

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

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

[16.8.3.1 NMAC – N, 04/01/2022]

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

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

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

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

16.8.3.4 DURATION: Permanent.

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

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

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

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

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

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

[16.8.3.7 NMAC – N, 04/01/2022]

16.8.3.8 ADVERTISING AND MARKETING:

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

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

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

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

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

(b) keep out of reach of children;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) cartoons;

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

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

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

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

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

16.8.3.9 CANNABIS FINISHED PRODUCT LABELING:

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

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

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

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

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

F. Labels shall be unobstructed and conspicuous.

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

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

I. A label shall not:

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

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

K. The principal display panel shall include:

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

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

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

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

(b) percent of Total THC per container; and

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

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

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

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

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

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

(1) cannabis manufacturer business or trade name;

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

(3) cannabis manufacturer license number;

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

(5) date product was manufactured;

(6) ingredient list:

(a) using the common or usual name;

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

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

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

(7) if utilized, pharmacologically active ingredients;

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

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

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

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

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

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

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

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

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

(2) cannabis manufacturer business or trade name;

(3) cannabis manufacturer license;

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

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

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

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

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

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

(2) cannabis manufacturer business or trade name;

(3) cannabis manufacturer license number;

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

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

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

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

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

16.8.3.10 CANNABIS SEED AND IMMATURE CANNABIS PLANT LABELING:

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

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

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

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

E. The label shall be unobstructed and conspicuous.

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

G. The principal display panel shall include:

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

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

16.8.3.11 CANNABIS FINISHED PRODUCT LABELING IN CANNABIS CONSUMPTION

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

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

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

16.8.3.12 CANNABIS FINISHED PRODUCT PACKAGING:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[16.8.3.15 NMAC – N, 04/01/2022]

History of 16.8.3 NMAC: [RESERVED]