No consumption of alcohol products on site

We reserve the right to refuse entry or service for reasons including visible intoxication

It is against the law to drive while impaired by cannabis"

[16.8.2.xx NMAC - N xx/xx/2021]

16.8.2.xx DEE JOHNSON CLEAN INDOOR AIR ACT: Smoking and vaping shall be allowed on the licensed premises of type II cannabis consumption area only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act.
[16.8.2.xx NMAC - N xx/xx/2021]

16.8.x.x CANNABIS TESTING LABORATORY LICENSE: GENERAL PROVISIONS

A. Testing categories: The division may license cannabis testing laboratories to perform analytical testing of cannabis products in one or more of the following categories:

- (1) visual inspection;
- (2) microbiological;
- (3) residual solvents;
- (4) potency and homogeneity;
- (5) heavy metals;
- (6) pesticides;
- (7) water activity; and
- (8) such other testing categories as the department may identify.

B. License not required for internal testing: A cannabis establishment may conduct analytical testing using validated methods for internal quality control purposes without obtaining a cannabis testing laboratory license but may not offer testing services to another person or entity.

C. Division application forms: All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.

D. Other activities prohibited: No person with a direct or indirect interest in any cannabis establishment other than a cannabis research laboratory may hold an interest in a Cannabis Testing Laboratory.
[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.x.x. APPLICATION REQUIREMENTS FOR CANNABIS TESTING LABORATORY LICENSE:

A. Contents of application:

(1) for any initial or renewal application, contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's mailing address;
- (c) applicant's contact telephone number;
- (d) applicant's contact email address;
- (e) applicant's business physical address and mailing address, if different;
- (f) applicant's business legal name, including a DBA name, if applicable;
- (g) applicant's business web address, if applicable;

(2) for any initial application, information about controlling persons, to include:

- (a) name and contact information;
- (b) documentation of legal name change, if applicable;
- (c) criminal history screening documents, as set forth in 16.8.2.9 NMAC and the Cannabis Regulation

Act;

(d) a detailed description of any criminal convictions, including for each: the date of the conviction; dates of incarceration, probation, or parole; description of the offense; and any evidence of rehabilitation, including court documents, personal or professional references, completion of treatment, employment records, and other relevant information;

(e) demographic data pursuant to the Cannabis Regulation Act; and

(f) A copy of identification issued by a federal or state government, including name, date of birth, and picture and indicating the person is at least 21 years of age;

(3) for any initial or renewal application, information about local and state registrations and permits, to include:

- (a) a copy of a local current business license;
- (b) a copy of a local fire inspection report;
- (c) a copy of zoning approval;
- (d) if applicable, documentation the applicant is in good standing with the New Mexico secretary of

state;

(4) for any initial or renewal application, certifications that the applicant:

(a) attests to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued;

(b) will adhere to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules, including:

- (i) testing requirements;
- (ii) transport requirements;
- (iii) security requirements;
- (iv) quality assurance requirements; and
- (v) the prohibition on any person holding an interest in one or more cannabis testing

laboratories from holding an interest in any other cannabis license other than a cannabis research laboratory;

(c) will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(d) has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application; and

(e) is not licensed at the same location under the Liquor Control Act;

(5) for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:

(a) a list of categories of testing for which licensure is sought;

(b) legible and accurate premises diagram containing information required by subsection 16.8.x.x NMAC, in a portable document format (.pdf), and if requested by the division, digital photographs;

(c) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;

(d) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees, or premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and

(6) for any initial or renewal application, payment of any required fees as set forth in 16.8.11 NMAC.

B. Initial demonstration of capability: The division requires the submission of an initial demonstration of capability (IDC) for every test a cannabis testing laboratory intends to conduct, except tests for research and development purposes only. The IDC must identify a limit of quantitation that is equal to or lower than the action level for the specified test.

(1) An IDC is required whenever:

(a) an initial application is submitted, except that an applicant may instead submit evidence of prior completion of an IDC as a requirement of licensing under the Lynn and Erin Compassionate Use Act;

(b) the cannabis testing laboratory proposes to use a new analytical instrument to test for an analyte;
or

(c) the cannabis testing laboratory proposes material changes to testing methods.

(2) Every IDC shall include the following elements:

(a) Demonstration of method calibration: The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration range shall include a low calibration point equal to, or less than, the action level for each targeted compound. The cannabis testing laboratory shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) Demonstration of method accuracy and precision: A cannabis testing laboratory shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing median or mid-level calibration concentration. The cannabis testing laboratory shall identify and justify acceptance criteria and shall calculate and provide the calculated mean (average) result and the standard deviation. Any standard deviations greater than 20 percent shall be noted and explained.

(c) Demonstration of method detection limit: A cannabis testing laboratory shall calculate its method detection limit using a generally accepted method.

(d) Demonstration of low system background: A cannabis testing laboratory shall supply the analytical data of at least three negative control samples that do not contain any target analytes.

(e) Demonstration of analyte identification: A cannabis testing laboratory that uses, high performance liquid chromatography (HPLC) or gas chromatography with flame ionization detector or photoionization detector (GC-FID or GC-PID/FID) instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A cannabis testing laboratory that uses gas chromatography–mass spectrometry (GCMS), liquid chromatography–mass spectrometry (LCMS), or liquid chromatography–tandem mass spectrometry (LCMSMS) instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

C. Continuing demonstration of capability: A cannabis testing laboratory shall submit a continuing demonstration of capability (CDC) for each test performed annually as part of the laboratory’s application for renewal of licensure. A CDC may consist of:

(1) Evidence that the cannabis testing laboratory has the test within its current scope of accreditation to the current standards of ISO/IEC 17025, *Testing and Calibration Laboratories*;

(2) Evidence that each analyst performing the test has successfully completed, within the previous year, relevant proficiency testing administered by a provider accredited to the standards of ISO/IEC 17043, *Conformity Assessment—General Requirements for Proficiency Testing*; or

(3) The re-performance of the IDC.

D. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation; or

(4) consulting with state or local governments.

E. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret by clearly identifying such information as “confidential trade secrets” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.x.x SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS TESTING LABORATORY LICENSE:

A. Application: A cannabis testing laboratory shall submit to the division an application form for an amended license and obtain approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size or location of the premises;

(2) change of licensee’s legal or business name;

(3) material or substantial change in testing methods or equipment;

(4) addition of a controlling person; or

(5) material or substantial change to a licensee’s security system.

B. Requirements and processing of application for amended license: The application for amended license shall:

(1) be clearly designated as one for an amended license;

(2) supply any information representing a material change from the most recent application; and

(3) include an initial demonstration of capability for any new or materially different method for performing a required test, including testing for an additional analyte or testing for an analyte using a different type of instrument.

C. Approval or denial: The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) testing for an analyte required in required testing using a different type of instrument; or

(3) change to a licensee's security system, including relocation of security points or installation of a new security system.

E. Amended license not required: Other changes to standard operating policies and procedures, unless material or substantial, may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.x.x PREMISES DIAGRAM:

A. Detailed diagram required: An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state, or local laws.

B. Contents of diagram: The diagram shall show:

(1) the boundaries of the property and the proposed premises to be licensed;

(2) if applicable, the uses of any portion of the property not included in the premises;

(3) a brief statement or description of the principal activity to be conducted in each area on the premises;

(4) the dimensions of each area where testing of cannabis products will take place;

(5) the location and identity of equipment; and

(6) entrances and exits;

C. Format of diagram: The diagram shall:

(1) be drawn to scale;

(2) be rendered in black and white print; and

(3) contain no highlighting.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.X.X CANNABIS TESTING LABORATORY POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: A cannabis testing laboratory shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) sample collection procedures, including:

(a) specifications for sampling tools and containers;

(b) use of gloves and other personal protective equipment to prevent contamination of batches;

(c) access to complete batches of cannabis products;

(d) determination of the number of sample increments required, based on batch size; and

(e) random selection of sample increments;

(2) chain of custody;

(3) data recording;

(4) sample storage and integrity, including sealing of sample containers and, if applicable, the use of preservatives, inert gas, or other measures;

(5) transportation, including protection from light, heat, and humidity;

(6) sample preparation of each matrix for each test;

(7) methodology for each test, including:

(a) sample preparation;

(b) reagent, solution, and reference standard preparation;

(c) instrument setup, as applicable;

(d) standardization of volumetric reagent solutions, as applicable;

(e) data acquisition; and

(f) calculation of results;

(8) data quality parameters for each test, including:

- (a) specificity;
 - (b) limit of detection; and
 - (c) limit of quantitation;
 - (9) reporting of results;
 - (10) quality assurance;
 - (11) employee policies and procedures, including but not limited to:
 - (a) adherence to state and federal laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;
 - (b) responding to an emergency, including robbery or a serious accident or incident;
 - (c) alcohol and drug-free workplace policies and procedures;
 - (d) safety and security procedures;
 - (e) occupational health and safety;
 - (f) crime prevention techniques; and
 - (g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996;
 - (12) equipment cleaning, maintenance, and inspection standards and schedules;
 - (13) standards for labeling, storage, expiration, and re-qualification dates and records relating to reagents, solutions, and reference standards;
 - (14) sample analysis procedures, including but not limited to procedures for the use of only primary or secondary standards for quantitative analyses;
 - (15) standards for data recording, review, storage, and reporting that include, but are not limited to, standards to ensure:
 - (a) that data is recorded in a manner consistent with this rule, and that it is reviewed to verify that applicable standards of practice, equipment calibration, and reference standards were applied before reporting;
 - (b) that all data, including raw data, documentation, protocols, and reports are retained in accordance with the requirements of this rule; and
 - (c) that reports are the property of the business or individual who provided the sample, and reports meet the requirements of this rule; and
 - (16) creation of chain of custody documentation for each sample.
- B. Employee training:**
- (1) Each agent or employee of a cannabis testing laboratory shall:
 - (a) have completed, prior to employment, a cannabis training and education program approved by the department; or
 - (b) receive training, documented by the establishment, on the following topics within 30 days of the start of employment:
 - (i) employee health and safety;
 - (ii) health and safety hazards;
 - (iii) hazard communication;
 - (iv) security procedures; and
 - (v) record keeping/track and trace.
 - (2) A cannabis testing laboratory must provide and document training on the following subjects before permitting any authorized person to independently collect samples of cannabis products:
 - (a) an overview of the process and standard operating procedures of the laboratory;
 - (b) quality control procedures, including sterile collection of samples and storage;
 - (c) chain of custody, recordkeeping, and tracking requirements;
 - (d) calibration, use, and maintenance of measuring devices;
 - (e) transportation procedures; and
 - (f) any additional information reasonably related to sample collection.
 - (3) A cannabis testing laboratory must provide and document training on the following subjects before an agent or employee independently performs any cannabis testing process:
 - (a) an overview of the process and standard operating procedure(s);
 - (b) quality control procedures;
 - (c) chain of custody and tracking requirements;
 - (d) proper and safe usage of equipment or machinery;
 - (e) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

- (f) cleaning and maintenance requirements;
- (g) emergency operations, including shutdown; and
- (h) any additional information reasonably related to an employee's job duties.

C. Training documentation:

- (1) The licensee shall maintain a record that contains at minimum:
 - (a) an annual attestation by licensee that all personnel at the premises received and understood all information and training provided in the training program;
 - (b) a list of all personnel at the premises, including at minimum, name and job duties of each;
 - (c) documentation of training topics and dates of training completion for all personnel;
 - (d) the signature of the individual personnel and the licensee verifying receipt and understanding of each training or refresher training completed by the personnel; and
 - (e) any official documentation attesting to the successful completion of required training by personnel.
- (2) The licensee shall designate supervisory personnel to oversee the documentation of training. Assigned supervisory personnel must have the education, training, or experience (or a combination thereof) necessary to ensure personnel receive training necessary for job performance.

D. Materials to be maintained on premises: A cannabis testing laboratory shall maintain on its premises, and shall promptly present to the department upon request:

- (1) all results of laboratory tests conducted on cannabis or cannabis derived products for a period of at least two years
- (2) operating manuals and other documentation for each piece of equipment;
- (3) records of required inspection, calibration, and maintenance for each piece of equipment,
including:

- (a) the date of the operation;
- (b) the person who performed it;
- (c) the written procedure used; and
- (d) any deviations from the written procedure;
- (4) records of non-routine repairs performed on equipment as a result of failure and malfunction,
including:

- (a) the nature of the repair;
- (b) how and when the need for the repair was discovered; and
- (c) any remedial action taken in response to the repair;
- (2) the certificate of analysis for all reference standards, whether acquired or internally produced.
- (5) current material safety data sheets for all chemicals used; and
- (6) documentation of proficiency training.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.X.X MINIMUM STANDARDS FOR THE TESTING OF CANNABIS PRODUCTS:

A. General requirements: Cannabis testing laboratories shall ensure the following:

- (1) testing is done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act; and
- (2) weighting or measuring devices that are used in testing are appropriately documented as having undergone certified registration and calibration that is in accordance with requirements of the New Mexico Department of Agriculture applicable to commercial transactions.

B. Sample collection: For all required testing or testing for the purposes of labeling claims, a person authorized by this rule shall collect the required samples according to the following guidelines:

- (1) Only the quantity of cannabis product specified in the cannabis testing laboratory's operating procedures as necessary for all tests to be performed and to ensure the proper number of representative samples shall be collected.
- (2) The number of sample increments per batch, as specified in the cannabis testing laboratory's operating procedures as necessary for all tests to be performed, shall be collected.
 - (a) The number of sample increments shall not be less than the minimum quantity specified in Table 2.
 - (b) Samples shall be taken randomly throughout the length, width, and depth of the batch.
 - (c) The standard sample increment size shall be 0.5 grams, unless specified otherwise in the cannabis testing laboratory's operating procedures.

- (3) Samples shall be sealed in a single use, tamper-evident container that meets the specifications of the laboratory's policies and procedures.
- (4) Samples shall be labeled according to the laboratory's policies and procedures, with, at minimum:
- (a) the license number of the establishment from which the sample was collected;
 - (b) the batch number assigned by the establishment;
 - (c) the date the sample was taken;
 - (d) the name of the person collecting the sample; and
 - (e) the tests to be performed;
- (5) If homogeneity testing is required, each sample increment necessary for homogeneity testing shall be collected and transported in individual sealed containers.

Table 1, Minimum quantity of sample increments		
Matrix Type	Batch Size	Minimum Sample Increments
<u>Dried cannabis</u>	<u>≤5.0 lbs.</u>	<u>10</u>
	<u>>5.0 lbs.; ≤15.0 lbs.</u>	<u>10 + 5 per pound or fraction thereof above 5 pounds</u>
<u>Other products</u>	<u>≤2.0 lbs.</u>	<u>10</u>
	<u>>2.0 lbs.</u>	<u>5 per pound</u>

C. Transportation: All samples shall be transported according to the general requirements of 16.8.2.13 NMAC and the specifications found in the cannabis testing laboratory's policies and procedures.

D. Receipt of test samples: A cannabis testing laboratory may receive test samples of cannabis products from any cannabis establishment, adult 21 years of age or older, qualified patient, or primary caregiver as authorized by this rule.

E. Storage: A cannabis testing laboratory shall segregate and store cannabis samples in a manner that prevents contamination or degradations and shall safeguard any cannabis products and cannabis waste against diversion.

(1) A cannabis testing laboratory shall provide one or more secure cabinets or vaults for the storage of cannabis samples, reference standards, and cannabis waste, and access shall be limited to persons authorized to conduct tests or dispose of cannabis waste.

(2) Cannabis samples shall be stored in environmental conditions that minimize physical or chemical degradation and microbial contamination, including protection from light, heat, and humidity. Any cannabis product that requires refrigeration shall be kept at a temperature no greater than 40 degrees Fahrenheit (4 degrees Celsius) prior to sample preparation.

F. Sample retention and disposal:

(1) Samples testing positive for a prohibited pesticide must be retained for a minimum of 30 days. All other samples must be retained for a minimum of 15 days. Upon notification from the division that samples are needed for an investigation by the division, a law enforcement agency, or another department, the cannabis testing laboratory shall retain the sample until further directed by the division.

(2) Any portion of a cannabis or cannabis-derived test sample that is not destroyed during analysis shall be:

- (a) returned to the person who provided the sample;
- (b) provided to the division, the State Chemist Laboratory (Department of Agriculture), or State Laboratory Division for additional testing;
- (c) upon written notification to the department, used to make for internal quality control purposes; or
- (d) destroyed in accordance with the wastage requirements of this rule.

G. Laboratory premises: A cannabis testing laboratory shall maintain the premises of the laboratory in a clean and orderly condition; shall equip the premises with such utensils and equipment as necessary to conduct the operations of the laboratory; and shall ensure adequate space for laboratory operations, sample storage, and document storage.

H. Equipment:

(1) Equipment used for the analysis of test samples shall be adequately inspected, cleaned, and maintained by laboratory staff, the manufacturer, or other trained persons according to manufacturer

recommendations. Equipment used for the generation or measurement of data shall be adequately tested and calibrated on an appropriate schedule, as applicable.

(2) Laboratory operations shall document procedures setting forth in sufficient detail the methods and schedules to be used in the routine inspection, cleaning, maintenance, testing, and calibration of equipment, and shall specify, as appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The procedures shall designate the personnel responsible for the performance of each operation.

(3) Computer systems used for the analysis of samples, retention of data, sample tracking, calibration scheduling, management of reference standards, or other critical laboratory management functions shall ensure that electronic records, electronic signatures, and handwritten signatures executed to electronic records are trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper.

I. Reagents, solutions, and reference standards:

(1) A cannabis testing laboratory is authorized to possess reagents, solutions, and reference standards. Such items shall be:

(a) secured in accordance with the approved laboratory's storage policies;
(b) labeled to indicate identity, date received or prepared, and expiration or requalification date; and, where applicable, concentration or purity, storage requirements, and date opened;

(c) stored under appropriate conditions to minimize degradation or deterioration of the material; and
(d) used only within the item's expiration or requalification date.

(2) Deteriorated or outdated reagents and solutions shall be properly destroyed.

(3) A cannabis testing laboratory may:
(a) acquire commercial reference standards for cannabinoids and other chemicals or contaminants, for the exclusive purpose of conducting testing for which the laboratory is approved;
(b) internally produce reference standards, using standard analytical techniques to document the purity and concentration of the internally produced reference standards;
(c) obtain cannabis products from a cannabis establishment for the purpose of producing reference standards.

J. Recording of analytical data:

(1) A cannabis testing laboratory shall ensure that all data generated during the testing of a test sample, except data generated by automated data collection systems, is recorded directly, promptly, and legibly in ink.

(2) When automated data collection systems are used, the cannabis testing laboratory shall log the name of the individual performing the test.

(3) All data shall be annotated with the date of entry and signed or initialed by the person recording the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or initialed at the time of the change.

(4) Any change in an entry shall:
(a) be made so as not to obscure the original entry;
(b) indicate the reason for such change;
(c) be dated and signed or initialed at the time of the change; and
(d) be accompanied by a corrective action report to be made available to the division or the cannabis establishment that submitted the sample upon request for up to two years after the analysis is completed.

(5) For each final result reported, a cannabis testing laboratory shall verify that:
(a) any calculations or other data processing steps were performed correctly;
(b) the data meet any data quality requirements such as for accuracy, precision, linearity, etc.;
(c) any reference standards used were of the appropriate purity and within their expiration or requalification dates;
(d) any volumetric solutions were properly standardized before use; and
(e) any test or measuring equipment used has been properly tested, verified, and calibrated, and is within its verification or calibration period.

K. Data storage:

(1) A cannabis testing laboratory shall ensure that all raw data, documentation, protocols, and certificates of analysis associated with analysis of a test sample are retained for two years from the date of the completion of analysis.

(2) A cannabis testing laboratory shall designate an individual as responsible for records maintenance

(3) A cannabis testing laboratory shall maintain the records identified in this section. Such records must be maintained:

- (a) in a manner that allows retrieval as needed;
 - (b) under conditions of storage that minimize deterioration throughout the retention period; and
 - (c) in a manner that prevents unauthorized alteration.
 - (4) Only authorized personnel may access the records.
- L. Data reporting:**
- (1) A certificate of analysis shall contain the following information:
 - (a) the date of receipt of the test sample;
 - (b) the description of the type or form of the test sample (leaf, flower, powder, oil, specific edible product, etc.);
 - (c) the batch number or code that is associated with the product batch and that is recorded in the track and trace system;
 - (d) the identity of the person who collected the sample;
 - (e) the date on which analysis occurred;
 - (f) the analytical method used, including at a minimum identification of the type of analytical equipment used (e.g., GC, HPLC, etc.);
 - (g) the analytical results, including units of measure where applicable;
 - (h) the identity of the supervisory or management personnel who reviewed and verified the data and results and ensured that data quality, calibration, and other applicable requirements were met; and
 - (i) the name, address, and contact information of the cannabis testing laboratory that conducted the test.
 - (2) The certificate of analysis shall state that reported analytical results apply only to the test sample received.
 - (3) The certificate of analysis shall contain in minimum 12-point type, all capital letters, the disclaimer, “UNOFFICIAL TEST RESULTS. NOT VALID FOR TRANSFER OR SALE” whenever:
 - (a) The person submitting the test sample is not a licensed cannabis establishment;
 - (b) The test sample was not collected by a person authorized to collect samples for required testing under this rule; or
 - (c) The person submitting the test sample requested that the analysis be performed for research and development purposes.
- [16.8.2.xx NMAC – N, xx/xx/2021]

16.8.2.XX CANNABIS RESEARCH LABORATORY LICENSURE; GENERAL PROVISIONS:

- A. License Types:** The division may license three classes of research:
- (1) **Tier I:** A cannabis research laboratory Tier I may produce cannabis to be ingested by human or animal subjects, produce cannabis not meant for ingestion, conduct clinical studies, agricultural studies, and/or market research studies, and produce federally legal cannabis products;
 - (2) **Tier II:** A cannabis research laboratory Tier II may produce cannabis not meant for ingestion, purchase cannabis to be ingested by human or animal subjects, and conduct clinical studies, agricultural studies, and/or market research studies; and
 - (3) **Tier III:** A cannabis research laboratory Tier III may not produce cannabis and may only purchase cannabis or cannabis products from approved cannabis research laboratories Tier I and Tier II, as appropriate for the planned research, and may conduct clinical studies, agricultural studies, and/or market research studies.
- B. Exception.** A Tier II or Tier III cannabis research laboratory may purchase cannabis from another licensed cannabis establishment with approval from the cannabis control division only if such research relates to brand specific inquiries (e.g., including studies comparing similar products from different brands or conducting cultivar specific efficacy studies for certain conditions) where use of cannabis or cannabis products produced by a cannabis research laboratory is impossible.
- C. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.
- [16.8.2.xx NMAC – N, xx/xx/2021]

16.8.2.XX APPLICATION REQUIREMENTS FOR CANNABIS RESEARCH LABORATORY LICENSE:

A. An initial application or renewal for cannabis research laboratory licensure shall include the following:

- (1) Contact information for the applicant and the cannabis establishment, to include:
 - (a) applicant's full legal name;
 - (b) applicant's mailing address;
 - (c) applicant's contact telephone number;
 - (d) applicant's contact email address;
 - (e) applicant's business physical address and mailing address, if different;
 - (f) applicant's business legal name, including a DBA name if applicable;
 - (g) applicant's business web address, if applicable;
 - (h) applicant's business hours of operation;
 - (i) name and contact information for each controlling person;
 - (j) demographic data pursuant to the Cannabis Regulation Act; and
 - (k) license type sought (Tier I, Tier II, or Tier III);
- (2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
- (3) legible and accurate diagram containing information required by subsection 16.8.2.46 NMAC and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to research cannabis, including a description of extraction and infusion methods, in a portable document format (.pdf), and if requested by the division, digital photographic photos;
- (4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;
- (5) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;
- (6) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;
- (7) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;
- (8) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;
- (9) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (10) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (11) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;
- (12) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;
- (13) certification the applicant is not licensed under the Liquor Control Act.
- (14) applicant's social and economic equity plan to encourage economic and social diversity in employment, 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;
- (15) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that

a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

(16) payment of any required fees as set forth in 16.8.11 NMAC.

B. Verification of information: The division may verify information contained in each application and accompanying documentation by:

(1) contacting the applicant or controlling person by telephone, mail, or electronic mail;

(2) conducting an on-site visit;

(3) requiring a face-to-face or virtual meeting and the production of additional documentation;

or

(4) consulting with state or local governments.

C. Trade secrets: Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as “confidential” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within ten days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.2.XX SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RESEARCH LABORATORY LICENSE:

A. Application: A licensed research laboratory shall submit to the division an application form for an amended license, if applicable and obtain approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size or location of the premises;

(2) change of licensee’s legal or business name;

(3) change or modification in extraction type(s) or equipment;

(4) material or substantial change in water source;

(5) addition or elimination of a controlling person;

(6) material or substantial change to a license’s security system; or

(7) material or substantial modification of the premise.

B. Amended license not required: Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:

(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) a modification in the licensee’s access to the water source submitted with an application for initial or renewal licensure or a 10 percent, or more, increase in the licensee’s water usage;

(3) change to a license’s security system, including relocation or security points or installation of a new security system; or

(4) modification of the premises to relocate cannabis activities.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.2.XX PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed premises. The diagram shall be used by the division to determine whether the premises meets the

requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be research, including production, manufacturing, and testing. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.2.XX CANNABIS RESEARCH LABORATORY POLICIES AND PROCEDURES:

A. Minimum policy and procedure requirements: Licensees shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis research criteria and procedures, which shall be consistent with the requirements of federal and state laws, including the Food and Drug Administration, the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and shall include at a minimum, the following topics:

(a) protocols for research;
(b) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product; and
(c) procedures for testing and destruction of cannabis or cannabis products;
(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;
(b) responding to an emergency, including robbery or a serious accident or incident;
(c) alcohol and drug-free workplace policies and procedures;
(d) safety and security procedures;
(e) occupational health and safety;
(f) crime prevention techniques; and
(g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program:

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;
(b) health and safety hazards;
(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;
(d) training requirements for the proper use of health and safety measures and controls;

- (e) emergency procedures;
- (f) security procedures; and
- (g) record keeping requirements.

(2) Prior to independently engaging in any cannabis research process, including but not limited to extraction:

- (a) an overview of the process and standard operating procedure(s);
- (b) quality control procedures;
- (c) hazard analysis and control procedures as appropriate;
- (d) proper and safe usage of equipment or machinery;
- (e) safe work practices applicable to an employee's job tasks, including

appropriate use of any necessary safety or sanitary equipment;

- (f) cleaning and maintenance requirements;
- (g) emergency operations, including shutdown; and
- (h) any additional information reasonably related to an employee's job

duties.

(3) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a cannabis research licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training documentation:

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

(a) a list of all personnel at the premises, including at minimum, name and
job duties of each;

(b) documentation of training topics and dates of training completion for all
personnel;

(d) dates of refresher training completion for all personnel;

(e) the signature of each employee verifying receipt and understanding of
each training or refresher training completed.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section.

D. Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.2.xx 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.

[16.8.2.xx NMAC – N 08/22/2021; Rn/E, 09/08/2021; Rn/E, [xx/xx/2021]]

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

PART 3: PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS is intentionally omitted in this round of rulemaking.

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

PART 6: HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES is intentionally omitted in this round of rulemaking.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERICAL 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, xx/xx/2021]

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, xx/xx/2021]

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, xx/xx/2021]

16.8.7.4 DURATION: Permanent.
[16.8.7.4 NMAC - N, xx/xx/2021]

16.8.7.5 EFFECTIVE DATE: [DATE], unless a later date is cited at the end of a section.
[16.8.7.5 NMAC - N, xx/xx/2021]

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, xx/xx/2021]

16.8.7.xx 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 established lot of immature plants shall be assigned a plant tag. Each lot of immature plants under a single plant tag shall be uniform in strain or cultivar and contain no more than 100 individual immature plants at any one time. The lot plant tag shall be visible and within clear view of an individual standing next to the immature lot and kept free from dirt and debris. Each lot shall either:

(a) have each immature plant in the lot labeled with the track and trace number and placed contiguous to one another to facilitate identification by the division; or

(b) be fully separated from other lots of immature or mature plants by a physical barrier. In such cases, each individual plant does not need to be labeled with the corresponding track and trace number

(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 of the immature lot. 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 (3) 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.xx 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.xx NMAC - N xx/xx/2021]

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

16.8.x.x 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, distribution, transfer, extraction, or further manufacturing of any cannabis product contained in the batch, except for the purposes of remediation as permitted by this section.

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 extraction, other manufacturing, transfer to another cannabis establishment, retail sale, or 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 concentrate that it manufactures using volatile solvents prior to further manufacturing, transfer to another cannabis establishment, retail sale, or delivery to a patient or consumer.

(3) 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 that it manufactures prior to transfer to another cannabis establishment, retail sale, or delivery to a patient or consumer.

Table 1, Required Testing of Cannabis Products									
Product category	Potency	Homogeneity of Batch	Visual Inspection	Microbiological	Residual Pesticides	Water Activity	Homogeneity of Product	Residual Solvents	When testing is required
Flower	X	X	X	X	X	X			Before transfer, sale, or further manufacturing
Trim	X	X	X	X	X	X			
Concentrate (volatile solvent)	X				X			X	
Kief	X		X	X	X	X			Before transfer or sale
Pre-rolls	X			X	X	X			
Concentrate (non-volatile solvent)	X		X	X	X	X			
Extract – alcohol	X				X				
Extract – other liquid	X			X	X				
Topical	X			X					
Edible	X			X	*	X	X		
Other inhalable	X				*			X	
Other	X			X	*	X	X	X	

*Pesticide testing required unless exempted by paragraph 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.x.x 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.x.x 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 sealed 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.

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, as 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 last four months.

(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.

Table 2. Microbiological Testing Requirements	
Target Microbe	Action Level
*E. coli	100 CFU/gram
<i>Aspergillus flavus</i> , <i>Aspergillus fumigatus</i> , <i>Aspergillus niger</i> , or <i>Aspergillus terreus</i>	Present in 1 gram
<i>Salmonella</i> spp.	Present in 1 gram
†Shiga-toxin producing E. coli	Present in 1 gram
† <i>Clostridium botulinum</i>	Present in 1 gram
† <i>Pseudomonas aeruginosa</i>	Present in 1 gram
*Cannabis product may be tested for shiga-toxin producing E. coli, rather than generic E. coli. †Testing for shiga-toxin producing E. coli, <i>Clostridium botulinum</i> , and <i>Pseudomonas aeruginosa</i> is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.	

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	n-butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
Pentane	n-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 and homogeneity testing:

(1) 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.

(2) Batch-level homogeneity testing is performed by testing for total THC potency additional samples in addition to the sample tested for potency. The number of samples to be tested shall be based on the size of the batch according to the method validated by the cannabis testing laboratory; however, the total number of samples tested shall be not less than three for any batch of material five pounds or less.

(3) Product-level homogeneity testing is performed by segregating a single retail package or an identical quantity of a solid or semi-solid and testing for total THC potency a minimum of three randomly selected increments of the product.

(4) A set of samples shall pass homogeneity testing if the relative standard deviation of total THC potency of the samples is no more than 15%.

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 For liquids: mg/ml
Tetrahydrocannabinol	THC	1972-08-3	
Cannabidiolic Acid	CBDA	1244-58-2	
Cannabidiol	CBD	13956-29-1	

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, §§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.

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

*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.

K. Water activity test:

(1) A sample of an edible cannabis product shall pass the water activity test if:
(a) its water activity is 0.65 or below; or
(b) the combination of water activity and pH indicates that it is not a TCS food, as determined by the table contained in NMAC 16.8.x.x.

(2) A sample of any other cannabis product for which testing is required may be deemed to have passed the water activity test if its water activity is 0.65 or below.

L. 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.

M. 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 sealed 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.

N. 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.

O. Remediation: A cannabis establishment may remediate 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.

P. 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 NMAC 16.8.2.15. 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.

Q. 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 NMAC 16.8.2.16 is not grounds for action against the cannabis testing laboratory that produced the original testing result.
[16.8.2.xx NMAC – N, xx/xx/2021]

1.8.x.x 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 quality improvement.

(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.
[16.8.2.xx NMAC – N, xx/xx/2021]

16.8.x.x 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.
[16.8.2.xx NMAC – N, xx/xx/2021]

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
*Reported in micrograms per gram (µg/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 (µg/L) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.				

16.8.7.xx 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.xx NMAC - N xx/xx/2021]

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 xx/xx/2021]

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 xx/xx/2021]

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 xx/xx/2021]

16.8.10.4 DURATION: Permanent.
[16.8.10.4 NMAC - N xx/xx/2021]

16.8.10.5 EFFECTIVE DATE: December xx, 2021, unless an earlier date is cited at the end of a section.
[16.8.10.5 NMAC - N xx/xx/2021]

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 xx/xx/2021]

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 xx/xx/2021]

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 xx/xx/2021]

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 (4 ½) 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.

(f) 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 guilt to a violation of the Cannabis Regulation Act;

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

(g) 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.

J. 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 xx/xx/2021]

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 xx/xx/2021]

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;

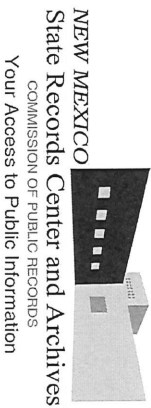
C. any person filing an application with the division for licensure of a provider, instructor or program knowingly submitted false information to the division;

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 xx/xx/2021]

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 xx/xx/2021]

Transmittal Form



2022 JAN -4 AM 11:20

Your Access to Public Information

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: ☐ New ☒ Amendment ☐ Repeal ☐ Emergency ☐ Renumber ☐ (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? ☐ Yes ☒ No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? ☐ Yes ☐ No ☐ Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Authority was given to the Cannabis Control Division via the Cannabis Regulation Act, NMSA 1978, §§ 26-2C-3(A) (2021).

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

2022 JUN -4 AM 11:20

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Please find the Concise Explanatory Statement for rule-making adoption attached hereto.

Issuing authority (If delegated, authority letter must be on file with ALD):
Name:

Kristen Thomson

Check if authority has been delegated

☒

Title:

Director, Cannabis Control Division

Signature: (BLACK ink only OR Digital Signature)

Kristen Thomson

Date signed:

Digitally signed by Kristen Thomson
Date: 2022.01.03 17:28:22 -07'00'



2022 JAN -4 PM 11:20

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Kristen Thomson, Director

Friday, December 31, 2021

IN RE: RULEMAKING PROCEEDING FOR RULES RELATED TO LICENSURE FOR
TESTING LABORATORIES UNDER THE NEW MEXICO CANNABIS
REGULATION ACT ("CRA"), §§ 26-2C-1 THROUGH 26-2C-42 NMSA 1978.
16.8.1 NMAC: GENERAL PROVISIONS
16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR
CANNABIS ESTABLISHMENTS
16.8.7 NMAC: QUALITY CONTROL, INSPECTION, AND TESTING OF
CANNABIS PRODUCTS

CONCISE EXPLANATORY STATEMENT

The Cannabis Control Division ("CCD") of the New Mexico Regulation and Licensing Department ("RLD") hereby adopts rules concerning testing laboratories under the CRA as 16.8.1 NMAC General Provisions, 16.8.2 NMAC Licensing and Operational Requirements for Cannabis Establishments and 16.8.7 NMAC Quality Control, Inspection, and Testing of Cannabis Products. These rules will be codified in Title 16, Chapter 8, Parts 1, 2 and 7 of the New Mexico Administrative Code.

1. Statutory Authority for Rule Promulgation:

Pursuant to §26-2C-3 NMSA 1978 (2021) of the CRA, the CCD shall adopt and promulgate rules as provided in the State Rules Act, §14-4-1 NMSA 1978 *et seq.*, which rules shall be "consistent with industry standards necessary for the division to carry out its duties" pursuant to the CRA.

For the purposes of adoption and promulgation of rules under the CRA, pursuant to §9-16-6 NMSA 1978 of the Regulation and Licensing Department Act, the Superintendent of the RLD "has every power expressly enumerated in the laws, whether granted to the superintendent or the department or any division of the department".

2. Date of Notice in the New Mexico Register:

The Notice of Rulemaking was published in Volume XXXII, Issue: 21 of the New Mexico Register on November 9, 2021.

3. Date of Rule Approval:

The Cannabis Regulatory Advisory Committee recommended the rules to be approved on December 2, 2021. The CCD approved the rule on December 31, 2021.

4. Date of Adoption of Rule:

December 31, 2021



777 JAN -4 AM 11:20

5. Date of Publication of Adopted Rule in the New Mexico Register:

The adopted Rule will be published in Volume XXXIII, Issue 1 of the New Mexico Register on January 11, 2022.

6. Effective Date of Rule:

Amendments to Sections 1 and 2 of 16.8 NMAC will be effective January 11, 2022, while new rules added to Section 3 of 16.8 NMAC will be effective March 1, 2022.

7. Reasons for Adopting Rule:

Part 16.8.1 NMAC – General Provisions

The objective of Part 16.8.1 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. Part 1 standardizes definitions in order to provide clarity around the rules contained herein and establishes the commitment of the division to advance social and economic equity in its licensure procedures. The CCD added to the existing definition section to provide needed clarity on terms related to laboratory testing licensure.

Part 16.8.2 NMAC – Licensing and Operational Requirements for Cannabis Establishments

The objective of Part 16.8.2 is to ensure the safe production, testing, sale and consumption of commercial and medical cannabis. The CCD added language surrounding application and operational licensure requirements for testing laboratories. This license type is integral to the safe production, sale and consumption of cannabis.

Part 16.8.7 NMAC – Quality Control, Inspection, and Testing of Cannabis Products

The objective of Part 16.8.7 is to ensure cannabis products are subject to quality control through means including inspection and testing of cannabis products. The CCD added rules around required testing and its process.

The division's amendments and adoption of new rules prioritized the health and safety of medical patients and consumers of adult use cannabis, the efficiency of the regulatory process, the efficiency of the cannabis supply chain and the financial burden of testing laboratory licensees.

8. Reasons for Changes from Published Proposed Rule:

No changes were made to Section 7 of 16.8.1 NMAC, "Definitions" as the division determined the definitions were sufficient to provide clear guidance for testing laboratory applicants and licensees. Additionally, no relevant public comment suggested changes to definitions for testing laboratories.

Minor changes were made to Sections 44 and 45 of 16.8.2 NMAC, "Application Requirements for Cannabis Testing Laboratory License" and "Submittal of Application for Amended Cannabis Testing Laboratory License," respectively. Changes to the application requirements changed certain materials from documents that needed to be submitted as a



2022 JAN -4 AM 11:20

part of the application, to certification that the applicant has properly acquired these documents. For example, application requirements for proof of business license, zoning approval and fire inspection were moved to a certification that the application has properly acquired these necessary documents, as applicable. These changes brought the testing laboratory

Similarly, Section 47 of 16.8.2 NMAC was changed to have the training requirements and materials consistent with other license types now finalized throughout the rest of 16.8.2 NMAC.

Part 7 of 16.8 NMAC, Quality Control, Inspection, and Testing of Cannabis Products removed duplicative testing requirements to streamline testing compliance for production and manufacturer licensees and well as testing laboratory licensees. The division focused on required testing prior to sale to a qualified patient, primary caregiver or adult-use consumer in order to reduce duplicative testing requirements. As stated above, these changes will ensure consumer safety while also improving the efficiency of the cannabis supply chain and reducing cost for production, manufacturing and testing laboratory licensees.

9. Reasons for Not Accepting Substantive Arguments from Public Comment:

The division received public comment suggesting a change in the batch size required for testing. While the division did not accept these particular suggestions, changes to other parts of the rule should reduce supply chain bottlenecks and cost of testing while all the while protecting consumer health.

For detailed responses to written and public comment, please review the agency record which can be accessed on the Sunshine Portal.

The new Rule, as recommended by the Cannabis Regulatory Advisory Committee on December 2, 2021, and as finally approved by the Director of the Cannabis Control Division on December 31, 2021, is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

ON BEHALF OF THE CANNABIS CONTROL DIVISION OF THE
NEW MEXICO REGULATION AND LICENSING DEPARTMENT

12/31/2021

Kristen Thomson

DATE

KRISTEN THOMSON
DIRECTOR



This is an amendment to 16.8.1 NMAC, Section 7, effective 01/11/2021. 2022 JAN -4 AM 11: 20

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.

2022 JUN -4 AM 11:20

(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.

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

(4) (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.

(5) (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.

2022 JAN -4 AM 11: 21

(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.

[~~(2)~~] (3) “Testing” means testing of cannabis and cannabis products consistent with division rules.

[~~(3)~~] (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]

**NEW MEXICO REGULATION AND LICENSING DEPARTMENT
CANNABIS CONTROL DIVISION
RULE PROMULGATION HEARING**

Public Hearing: Proposed Amendment of 16.8.1 NMAC ("Commercial and Medical Cannabis General Provisions"), 16.8.2 NMAC ("Commercial and Medical Cannabis Licensing and Operational Requirements for Cannabis Establishments"), 16.8.3 NMAC ("Packaging, Labeling, Advertising, Marketing, and Commercial Display Requirements for Cannabis Products"), 16.8.6 NMAC ("Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources"), 16.8.7 NMAC ("Quality Control, Inspection, and Testing of Cannabis Products"), 16.8.9 NMAC ("Cannabis Training and Education Programs") and 16.8.10 NMAC ("Cannabis Servers Licensing and Training Program").

Actions in Question: Rule Promulgation Hearing for 16.8.1 NMAC, 16.8.2 NMAC, 16.8.3 NMAC, 16.8.6 NMAC, 16.8.7 NMAC, 16.8.9 NMAC and 16.8.10 NMAC

Hearing Date: December 9, 2021

Report Date: January 4, 2022

REPORT OF HEARING OFFICER

A Public Hearing was held on Thursday, December 9, 2021 at 9:00 a.m. via Cisco WebEx and telephone. The hearing was held for the purpose of considering the Regulation and Licensing Department's ("RLD") proposed amendments and creation of 16.8.1 NMAC ("Commercial and Medical Cannabis General Provisions"); 16.8.2 NMAC ("Commercial and Medical Cannabis Licensing and Operational Requirements for Cannabis Establishments"); 16.8.3 NMAC ("Packaging, Labeling, Advertising, Marketing, and Commercial Display Requirements for Cannabis Products"), 16.8.6 NMAC ("Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources"), 16.8.7 NMAC ("Quality Control, Inspection, and Testing of Cannabis Products"), 16.8.9 NMAC ("Cannabis Training and Education Programs") and 16.8.10 NMAC ("Cannabis Servers Licensing and Training Program").

Robert Sachs presided as Hearing Officer. The RLD was represented by Patrick Schaefer, General Counsel for the RLD.

The other participants in the hearing included the following individuals:

1. Kristen Thomson, Director, CCD
2. Nicole Bazzano, Licensing Manager, CCD
3. Julia Valdez, Executive Assistant, CCD
4. Terry Last, Executive Secretary, CCD

Also listed here, in order of appearance, are participants who offered comments at the hearing:

1. Matthew Muñoz
2. Kristina Caffrey
3. Chris Mechels
4. Michael Chartrand
5. Duke Rodriguez

6. John Osborn
7. Jason Barker
8. Ben Lewinger
9. Larry Love
10. Tony Martinez
11. Jett Curtis
12. T.J. Trujillo
13. Robbie Tafoya

The Cisco WebEx platform was hosted by Julia Valdez from the RLD. Nicole Bazzano assisted in that process. Kim Schollenberger, from Paul Baca Court Reporting in Albuquerque, was the court reporter.

SUMMARY OF PROCEEDINGS

The Hearing Officer opened the proceeding by introducing himself and stated that he has been designated by Cannabis Control Division director, Kristen Thomson to serve as the Hearing Officer for this public comment hearing. The Hearing Officer stated that the subject matter of this public comment hearing is proposed administrative rules concerning the New Mexico Cannabis Regulation Act.

The Hearing Officer stated that he and the court reporter, in addition to staff members from the Regulation and Licensing Department were gathered at the Toney Anaya State Office Building, located at 2550 Cerrillos Road, in Santa Fe, New Mexico. He further stated as follows:

- In light of health concerns related to the ongoing COVID-19 public health emergency and in an effort to make this hearing as accessible to the public as possible, this public comment hearing was being conducted with the public able to attend via internet video conferencing technology in order to make public comment on the proposed rules language.
- The purpose of this hearing was for the Cannabis Control Division (CCD) of the Regulation and Licensing Department was to receive public comment on proposed new administrative rules regarding the commercial and medical cannabis industry. The rules that have been proposed by the RLD at this time give particular attention to rules regarding cannabis manufacturers and cannabis retailers. On behalf of the CCD, the Hearing Officer welcomed everyone present at this hearing, whether in person or participating remotely.
- This hearing was being conducted pursuant to, and in accordance with, the provisions of the New Mexico Cannabis Regulation Act, Sections 26-2C-1 through 26-2C-42, NMSA 1978 (2021); the Open Meetings Act, Sections 10-15-1 through 10-15-4; the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978; and NMAC 1.24.25, the default procedural rule for rulemaking, as promulgated by the Attorney General.
- Public notice of this hearing was advertised in the New Mexico Register on September 28, 2021. Copies of the public notice, as well as copies of the proposed rules and copies of research and documentation relied upon by the Cannabis Control Division in the development of the proposed rules, have been available from the Regulation and Licensing Department office since the notices were published and are available to the public attending this hearing via the RLD website for the Cannabis Control Division at: <https://ccd.rld.state.nm.us/2021/07/06/licensing-and-operational-requirements-for-cannabis-establishments-2/>. Copies of the proposed rules continue to be available by request to anyone who requests them.

- The Hearing Officer asked that everyone physically present in the room silence their cell phones and asked that any extended conversations be held outside of this room. For all those attending via videoconference technology, the Hearing Officer asked that they ensure that their microphones remain muted until such time as they were called upon to make your public comment.
- This hearing was scheduled to end not later than 4:00 p.m. on the day of hearing. Due to the large number of participants, and in order to allow as many people as possible to present their public comments on the proposed rules within the time we have for the hearing, the Hearing Officer would be limiting public comment for each presenter to 5 minutes. This time deadline would be strictly enforced, and when a presenter's allotted time has expired the presenter's microphone will be muted and we would move on to the next person. Presenters will be able to see a 5-minute clock on the screen that will start when the presenter begins speaking. Presenters were asked to consider this time limit carefully before they spoke and make every effort to focus their comments and get to the heart of any concerns or issues they wished to address as quickly as possible.
- The participants were told that if they would like to submit written testimony, we would accept written testimony after the conclusion of their 5-minute public comment up until the close of the public comment hearing today. They were told that they must submit their written comments no later than the end of the December 9 day of the public comment hearing if they wished that their written comments become part of the official record for this hearing.
- They were also told that if they previously submitted written testimony regarding the proposed rules, they did not need to resubmit any documents previously submitted. They were told that may submit public comment via email sent to ccd.publiccomment@state.nm.us or by visiting ccd.rld.state.nm.us and entering their public comments on the adult-use cannabis producer hearing page.

The Hearing Officer further stated that, as this public hearing was being conducted via the teleconference format as opposed to a traditional sign-in sheet for those in attendance via teleconference who wish to speak regarding the proposed rules, we would be utilizing the registration log-in for Cisco WebEx to record all those who attend and/or participate in the hearing. A member of the RLD staff assigned responsibility for including the names of attendees appearing by videoconference to the Attendance Sheet.

The Hearing Officer then stated that this is a formal proceeding and a court reporter has been contracted to record the proceedings. The court reporter will record the proceedings and the transcript will become a part of the rule hearing record. Therefore, persons recognized to address the hearing attendees and the RLD are asked to:

- Identify themselves for the record each time they addressed the body; and
- Speak loudly and clearly so the recorder can pick up their comments.

The Hearing Officer then stated that this hearing would be conducted in the following manner:

Mr. Sachs, from the RLD, will present Exhibits to be included in the Rulemaking Hearing Record. The Hearing Officer would then rule on the admissibility of the Exhibits offered for admission.

Exhibits admitted into evidence by the RLD would be available for review by members of the public <https://ccd.rld.state.nm.us>. All public comments that have been submitted, and would be admitted as exhibits for this hearing, would likewise be available for review by members of the public on that same website. Any additional exhibits admitted into the record for this matter during the course of this hearing would also be made available for the public to review on the Cannabis Control Division's website. After Mr. Sachs makes his presentation on behalf of the Regulation and Licensing Department and offers Exhibits and, and their admission has been ruled upon, the Hearing Officer would then open the Hearing for comments from the audience.

The Hearing Officer then requested the following:

Each person making public comment may speak regarding any part of the proposed rules. Please make reference to the individual rule parts or subsections to which you refer. You may refer to other parts of the proposed rules that reasonably relate to the part of the rule being discussed or which relate to your comments.

The Hearing Officer explained that the RLD does not follow the rules of evidence, and therefore the Hearing Officer, may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious. The decision as to whether such exhibits, testimony, commentary or other evidence is irrelevant, redundant, or unduly repetitious shall be made by the Hearing Officer.

The participants were reminded again to be aware that each presenter would be allowed only 5 minutes of testimony. After identifying themselves for the record, the Hearing Officer encouraged them to make the most of their allotted time by moving directly to the issues or subjects of the proposed rules they wish to address to the RLD. At the conclusion of each commenter's 5 minutes, his or her microphone would be silenced.

The Hearing Officer advised that after a person has testified or offered comment, as Hearing Officer, he may ask questions for the purpose of clarifying a person's comments.

The Hearing Officer also stated that this public hearing is intended to provide the public with an opportunity to voice opinions on the proposed rule. In order to maximize the amount of time available for individuals to make public comment, only the Hearing Officer would ask any clarifying questions that are determined to be necessary.

The Hearing Officer then stated that at the conclusion of this rule hearing, the CCD will review the information received and will conduct discussions and take final action, such as amending, adopting, tabling, and so forth on the proposed rules.

The Hearing Officer then asked Mr. Sachs to introduce Exhibits into evidence. He identified RLD Exhibit Nos. 1 through 35, which were the exhibits that had been submitted as of the day of hearing, prior to the opening of the hearing. Those exhibits include the following:

RLD Exhibit No. 1: Legal notice of proposed rulemaking published in the New Mexico Register Volume XXXII, Issue 21/published November 9, 2021

RLD Exhibit No. 2: Notice of proposed rulemaking sent to Interested Parties

RLD Exhibit No. 3: Proposed Draft Rules 16.8.1 Amendments

RLD Exhibit No. 4: Proposed Draft Rules 16.8.2 Amendments

RLD Exhibit No. 5: Proposed Draft Rules 16.8.3

RLD Exhibit No. 6: Proposed Draft Rules 16.8.6

RLD Exhibit No. 7: Proposed Draft Rules 16.8.7

RLD Exhibit No. 8: Proposed Draft Rules 16.8.10

RLD Exhibit No. 9: City of West Hollywood Ordinance

RLD Exhibit No. 10: Dakalb, IL Ordinance

RLD Exhibit No. 11: Sesser, IL Ordinance

RLD Exhibit No. 12: Resources for Testing Laboratory Rules

RLD Exhibit No. 13: Cannabis Rules – Alaska

RLD Exhibit No. 14: Cannabis Rules – California

RLD Exhibit No. 15: Cannabis Rules – Colorado

RLD Exhibit No. 16: Cannabis Rules – Maine

RLD Exhibit No. 17: Cannabis Rules – Massachusetts Medical

RLD Exhibit No. 18: Cannabis Rules – Massachusetts Recreational

RLD Exhibit No. 19: Cannabis Rules – Michigan

RLD Exhibit No. 20: Cannabis Rules – Oregon

RLD Exhibit No. 21: Cannabis Rules – Washington

RLD Exhibit No. 22: Sampling for Testing – State Comparison

RLD Exhibit No. 23: Public Comment submitted by Leeland Murray

RLD Exhibit No. 24: Public Comment submitted by John Grisham of Ricci and Company

RLD Exhibit No. 25: Public Comment submitted by William Woodall, Professor at the
University of New Mexico

RLD Exhibit No. 26: Public Comment submitted by Alyson Noell of Ricci and Company

RLD Exhibit No. 27: Public Comment submitted by Sam Shore of Alchemy Wellness

RLD Exhibit No. 28: Public Comment submitted by Denise Padilla

RLD Exhibit No. 29: Public Comment submitted by Michael Chartrand of Connect Premium Lounge

RLD Exhibit No. 30: Public Comment submitted by Chris Mechels

RLD Exhibit No. 31: Public Comment submitted by Dayelle Cueto of Argon Labs

RLD Exhibit No. 32: Additional Public Comment submitted by Michael Chartrand of Connect Premium Lounge

RLD Exhibit No. 33: Public Comment submitted by James McCue

RLD Exhibit No. 34: Public Comment submitted by Kristina Caffrey of Ultrahealth

RLD Exhibit No. 35: Public Comment submitted by Milan Patel of PathogenDx

RLD Exhibit Nos. 1 through 35 were all admitted into evidence.

The Hearing Officer then stated that any person wishing to testify should do so when they are recognized. Due to the hybrid nature of the hearing today, with participants appearing both in-person and remotely, we would be going back and forth between in-person commenters and those making comment via the videoconference technology.

The Hearing Officer also explained that for those appearing via videoconference who wish to provide public comment, if they would like to provide public comment, they should first open the participant's section and raise their hand. To do this, they should first click on the "Participant's" button at the bottom right of the Cisco WebEx window. Once they do that, they would see a small hand icon in the bottom right corner of the Cisco WebEx window. If they click on the hand icon, RLD staff would see that they have raised their hand and would allow them to provide public comment when it was each person's turn.

The Hearing Officer also stated that participants should be aware that at this time it was estimated that there are at total number of more than 104 people who have indicated they intend to offer public comment at today's hearing.

If a person who testifies wishes to submit an exhibit for this hearing which has not already been admitted into the record, that person will be required to identify the proposed exhibit and describe the contents of the exhibit. As Hearing Officer, I would then rule on the admission of the proposed exhibit. Upon admissibility, each exhibit will be marked and numbered and entered into the record.

If a person who testifies has submitted an exhibit for this hearing, which has already been admitted into the record, the person is requested to identify that exhibit at the beginning of the person's testimony today.

PUBLIC COMMENTS OFFERED AT HEARING

The following is a summary of the written comments that were submitted and the public comments offered into the record at the December 9, 2021 Public Hearing. Each participant was asked whether he or she would like to offer public comment. The participants were also asked to identify themselves as appearing at the hearing on their own behalf, or on behalf of an association or other group. The summary only identifies those who offered public comment.

The Hearing Officer also stated that, to be clear, this hearing is an opportunity for “testimony and comments” to be presented by those who wish to provide public comment on the proposed rules. The hearing would not be conducted as a “question and answer” session. If a participant had questions regarding the proposed rules, they were advised that they were certainly free to include those questions in their public comment. The RLD would respond to public comments at the time when the RLD issues its concise explanatory statement regarding all comments received. The RLD would not be responding individually to those making comments on the proposed rules; the RLD would publish a comprehensive concise explanatory statement responding to all comments provided by the public at a later time, in keeping with the requirements of New Mexico administrative rule NMAC 1.24.25.

Ms. Bazzano then offered an introduction to the proposed rules. She began by stating that Director Kristen Thomson and the Cannabis Control Division openly and honestly wish to learn from the public about concerns and suggestions related to the proposed rules.

Ms. Bazzano stated that the purpose of the rulemaking proposals to 16.8.1, 16.8.2, 16.8.3, 16.8.6, 16.8.7 and 16.8.10 NMAC is to make public rules related to licensure as required by the Cannabis Regulation Act. She noted that the objective of Part 1 of the rule is to set forth general provisions that apply to all of Chapter 8 and to all persons affected by or regulated by Chapter 8 of Title 16. Part 1 standardizes definitions to provide clarity around the rules contained therein. Proposed amendments to

Part 1 add definitions related to new licenses to be discussed in today’s hearing.

Part 2 includes additions to licensing requirements for cannabis consumption areas, cannabis testing laboratories and cannabis research laboratories to ensure the safe production, testing, sale and consumption of commercial and medical cannabis.

Part 3 addresses advertizing and marketing requirements and sets guidelines for how cannabis and cannabis products may be marketed to consumers in order to ensure that cannabis and cannabis products are properly labeled and packaged so consumers and medical patients have an accurate understanding of the product they are consuming, while ensuring child-resistant packaging prohibits access of products by minors.

Part 6 addresses promoting health and safety of employees and licensees, food and product safety for consumers ingesting cannabis products, reducing environmental impacts and protecting natural resources during the production of cannabis products.

Part 7 provides additions to requirements for track and trace and testing of cannabis and cannabis products to ensure cannabis products are subject to quality control through inspection and testing of cannabis products.

Part 10 establishes licensing guidelines for cannabis server licensing and training and educational programs.

Written Comments

The Written Comment of Leeland Murray

Mr. Murray submitted a written comment which has been designated RLD Exhibit 23.

He suggested that randomized sampling of cannabis products be conducted by a third-party laboratory to prevent production bias and assure that accurate and representative samples are taken.

In addition, Mr. Murray said that there is no specific mention of requiring testing for pesticides, fungicides or heavy metals in the proposed rule and that testing for such things should be included to ensure product safety for consumers. Mr. Murray included links to three articles about heavy metals and pesticide use in the cannabis industry.

The Written Comment of John Grisham

Mr. Grisham, a partner with Ricci & Company CPA's of Albuquerque, submitted a written comment which has been identified as RLD Exhibit 24.

He commented specifically on the part of the proposed rule covering audits under 16.8.2.20. He noted that in 2012 the New Mexico Public Accountability Board wrote a letter to the state Department of Health that required all producers to obtain an agreed upon procedure report from a CPA. He maintains that's much different than what's called for in the proposed rule. Mr. Grisham says the rule should be clarified because the fee for a full audit would be excessive; the biennial audit would essentially double fees every other year; the rule doesn't separate micro producers from fully licensed cultivator; it's not clear whether a CPA in New Mexico can render an opinion of the audit; and that due to the cannabis industry being largely cash-based, having auditable books and records also becomes an expensive proposition.

The Written Comment of Gill Woodall

Mr. Woodall submitted a written comment which has been designated RLD Exhibit 25.

He expressed concern that servers working within cannabis consumption areas were required to get training. However, sellers who sell cannabis for off-site consumption are not required to undergo training. He is under the impression that the original legislation required servers and sellers to undergo training, much like alcoholic servers and sellers. Leaving out training for sellers would be a serious error of omission, he said.

Mr. Woodall, a senior research scientist at the University of New Mexico, said he has been examining responsible alcohol and cannabis sales practices for 15 years and offered to provide published research on the subject.

The Written Comment of Alyson Noell

Alyson Noell submitted a written comment which has been designated RLD Exhibit 26. Noell, who like Mr. Grisham also works for Ricci & Company CPA's of Albuquerque, had the same concern as Mr. Grisham regarding audits under 16.8.2.20. She also referred to the guidance provided by the New Mexico Public Accountability Board in 2012, saying that in lieu of a financial statement audit the Department of Health required producers to obtain an Agreed Upon Procedures report from a CPA. The proposed requirements, however, seem to call for a full financial statement audit biennially. She asked that the division clarify or modify the rule because many licensees operate mostly as a cash-based business, making the process an expensive proposition for the licensees. She added that there is no separation between micro producers and larger, fully integrated cultivators and therefore it would be disproportionately burdensome for those with a micro license. She said it is unclear whether a CPA in New Mexico could provide an opinion with respect to a financial statement audit.

The Written Comment of Sam Shore

Sam Shore, of Alchemy Wellness, submitted a written comment which has been identified as RLD Exhibit 27.

In it, Mr. Shore asks many questions regarding proposed rules for the Cannabis Server Permit and training programs. Covering sections 16.8.10.8 through 16.8.10.10, asks questions relating to whether the server permit is required only for servers in consumption areas or includes medical and adult use dispensaries; how many questions will be on the test; the length of time to take the test; how many classroom hours are required in training; fees relating to the permit application and training; and whose responsibility is it to check whether a server owing child support is issued a license.

The Written Comment of Denise Padilla

Ms. Padilla submitted a written comment which has been designated RLD Exhibit 28. She asks whether the requirements for a hemp license are the same as for a cannabis license.

The Written Comment of Michael Chartrand

Mr. Chartrand, of Cannect Premium Lounge, submitted a written comment which has been identified as RLD Exhibit 29.

Mr. Chartrand says that New Mexico's laws pertaining to consumption areas contradict themselves, as a result of the term "consumption areas" being left out of definitions. He offers alternative definitions for "licensed premises," "cannabis establishment" and "facility" that incorporate the word "consumption."

The Written Comment of Chris Mechels

Mr. Mechels submitted a written comment which has been designated RLD Exhibit 30.

Mr. Mechels states that the Cannabis Control Division is not complying with the New Mexico Rules Act, thus requiring the rescheduling of the Dec. 9, 2021, public hearing. He says notice of the hearing posted on the Sunshine Portal was not done 30 days prior to the meeting, nor was it posted on the RLD website. He also says the content of the notice does not match the proposed changes and that the CCD is engaged in an illegal process. Mr. Mechels added that recreational cannabis opens up serious ethical and legal concerns.

The Written Comment of Dayelle Cueto

Ms. Cueto, of Hobbs-based Argon Labs, submitted a written comment which has been designated RLD Exhibit 31.

Ms. Cueto urges the CCD to delay the requirement for testing for pesticides for six months and then stagger implementation once pesticide testing starts up. That's because laboratories weren't prioritized in the licensing process like producers were, the equipment used in testing is expensive, and method development will take time to complete. She says laboratories would be rushing it to get up and running and that there could be a cannabis shortage soon after April 1, 2022, due to a scarcity of licensed testing laboratories.

Ms. Cueto also urges the state of New Mexico to test for heavy metals in the final product – like flower, concentrates, edibles and topicals – and not just test for metals in soil, water and topicals. She says

she knows of no other state that doesn't test cannabis products for heavy metals. She said that concentrates, by definition, can increase heavy metal levels that could potentially be harmful.

The Second Written Comment of Michael Chartrand

Mr. Chartrand, of Connect Premium Lounge, submitted a written comment which has been designated RLD Exhibit 32.

Mr. Chartrand commented further regarding cannabis consumption areas, saying that under the rules a consumption area must be a permanent part of the retail establishment. He says that requiring consumption areas to have storefronts hinders small businesses, citing as examples a mobile massage therapist that utilizes cannabis-infused lotions, a catering company that serves cannabis-infused meals at various locations, a wedding planner whose clients wish to have a consumption area at the wedding reception, among others. He says a solution to the problem would be to disengage consumption areas from retail establishments in the rules, or establish a third type of license that allows for safe and appropriate cannabis use in non-permanent settings.

The Written Comment of James McCue

Mr. McCue, of Jemez Springs, submitted a written comment which has been designated RLD Exhibit 33.

Mr. McCue asked several questions, including whether medical cannabis patients were permitted to consolidate their personal plants in one location under a master grower without having to get a license; what agency would monitor watershed protections in areas where production is taking place; if growers that utilize lighting in greenhouses are subject to laws designed to protect dark skies; what qualifications and career opportunities would there be for inspectors, and personnel in compliance, tracking systems, training and installation; and what software will be utilized.

The Written Comment of Kristina Caffrey

Ms. Caffrey, chief legal officer for Ultra Health, submitted a written comments which have been designated RLD Exhibit 34. She comments on testing regulations contained in Section 16.8.2, testing regulations contained in 16.8.7, and batch size as described in 16.8.1.7.

Regarding testing under 16.8.2, Ms. Caffrey says that the language used in the section could cause confusion, leading licensees to believe that their own "internal" testing could suffice for test results and substitute for third-party testing.

Ms. Caffrey also takes issue with some of the other language in the section, including the words "hold," "interest" and "person," which she says lead to confusion. Ms. Caffrey also says that "labeling claims" is another vague term in the section. She suggests that the CCD check with testing laboratories regarding retaining test samples for 30 days, saying that the act of testing often results in destruction of the sample.

Regarding testing standards covered under 16.8.7, Ms. Caffrey raises concerns about BioTrack, sample collecting, intermediate testing, homogeneity testing, potency and homogeneity testing, time limitations on remediation, sample size increments and storage, and secure versus sealed containers.

Ms. Caffrey says there has historically been a problem with BioTrack listing cannabis that has not been tested or failed tests as being "in stock." This leads to inaccurate calculations to the plant count and the belief that there is more cannabis available than there actually is, she said. She suggests new

categories be created for cannabis that awaits testing and for cannabis that has failed tests in order to get a more accurate count for what's actually "in stock."

She also suggests that the requirement that "testing samples be collected by laboratory staff trained in testing sample collection" could be fulfilled through one of five ways: allowing cultivation staff to undergo training in test sample collection, possibly headed by laboratory staff, to qualify as collection by laboratory staff; designate the collection point to be at the testing laboratory, where cultivation staff delivers samples that are then "collected" at the lab; designate the perimeter of the cultivation site as the collection point; allowing the producer to submit a quality control plan to satisfy the collection mandate; or any combination of the above options.

Ms. Caffrey goes on to address intermediate testing. She outlines the different stages at which testing takes place for flower/trim and concentrates. She says that in some cases intermediate testing is unnecessary and that it creates barriers for legal licensees. She urges the CCD to reevaluate its testing regime to avoid unnecessary intermediate testing.

Ms. Caffrey says wording contained in the rule that "Batch-level homogeneity testing is performed by testing for total THC potency additional samples in addition to the sample tested for potency" makes no sense and clarification is required.

She also notes that the rules contain no time limitations for remediation. She suggests that it may help to specify a time window during which failed batches may be remediated and retested.

Ms. Caffrey also says there is confusion in the statement "A set of samples shall pass homogeneity testing if the relative standard deviation of total THC potency of the samples is no more than 15%." She wonders if that means that the potency differences in the homogeneity tests cannot be more than 15 percentile points, or does it mean that the margin of error cannot be greater than 15%. If it's the latter, the margin of error should be increased to 20%, she said, as that is the most commonly used margin of error used in cannabis testing, she says.

Ms. Caffrey asks a question regarding sample size increments and how they should be packaged. The rule states that "Samples shall be sealed in a single use, tamper-evident container ... minimum quantity of sample increments." She wants to know whether that means the 10 sample increments need to come in 10 different containers, or just one container. She says it's easier, less wasteful and less time consuming to provide all 10 samples in the same container, reasoning that the samples all come from the same batch.

Ms. Caffrey says there is confusion as to whether samples are to be stored in a "secure" or "sealed" container. The rule says, "After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions ... The sealed container shall be labeled with the identification number used in the track and trace system..." She suggests the use of "secure" only and that sealed not be used. A sealed container, she says, creates problems with the drying/curing process as moisture can get locked inside.

Regarding batch size as covered under 16.8.1.7(B)(1) NMAC, Ms. Caffrey suggests that the maximum batch size be increased from 15 to 25 pounds. She says that over the years batch size has not increased proportionate to production. The standard batch size in the medical program has stood at 5 pounds, but that's when licensees had maximum limits of 450 or 1,750 plants. Now, even with batch sizes set at 15 pounds, licensees can have up to 10,000 mature plants. And with no licensing limits there will be a lot more cultivators than just the 33 legacy medical producers. As a result of the increase in cultivation volume, Caffrey says that the two existing licensed testing laboratories will face a bottleneck for in recreational cannabis supply in 2022. "In essence, cannabis cultivation will transform from mere

gardening to full-scale farming in the coming months,” she says, adding that testing laboratories will need to quickly ramp up operations. But increasing batch size will reduce the number of tests and help alleviate the bottleneck that will come in 2022, she says. Ms. Caffrey recommends increasing the maximum batch size to 25 pounds, which she notes is five times more than the 5-pound batches of the medical program.

The Written Comment of Milan Patel

Mr. Patel, of PathogenDx, a company that tests cannabis for contaminants, submitted a written comment which has been designated RLD Exhibit 35.

Mr. Patel says he strongly supports the proposed regulations, particularly the microbiological testing requirements. He also commended the CCD for including *Aspergillus* species level testing.

However, Mr. Patel said he had one suggestion for how to strengthen the regulations and put them in line with national standards: Lower the action level for *E. Coli* from “100 CFU/gram” to “Present in 1 gram” and require speciation as Shiga-toxin producing *E. Coli*. He says that New Mexico establishing such a high action level would put it among a minority of states and run counter to what has grown to be the national standard.

The Written Comment of Duke Rodriguez

Mr. Rodriguez, of Ultra Health, submitted a written comment which has been designated RLD Exhibit 37.

Mr. Rodriguez says he will submit two documents that support increasing the batch size to 25 pounds for same strain/same harvest cannabis. One produced by the Colorado Marijuana Enforcement Division is a chart that shows the percentage of packages that passed testing each month of 2020, broken down by category and by adult and medical use (Exhibit 38). The other is a published research article titled “Costs of cannabis testing compliance Assessing mandatory testing in the California cannabis market” (Exhibit 39). Mr. Rodriguez says that determining appropriate batch size should be more evidence based and take into consideration testing capacity.

Exhibit 38 is a chart submitted by Duke Rodriguez of Ultra Health. The chart provided by the Colorado Marijuana Division shows month-by-month testing result rates in that state in 2020. The chart shows the percentage of packages that passed testing for microbial contaminants, potency, residual solvents, and metals for concentrate, flower and shake/trim, infused edible and infused non-edible cannabis.

Exhibit 39 is a research article titled “Costs of cannabis testing compliance Assessing mandatory testing in the California cannabis market” that was submitted by Duke Rodriguez of Ultra Health. The 20-page article was published in PLOS ONE on April 23, 2020. The article covers such topics as California’s cannabis testing standards, calculating laboratory cost per sample of cannabis, and testing cost per pound of cannabis marketed. In the discussion section, the abstract states that “a large lab has four times the total costs of a small lab but 10 times the testing capacity, in part because large labs are able to use their resources (Equipment, lab space, labor) more effectively.” It says that testing cost per pound of cannabis marketed is particularly sensitive to batch size, especially for batch sizes under 10 pounds. It says that “Testing itself is costly, but losses inflicted by destroying cannabis that fails testing is a major component of overall costs.” It notes that “some labs have reported up to 10% in variation in test results from the same sample. Some labs indicate that about 25% of samples need to be re-tested to be sure that results are accurate.” It says that a major issue for the legal, taxed and licensed cannabis market is competition with the untaxed, unlicensed segment. Higher testing costs translate to higher prices in the licensed segment, it says.

The Written Comment of Ron "Bud" Simon

Mr. Simon, of Loco Buds Farm in Las Cruces, submitted a written comment which has been designated RLD Exhibit 40.

Mr. Simon says that the state should keep the sample batch size limit at 15 pounds. He says that while it is true that producers will be able to grow as many as 10,000 mature plants at a time and that production limits have been raised 10 fold, not many producers will be capable of producing close to that amount by April 1, 2022, and many won't be up and running for another year. He suggests keeping the maximum sample batch size limit at 15 pounds, but the state should be prepared to increase the amount when more producers have entered the market and more testing laboratories have been established.

The Written Comment of Jason Barker

Mr. Barker, of Albuquerque, submitted a written comment which has been designated RLD Exhibit 41.

Mr. Barker maintains that the state's legalization law is slowly destroying the medical cannabis program and industry and complained that the high cost of training in order to get a server's permit is discriminatory.

Mr. Barker says that those who want to participate in the cannabis industry will have to pay between \$1,000 and \$3,000 just to apply for work. He compares that cost to the \$7.95 that it costs for a two-hour online course a bartender must take in order to get certified to serve for the next three years. He also compares the cost to a \$100 cost in Oregon and other online courses that cost \$210 and \$249. Mr. Barker suggests that workers in the medical cannabis program be grandfathered in and be issued a permit good for three years. He also suggests that some of the funding for the \$5 million loan program for microbusinesses should go toward education licensure and that any non-profit offering cannabis education training for free should receive a license at no charge. He recommends that the state establish an online portal through which people can obtain a server permit expediently. "The state of New Mexico is discriminating against people who's (sic) socio-economic status doesn't allow for them to even have this opportunity due to cost nor does the state have any kind of fund established to help pay for this overpriced education that is FREE all over the internet," he wrote.

Mr. Barker takes issue with Section 16.8.10.8, which states that the CCD not issue a server permit to anyone owing child support. He says it doesn't make sense for a division that works for social equity to deny someone in debt the opportunity to apply for a job that will assure child support payments are made. He also says that it makes no sense that current cannabis education programs at UNM, CNM and NNMC won't qualify as training under the state's rules.

The Written Comment of Erica Rowland

Ms. Rowland, of Farm Flourish, submitted a written comment which has been designated RLD Exhibit 42.

Ms. Rowland maintains that homegrown cannabis should be considered legal medicine. It has been for the last 10 years for medical cannabis patients, she says, and that should continue.

Ms. Rowland also says that producers should be allowed to donate cannabis product display material to underserved markets and patients through the state tracking software. She says that costs

associated with testing products and destroying display product increases costs and has an impact on pricing for patients.

Ms. Rowland also says that cannabis consumption areas should be allowed to be outdoors. She said it is safer, less invasive and doesn't infringe on patient rights and freedoms.

The Written Comment of Jason Marks

Mr. Marks, an attorney representing Scepter Lab, LLC, a testing laboratory, submitted a written comment which has been designated RLD Exhibit 43.

Mr. Marks starts by commending the CCD for the manner in which it has approached formulating testing rules and for producing rules that are comprehensive and generally reasonable. However, Mr. Marks believes that the CCD could still refine the rule to eliminate some duplicative and unnecessary testing. For example, he says there is no benefit from mandatory potency and homogeneity testing for product that will go through the extraction process. The same is true for pesticide testing, which he says shouldn't take place until after extraction, and microbiological testing.

Mr. Marks says that Scepter believes that extraction via ethanol and other volatile solvents inactivates most harmful microorganisms, but he is unsure whether that can be assumed for aspergillus spores, which could be harmful in an inhaled concentrate. Scepter recommends that the rule be modified to allow transferring biomass for extraction without potency, visual inspection and pesticide testing. It also recommends that microbiological testing of biomass for extraction only be bypassed if it is assured that aspergillus spores are inactivated by the process.

Mr. Marks goes on to say that it appears the rule as written is not consistent with remediation rules. He says the remediation rule allows growers to remediate by extraction, but if the grower is not vertically integrated they will not be able to transfer a batch that failed screening.

Regarding the collection of samples as outlined in the rule, Mr. Marks says that the word "suspects" should be replaced by "reasonably believes," a more defined legal standard. He says the word "microbes" should be used in place of "pesticide residues" where the rule addresses microbiological testing. He also suggests rewording of a footnote in Table 2, and he suggests rewording in sections covering potency and homogeneity testing to improve readability and understanding. He also suggests reformatting the tables and modifying the term "other products" in Table 1.

Mr. Marks says that Section I(3) – Product level homogeneity – is unclear in identifying which products require testing under the standard, adding that a single retail package does not stand in as a representative sample. Scepter recommends that a minimum of three finished products from a batch be submitted for batch-level homogeneity analysis and three increments from one product be submitted for product-level homogeneity.

Regarding prevention of heavy metal contamination, Scepter says that subsection C on soil testing should require that a third party collect and submit soil samples.

Finally, Mr. Marks says that it appears references to manufacturers and extraction equipment in Section 16.2.8.X (A)(8) are in error.

The Written Comment of Sherman Hom

Mr. Hom, of Medical Genomics, submitted a written comment which has been designated RLD Exhibit 44.

Mr. Hom says he supports testing for salmonella species, aspergillus flavus, A. fumigatus, A. niger and A. terreus, as well as shiga toxin producing E. coli (STEC). He does not support testing for generic E. coli <100 cfu, because a result exceeding the action level doesn't provide information concerning the presence of pathogenic E. coli. He also does not support testing for clostridium botulinum in edible products, as the bacterium could be potentially harmful to laboratory workers. He says no other state requires testing for C. botulinum.

The Second Written Comment of Duke Rodriguez

Mr. Rodriguez, of Ultra Health, submitted a written comment which has been designated RLD Exhibit 45.

Mr. Rodriguez reiterated a previous concern that was included in the comment from Kristina Caffrey of Ultra Health about an anticipated bottleneck caused by testing that would deplete supply when adult-use cannabis sales become legal. He says there were delays in testing when there was a 450 plant limit and again with a 1,750 plant limit. With production increasing 10-fold there will more delays with a 10,000 plant count, especially with testing for pesticides and heavy metals. "It is simple math and cannot simply be denied," he wrote. "Increased demand combined with increased testing requirements will create the ultimate start-up and launch failure."

Mr. Rodriguez goes on to say that increased testing will lead to increased costs for producers and increased prices for consumers. He also reiterated Ultra Health's position that batch sizes should be increased to 25 pounds, and references previously submitted exhibits 34, 37, 38 and 39.

Public Comments at Hearing

The Public Comments of Matthew Munoz

Mr. Munoz began by thanking the Cannabis Control Division for its hard working in striving to get the rules in place by Jan. 1, 2022. He went on to say that the CCD must mandate that all cannabis sold in New Mexico be subject to testing. He said medical cannabis patients especially, but all consumers, need to know that whatever product they use is void of mold, mildew, pesticides, and other dangerous toxins.

Mr. Munoz went on to say that Rule 16.8.7.xx.D(1) (10) allows the CCD to impose requirements without receiving input from producers. By letting the language stand, Munoz said CCD is skirting future rulemaking requirements and can arbitrarily create new mandates without notice.

Regarding staggered implementation of cannabis testing, Mr. Munoz said the CCD needs to re-evaluate standards. He said the testing standard should take place where cannabis is sold, not where it is produced. He said the proposed rules should be changed to state that all cannabis sold within 100 to 200 miles by automobile from a licensed testing laboratory must be tested. If it can be brought to Albuquerque to be sold, it can be brought in for testing, he said.

Mr. Munoz said the proposed rule regarding collection and transportation are contradictory and confusing. He said CCD must make clear who's responsible for collection and who's responsible for transportation. He said that CCD also needs to think about what cannabis needs to be tested and how it needs to be tested.

The Public Comments of Kristina Caffrey

Ms. Caffrey introduced herself as an attorney representing Ultra Health. She expressed concern that there was confusion as to who needs to get a cannabis server permit. She said the rule as written only covers those who serve cannabis in designated consumption areas and does not require those who sell product for off-site consumption to complete the necessary training certification to obtain a server permit. She asks the CCD to clarify that.

Ms. Caffrey also wanted to respond to comments from others regarding testing that she found somewhat alarmist. She said there has been testing in New Mexico since 2007 and the safety record for medical cannabis has been excellent. "And so we do have a very strong safety record from the existing testing regime and I am confident that the safety record can be extended when recreational sales begin," she said.

The Public Comments of Chris Mechels

Mr. Mechels opened by saying that the public hearing was illegal, or at best invalid. He said the hearing was improperly noticed under the Rules Act, which brings into question the integrity of the whole process. He said the process was already confusing and consists of modifying a modification upon a modification and there's no way for anyone to follow it. He said the CCD was destroying the process in an effort to meet deadlines set by the state Legislature. Mr. Mechels said the CCD was opening up a can of worms and that the process needed to "get legal."

The Public Comments of Michael Chartrand

Mr. Chartrand, representing Canna Lounge LLC, doing business in New Mexico as Cannect Premium Lounge, said most of his comments have to do with definitions, or the lack of definitions. Foremost, he said that the definition for licensed premises don't include consumption areas. He said other concerns he had with definitions were included in the written comment he submitted.

Today, Mr. Chartrand said he wanted to talk about how the proposed rule treats cannabis consumption areas as a retailer or restaurant. He said that the application for a consumption area calls for a diagram, including a description of each retail area and all security requirements. The problem with that, he said, is that not every consumption area is going to have retail space attached to it. Some businesses, like mobile massage therapist, wedding planners and catering companies will offer cannabis-infused products for consumption, even though they don't have a retail space or even a permanent location. Mr. Chartrand encouraged the CCD to consider such cases and said that tying consumption areas to retail shops is ill advised.

Finally, Mr. Chartrand took issue with the rule restricting visibility of cannabis products. "By doing this you're encouraging the stigma on cannabis consumption," he said. "We do not want to do that if we're going to make this a recreational drug in this state." By hiding it, he said the CCD is telling people that there is something to hide and that it increases the stigma on the use of cannabis in public areas.

The Public Comments of Duke Rodriguez

Mr. Rodriguez, of Ultra Health, read into the record written comments he previously submitted as his second written comment (described above). Increased demand coupled with increased testing requirements will result in a bottleneck from production to retailer and launch failure, he said. He

repeated previous comments about increasing the testing batch size to 25 pounds. He also referred to previously submitted material that shows high pass rates for testing and additional costs he said would ultimately be passed down to the consumer. "We need to be very sensitive to the timing and the extent of the testing regulations we're adopting," he said.

The Public Comments of Johnn Osborn

Mr. Osborn, who introduced himself as an attorney, started by agreeing with Mr. Chartrand's comment about open consumption of cannabis. "If we're going to be treating this like a regulated open market like alcohol, there's no reason for folks to have to hide in order to consume," he said, adding that if alcohol allows pop ups, cannabis should too.

Mr. Osborn went on to say that if there is going to be research involving human subjects, it should follow best practices for standards and protocols. He said there should be an early approval process for testing labs where federal licensing has been granted, such as with DEA research. In such instances, the federal government will have already vetted the applicants, he said.

The Public Comments of Jason Barker

Mr. Barker said he wanted to point out that the training and education portion of the rules allows for producers to be grandfathered in. He said the same should hold true for all industry employees with regard to a cannabis server permit.

Mr. Barker said that costs to sign up for cannabis courses at UNM, CNM and Northern New Mexico College ranges between \$1,000 and \$3,000. But a bartender only has to pay \$7.95 to take the test to get a permit to serve alcohol and the test only takes two hours.

He suggested that since the Finance Authority Oversight Committee recently approved a \$5 million loan program for cannabis micro-businesses, some of that money should be used for training and education programs.

The Public Comments of Ben Lewinger

Mr. Lewinger, who introduced himself as executive director of the New Mexico Cannabis Chamber of Commerce, started by thanking the CCD for the aggressive timeline for adopting rules and everyone who contributed comments that will help strengthen the rule.

Mr. Lewinger said that while the idea is to open the cannabis industry to all New Mexicans, some of the proposed rules create barriers. Specifically, he said, the cost for training employees is unduly expensive with college courses costing upwards of \$1,500. He said training should account for consumer safety, like in the alcohol industry. Otherwise, he said cannabis businesses should be able to train employees how they see fit.

Regarding requiring a biennial audit for licensees, that would put unnecessary and expensive requirements on cannabis businesses, especially new licensees and micro-licensed businesses, he said. He recommended that the licensee be required to perform just one yearly audit.

Regarding testing, Mr. Lewinger said it's not clear exactly how making laboratories responsible for sample collection would work under the rule and more work may be needed to refine and finalize new testing rules. However, he praised the CCD for testing aspergillus and mycotoxin in manufactured products.

The Public Comments of Larry Love

Mr. Love, a medical cannabis patient, started off by saying he was appalled that Ultra Health was lobbying for less testing. He said testing was very important and a hard look should be given to what other states are doing.

Mr. Love said he feared that the medical cannabis program might disappear with the onset of adult-use cannabis.

He finished by saying that lobbying for less testing was not a good idea. "So I implore you with the rules, to don't go light on testing. We don't want to get sick."

The Public Comments of Tony Martinez

Mr. Martinez said ensuring consumer safety is important, but it should happen in a way that people in the rural regions are not put in jeopardy.

He said that he agreed with everything that Ben Lewinger said. "We definitely need to not be overly cumbersome upon the people that are entering this workforce or the people that have already invested in training," he said, adding that he was a fan of moving slowing to adopt regulations rather than moving too quickly.

With regard to requirements for transporting cannabis, Mr. Martinez suggested that someone with CCD go on a ride-along with a producer to better understand their systems and why some things work and some things don't. He said requiring them to have additional locking mechanism inside the vehicle, in addition to the standard locking mechanism cars come with, puts people in danger. Having to move product in and out of a vehicle and in and out of a retailer takes more time when there's an additional lock to unlock. "This is going to put human lives in danger because it's adding a whole layer of regulation where there's no need," he said.

Mr. Martinez said he's not aware of robbery being a problem during these exchanges and that perhaps the CCD was trying to fix something that didn't need fixing. Instead, the proposed regulations add time to the process that deals with expensive product and cash, and that's going to add risk, he said.

The Public Comments of Jett Curtis

Mr. Curtis, who introduced himself as founder and CEO of High Magik, read a statement from Erica Rowland, founder of Farm Flourish and someone he described as "one of the most passionate advocates of cannabis in our state."

Regarding minimum standards for cannabis consumption areas, she asks that homegrown cannabis be considered legal medicine for use in cannabis consumption areas and lounges.

With regard to cannabis product display, consumers like to see what they are purchasing. So please allow retailers to donate display cannabis material to underserved markets and unfortunate patients, which can be done through the state tracking software.

With regard to disallowing visible consumption of cannabis products, the comment is that freedom is appreciated, as is the right provided by a law passed earlier this year to consume responsibly

outdoors. They ask that New Mexico municipalities be consulted and request that indoor-only language be removed “in support of legal cannabis and patient rights and freedoms.”

The Public Comments of T.J. Trujillo

Mr. Trujillo introduced himself as an attorney representing Pecos Valley Production. He said the company has concerns about delays in testing. While consumer safety is important, he encouraged the CCD to adopt an evidence-based need approach for testing requirements as rules are evaluated. Mr. Trujillo echoed comments made by others regarding cannabis server permits and how they are being administered.

The Public Comments of Robbie Tafoya

Robbie Tafoya, a medical cannabis patient for more than 13 years, began by expressing appreciation to the state for the “wonderful job” it has done over the years.

Mr. Tafoya said he had applied for a micro-producer license but was concerned because he is located in what he called “the devil’s triangle” in southern New Mexico, “which means we’re not able to leave this area without going through border checkpoints,” he said. He wanted to know how the situation is going to be rectified with the federal government, otherwise he and others in the area are going to be severely compromised in trying to transport product out of the area.

Mr. Tafoya also commented that many medical patients that grew cannabis for personal use lost their PPLs (Personal Production Licenses) and he hoped that those people will have an opportunity to become micro-growers.

The Hearing Officer stated that the record of attendees from the Webex videoconferencing technology would serve as the record of attendees at the public hearing. He said that that record would also serve as the attendance sheet for the hearing.

Ms. Bazzano asked that the transcribed record of the hearing be admitted as the attendance sheet. The Hearing Officer admitted the record as Exhibit 36.

The Hearing Officer then stated that the comments and discussion heard during the rule hearing would be considered by the Cannabis Control Division. The division will make a final decision on the proposed rules after considering the rulemaking record.

Any rules adopted by the Cannabis Control Division will be willed with the State Records and Archives in accordance with the State Rules Act and New Mexico Register publications deadlines. Publication of the rules will also be published on the Regulation and Licensing Department’s website, through the New Mexico Sunshine Portal website. The adopted rules become effective 30 days after they are filed at Records and Archives unless otherwise noted at the end of a section. Any rules not adopted may be postponed for future discussion, or may be postponed indefinitely.

The Hearing Officer adjourned the hearing at 10:12 a.m.

ANALYSIS AND RECOMMENDATIONS

The Hearing Officer, having reviewed the oral comments at hearing and the written comments submitted by the public and the Department, recommends that the CCD find that the provisions of the proposed rules 16.8.1 NMAC (“Commercial and Medical Cannabis General Provisions”), 16.8.2 NMAC

("Commercial and Medical Cannabis Licensing and Operational Requirements for Cannabis"), 16.8.3 NMAC ("Packaging, Labeling, Advertising, Marketing, and Commercial Display Requirements for Cannabis Products"), 16.8.6 NMAC ("Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources"), 16.8.7 NMAC ("Quality Control, Inspection, and Testing of Cannabis Products"), 16.8.9 NMAC ("Cannabis Training and Education Programs") and 16.8.10 NMAC ("Cannabis Servers Licensing and Training Program") are in harmony with, or spring from the authority given to the Department to promulgate rules under the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act. The Hearing Officer also makes recommendations for *some* revisions to the proposed rules, which are set forth below in this report.

The purpose of the Cannabis Regulation Act ("CRA" or "the Act") is stated in NMSA 1978, § 26-2C-3, which provides as follows:

A. The "cannabis control division" is created in the department to administer the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act [Chapter 26, Article 2B NMSA 1978] and rules promulgated in accordance with those acts. Rules shall be adopted and promulgated as provided in the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. No later than January 1, 2022, the division shall promulgate rules that are consistent with industry standards necessary for the division to carry out its duties pursuant to the Cannabis Regulation Act as follows:

- (1) qualifications and procedures for licensure; provided that qualifications shall be directly and demonstrably related to the operation of the applicable cannabis establishment;
- (2) security requirements for a cannabis establishment;
- (3) requirements related to:
 - (a) inspection and monitoring of a cannabis establishment;
 - (b) a cannabis establishment's recordkeeping and tracking of cannabis from seed until sale;
 - (c) prevention of the sale or diversion of cannabis products in commercial cannabis activity to a person under the age of twenty-one;
 - (d) labeling of cannabis products packaged, sold or distributed by a cannabis establishment; and
 - (e) language for labels of cannabis products regarding potential adverse effects;
- (4) rules providing that:
 - (a) a person who is twenty-one years old or older shall not purchase more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis at one time; and
 - (b) as to commercial cannabis activity:
 - 1) a consumer shall not possess more than two ounces of cannabis, sixteen grams of cannabis extract and eight hundred milligrams of edible cannabis outside the consumer's private residence;
 - 2) any cannabis in excess of the amounts described in Item 1) of this subparagraph shall be stored in the person's residence and shall not be visible from a public place; and
 - 3) the division shall not limit the amount of tetrahydrocannabinol concentration in a cannabis product; provided that the division may adopt requirements for apportionment and packaging of cannabis products;
- (5) rules on advertising and marketing of cannabis products;
- (6) rules on how a licensee may display cannabis products for sale;
- (7) procedures that promote and encourage full participation in the cannabis industry governed by the Cannabis Regulation Act by representatives of communities that have been

disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities;

(8) procedures that promote and encourage racial, ethnic, gender and geographic diversity and New Mexico residency among license applicants, licensees and cannabis industry employees;

(9) rules for a certification process to identify cannabis products for consumers from 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;

(10) in consultation with the economic development department, development of a technical assistance resource guide for rural New Mexico residents who are seeking to establish vertically integrated cannabis establishments, cannabis producer microbusinesses or integrated cannabis microbusinesses;

(11) In consultation with the department of environment, rules to establish:

(a) health and safety standards applicable to the research, production and manufacture of cannabis products;

(b) standards for food and product safety applicable to cannabis products; and

(c) which additives are approved for and prohibited from inclusion in cannabis products; provided that nicotine shall be prohibited;

(12) in consultation with the New Mexico department of agriculture and the department of environment, rules to establish standards for quality control, inspection and testing of cannabis products for potency and contaminants, except for cannabis produced or harvested for research purposes and not for ingestion; provided that all such rules and standards shall be consistent with the rules and standards for testing of medical cannabis products; and

(13) in consultation with the state fire marshal's office of the homeland security and emergency management department, rules with regard to health and safety.

C. No later than January 1, 2022, the division shall promulgate rules that are consistent with industry standards relating to cannabis training and education programs, including:

(1) qualifications and procedures for licensure; and

(2) physical security, cybersecurity and, if applicable, security of information collected under the federal Health Insurance Portability and Accountability Act of 1996 requirements.

D. No later than January 1, 2022, the division shall promulgate rules in consultation with the New Mexico department of agriculture, the department of environment and the office of the state engineer to establish:

(1) environmental protections; and

(2) protocols to ensure licensees' compliance with state and local laws and ordinances governing food and product safety, occupational health and safety, environmental impacts, natural resource protection, water use and quality, water supply, hazardous materials, pesticide use and wastewater discharge.

E. No later than January 1, 2022, the division shall adopt rules in consultation with the department of health to establish standards and determinations on requirements for reserving cannabis products for sale to qualified patients, primary caregivers and reciprocal participants.

Thus, as set forth above, the Cannabis Regulation Act gives the RLD the authority to promulgate rules in NMSA 1978, § 26-2C-3.

Guidance in determining whether a rule adopted by an administrative agency has been lawfully promulgated can be found in *New Mexico Mining Ass'n v. New Mexico Mining Com'n*, 1996-NMCA-098, 122 N.M. 332, which states as follows:

Rules adopted by an administrative agency will be upheld if they are in *harmony* with the agency's express statutory authority or *spring from those powers that may be fairly implied therefrom*. [Citations omitted.] Similarly, regulations adopted by an agency are presumed to be valid if they are shown to be *reasonably consistent* with the statutory purposes of the agency. [Citation omitted.] [Emphasis added.]

See also *Rio Grande Chapter of Sierra Club v. New Mexico Mining Com'n*, 2003-NMSC-005, 133 N.M. 97 at ii 25.

In addition:

"The court will confer a heightened degree of deference to legal questions that 'implicate special agency expertise or the determination of fundamental policies within the scope of the agency's statutory function.'"

Id., quoting *Morningstar Water Users Ass'n v. NM Pub. Util. Comm'n*, 120 N.M. 579, 583 (1995).

The foregoing legal principles have guided this report in considering the merits of the proposed rule.

Both written and public comment received throughout the public comment period reflected an overall support for the rules as proposed. However, there were specific areas of the rule addressed by comment that may require additional consideration from the division.

All of the comments, from the public and from the Department, have been summarized in detail above. The Hearing Officer has considered all comments and recommends that the division determine that the proposed rule is consistent with the express statutory authority and purposes of the Cannabis Regulation Act, in harmony with the Act, and springs from those powers which may reasonably be implied from the Act.

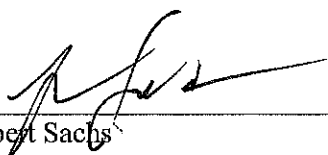
The public was told at the beginning of the hearing that if they had questions, they should state them in their public or written comments, and the CCD would respond to them in its concise explanatory statement post-hearing. The questions are summarized in detail in the Summary of Proceedings in this report and the Hearing Officer recommends that the CCD respond to them. Likewise, there were many comments, which were not related to a specific proposed rule. The Hearing Officer also recommends that the CCD consider those recommendations in its discretion. Some public comment referenced rules that were related to a specific proposed rule which was not up for consideration during the hearing. The Hearing Officer recommends that the CCD consider these comments when it revisits either these specific rules or topics related to these rules.

The vast majority of the rules are reasonably consistent with the statutory purposes of the CRA and are either in harmony with express statutory authority or spring from those powers that can reasonably be implied therefrom. There are areas of comment which the Hearing Officer recommends that the CCD take into considerations for revision of the proposed rules. In particular, the Hearing Officer recommends that the CCD make the following revisions to the proposed rules:

- The Hearing Officer recommends that required testing of cannabis products be revised in a manner that eliminates duplicative testing. Particularly, the removal of mandatory potency, pesticide and homogeneity testing for product that will ultimately go through the extraction process. The Division should review its testing requirements in Table 1 on its proposed rules.
- The Hearing Officer recommends that the language in the Potency and homogeneity section (J)(2) be revised as it currently does cause confusion and seems to not accurately capture the intention of the division.
- The Hearing Officer recommends that the division include language on when a batch of cannabis that fails a test may be remediated which may be found in subsection (O) of the section labeled, Required Testing of Cannabis Products.
- The Hearing Officer recommends that the division increase the standard of error in homogeneity testing from the 15% listed in proposed rules to the industry standard of 20% found in subsection (J)(4) of the section labeled, Required Testing of Cannabis Products.
- The Hearing Officer recommends that the word “secure” be used in place of “secured and sealed” as a sealed container may affect the quality of cannabis and cannabis product. Recommended changes should be made to (M)(2) of Required Testing of Cannabis Products and (B)(3) of Minimum Standards for the Testing of Cannabis Products.
- The Hearing Officer recommends that the division revisit its definition of batch size as there are several competing opinions as to the correct batch size. Some considerations to include in an additional analysis should be the number of expected tests, average testing time based on batch size, batch sizes of other states, or laboratory capacity based on batch size. The definition of batch size can be found in 16.8.1.7 NMAC.
- The Hearing Officer recommends that the division, in making its determination on licensing training and education programs consider the current cost for courses that ultimately will qualify for licensure. Several comments reference the prohibitive cost of current programs, particularly considering the cost of permits in industries other than cannabis.
- The Hearing Officer recommends that the division clarify the process around sample collection for testing. Several comments are requesting additional guidance around who is responsible for collection, how collection occurs and how samples are transported. The division should refer to subsection (C) of Required Testing of Cannabis Products if it seeks to clarify the process via rulemaking.

Recommendations:

Based upon the foregoing, the Hearing Officer recommends that the division adopt the proposed 16.8.1 NMAC ("Commercial and Medical Cannabis General Provisions"), 16.8.2 NMAC ("Commercial and Medical Cannabis Licensing and Operational Requirements for Cannabis"), 16.8.3 NMAC ("Packaging, Labeling, Advertising, Marketing, and Commercial Display Requirements for Cannabis Products"), 16.8.6 NMAC ("Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources"), 16.8.7 NMAC ("Quality Control, Inspection, and Testing of Cannabis Products"), 16.8.9 NMAC ("Cannabis Training and Education Programs") and 16.8.10 NMAC ("Cannabis Servers Licensing and Training Program"), with the recommendations indicated above.



Robert Sachs

11/4/22

Date