



Ultra Health.

August 10, 2022

Via Email

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

Re: Comments on Proposed Cannabis Control Division Revisions to Regulations 16.8.3 NMAC

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 revisions to regulations 16.8.3, ahead of the public hearing on August 12, 2022.

Proposed regulation 16.8.3.9(L) states, “Prior to the effective date for required pesticide testing, a cannabis finished product that has not undergone pesticide testing shall bear a label, affixed to the packaging, stating that the product has not been tested for pesticides. A cannabis finished product that has undergone pesticide testing prior to the effective date for required pesticide testing may bear a label, affixed to the packaging, stating the product has been tested for pesticides.”

This is yet another burdensome, nonsensical requirement from the Cannabis Control Division that aims to solve a problem that likely does not even exist.

Cannabis sold by licensed retailers already must bear labels that contain information about testing. Logically, if the testing label does not contain information about pesticide levels, then the customer will infer that the product did not undergo pesticide testing. The Cannabis Control Division’s proposal indicates it does not trust customers to make that very easy, obvious inference.

In New Mexico, only adults twenty-one years of age or older can purchase cannabis for recreational purposes, and medical cannabis patients who are minors must have a primary caregiver registered with the medical cannabis program. These two provisions ensure that only adults purchase cannabis. Despite these restrictions on cannabis purchasing, the Cannabis Control Division treats *all* cannabis customers as if they are incapable of reading labels, making obvious inferences, or communicating with licensed retailers.

In the event that a customer is particularly concerned about pesticide testing, that customer has the ability to 1) ask the retailer about pesticide testing; 2) shop around to find a product that is grown without pesticides; or 3) shop around to find a product that does indicate residual pesticide levels. Why does the Cannabis Control Division believe that cannabis

customers in New Mexico are entirely incapable of this kind of communication with licensed retailers or are incapable of shopping around?

Plenty of industries expect and allow for communication between buyers and sellers and allow customer choices to lead the way. Indeed, it is worth comparing the labeling requirements for cannabis to labeling requirements for fruits and vegetables. Fruits and vegetables do not carry labels indicating testing results for the particular vitamin content of each individual batch, do not carry labels indicating that the batch is free of particular microbes, and do not carry labels indicating residual pesticide levels. Rather, the customer is trusted to either wash produce thoroughly or to buy fruits and vegetables that claim to be grown without the use of pesticides.

Similarly, tobacco products contain a number of health warnings, but they do not contain information about the particular nicotine potency of an individual batch, do not carry labels indicating that the batch is free of particular microbes, and do not carry labels indicating residual pesticide levels. Rather, the customer is assumed to buy the product with the full knowledge of the known risks of tobacco.

It is clear from these examples that cannabis sold by licensed retailers in New Mexico already comes with it much, much more information than comparable consumer products, yet the Cannabis Control Division wishes to add yet another piece of information and yet another labeling requirement instead of recognizing that customers can drive licensee practices with their buying choices.

There are also practical considerations involving the simple size of cannabis packages. There is limited space on packages to add all of the labeling and warnings which Division regulations require. Adding yet another labeling component will mean that licensees must use larger packaging—which adds to cost and increases plastic waste. The Division has encouraged licensees to consider environmental impacts of packaging and to use more recycled and recyclable packaging components. An additional labeling component contradicts that previous message, because it will encourage wasteful packaging.

As New Mexico Top Organics-Ultra Health has explained before, every additional burden on licensees increases prices and therefore extends the life of the illicit market. Although a label stating “This product has not been tested for pesticides” may cost a few cents and take a few seconds to stick on a package, those cents and those seconds add up. They add to the already crushing cost of doing business as a legal cannabis licensee, and those costs necessarily and inevitably influence the prices charged to consumers. Price is one of the most crucial factors in influencing customers to choose legal retailers rather than illicit sellers, which means that higher prices for regulated products lead to more customers choosing illicit sellers.

The Division has once again forgotten one piece of central guidance from the Cannabis Regulation Act: the Division should “ensur[e] 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.” NMSA 1978, Section 26-2C-3(G). Every time the Division adds another burden—especially a burden with little to no utility—to licensees, it is perpetuating, rather than reducing and eliminating, the illicit market for cannabis.

August 10, 2022
Cannabis Control Division

New Mexico's legal sales have had only paltry increases since the legal kick-off in April 2022. Although July 2022 saw "record" sales, the Division should remember that July 2022 contained *five* Fridays and *five* Saturdays and one national holiday (Fridays, Saturdays, and holidays being strong sales days). Without the extra weekend helping July's numbers, the sales would not have been very impressive. The lack of significant growth in legal sales should indicate to the Division that licensed retailers are failing to remain competitive with the illicit market. This is not the time to add yet another labeling requirement that has no real utility.

In order to be successful, New Mexico's legal cannabis market must be able to function *as a market*, where supply, demand, quality, price, convenience, and consumer choice influence winners and losers. The Division's latest proposal is another feature that diminishes consumer choice and imposes a top-down, cookie-cutter, one-size-fits-all mode of operations. This makes the "market" inflexible and less able to compete with illicit sources of cannabis.

The Division should not impose this additional labeling requirement and should allow consumer choices to shape and guide retail patterns.

Please do not hesitate to contact Ultra Health with any questions.

Sincerely,

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