

This is an amendment to 16.8.3 NMAC amending Sections 7, 8, and 12 effective 3/22/2022.

16.8.3.7 DEFINITIONS: [RESERVED] 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, 03/22/2022]

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) ~~shall not~~ 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, 03/22/2022]

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:

~~[(7)]~~ (8) single serving edible cannabis finished products that are placed into a child resistant container may be bundled into an exit package;

- ~~[(8)]~~ (9) edible cannabis finished products containing multiple servings in a single container shall:
- (a) when in 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.

~~[(9)]~~ (10) Unless as otherwise specified in Paragraph (10) of this subsection, liquid cannabis finished products shall be single-serving only.

~~[(10)]~~ (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.

~~[(11)]~~ (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;

~~[(12)]~~ (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.

~~(13)~~ **(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, 03/22/2022]