

This is an amendment to 16.8.7 NMAC amending Sections 8, 9, and 10 and adding Sections 11, 12, 13, 14, 15, 16, 17, and 18 effective 07/12/2022.

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

**A. Required testing:** Unless an exception applies:

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

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

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

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

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

(4) Testing for homogeneity will be required beginning April 1, 2024.

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

Other	X		X	*	X
-------	---	--	---	---	---

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

**B. Staggered implementation:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- \_\_\_\_\_ (a) \_\_\_\_\_ requiring the use of gloves and other personal protective equipment
- \_\_\_\_\_ (b) \_\_\_\_\_ inspecting tools and containers prior to their use;
- \_\_\_\_\_ (c) \_\_\_\_\_ specifying the location within the cannabis establishment at which the samples will be collected;
- \_\_\_\_\_ (d) \_\_\_\_\_ specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and
- \_\_\_\_\_ (e) \_\_\_\_\_ the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions
- \_\_\_\_\_ (6) \_\_\_\_\_ Nothing in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

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

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

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

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

\_\_\_\_\_ **E. Exceptions to required testing:**

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

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

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

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

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

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

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

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

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

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

**Table 2. Microbiological Testing Requirements**

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

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

Target Compounds	Common Chemical Name	IUPAC Name	CAS Number	Action Level*
<b>Propane</b>	Propane	Propane	74-98-6	5000
<b>Butanes</b>	<i>n</i> -butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
<b>Pentane</b>	<i>n</i> -pentane	Pentane	109-66-0	5000
<b>Hexane</b>	<i>n</i> -hexane	Hexane	110-54-3	290
<b>Benzene</b>	Benzene	Benzene	71-43-2	2.0
<b>Toluene</b>	Toluene	Methylbenzene	108-88-3	890
<b>Heptane</b>	<i>n</i> -heptane	Heptane	142-82-5	5000
<b>Ethylbenzene and Xylenes</b>	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	
<b>Ethanol†</b>	ethyl alcohol	Ethanol	64-17-5	5000
<b>Methanol</b>	methyl alcohol	Methanol	67-56-1	3000
<b>Isopropanol</b>	isopropyl alcohol	2-propanol	67-63-0	5000

<b>Acetone</b>	Acetone	2-propanone	67-64-1	5000
<p>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 &lt; 2.0 µg/g"  *Micrograms solvent per gram (µg/g) of sample/parts per million (ppm).  ‡Unless exempt from testing.</p>				

**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. 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 twenty percent.

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

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

<b>Table 5. Pesticide Testing Requirements</b>			
<b>Targeted Pesticide</b>	<b>CAS Number</b>	<b>Action Level: Inhalable*</b>	<b>Action Level: Non-Inhalable*</b>
‡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
‡Myelobutanil	88671-89-0	0.1	0.4
‡Pacllobutrazol	76738-62-0	0.04	0.04
<b>Piperonyl butoxide</b>	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
<b>Other pesticide not registered with NMDA for use on cannabis</b>	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: "Pacllobitrazol < 0.4 $\mu\text{g/g}$ " ‡Not registered with NMDA for use on cannabis.			

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

**L. Procedures for testing:** A cannabis establishment shall adhere to the following procedures:

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

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

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

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and

shall make those results available to consumers or cannabis retailers upon request.

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

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

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

~~\_\_\_\_\_ (2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.~~

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

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

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

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

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

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

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

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

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

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

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

~~\_\_\_\_\_ (a) placed contiguous to one another to facilitate identification by the division; and~~

~~\_\_\_\_\_ (b) be fully separated from mature plants.~~

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

~~\_\_\_\_\_ **B. Tracking mature cannabis plants:** mature cannabis plants shall be tagged as follows:~~

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

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

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

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

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

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

**16.8.7.9 [ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:**

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

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

- (1) The cannabis establishment may collect the sample, or an agent of the cannabis testing laboratory may collect the sample.
- (2) If a cannabis establishment requests testing for research and development purposes, the results may not be used to satisfy any required testing requirement, even if the sample passes all tests.
- (3) The failure of a test for research and development purposes shall not constitute a failed test.
- (4) The results of a test conducted for research and development purposes shall not be included on a product label or advertisement.

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

- (1) An agent of the cannabis testing laboratory shall collect the samples according to the laboratory’s protocols.
- (2) A label may include a reference to concentrations of compounds not subject to required testing, including terpenes, terpenoids, or additional cannabinoids.
- (3) A label may include a reference to the passage of cannabis screenings, including one or more of the following:
  - (a) naming the contaminants for which screening was performed;
  - (b) providing a link or QR code to the list of contaminants for which the cannabis product was screened; or
  - (c) a statement that the product has met third party screening criteria, such as those established by an industry association, except that no label shall contain claims that a cannabis product is “pesticide free” or “organic” unless such labeling is specifically authorized under U.S. department of agriculture regulations.

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



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

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

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

\_\_\_\_\_ **F. Testing services for the division or other governmental entities:** A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.]

**IMPLEMENTATION AND ADMINISTRATION OF TRACKING SYSTEM:**

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

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

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

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

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

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

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

**16.8.7.10 [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.

<b>Table 1. Heavy Metal Testing Requirements for Water and Soil</b>				
<b>Analyte</b>	<b>Symbol</b>	<b>CAS Number</b>	<b>Action Level: Soil*</b>	<b>Action Level: Water†</b>
<b>Arsenic</b>	As	7440-38-2	4.25	10.0
<b>Cadmium</b>	Cd	7440-43-9	7.05	5.0
<b>Lead</b>	Pb	7439-92-1	400	15.0
<b>Mercury</b>	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 *Risk Assessment Guidance for Site Investigations and Remediation*.  
 †Reported in micrograms per liter (µg/L) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.

**GENERAL TRACK AND TRACE SYSTEM USE:**

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

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

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

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

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

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

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

**G. Additional software allowed:** licensees may use separate software applications to collect information to be used by the business, including additional inventory tracking or point of sale systems.

[16.8.7.10 NMAC – N, 3/1/2022; Rp, 16.8.7.10 NMAC, 07/12/2022]

**16.8.7.11 CONDUCT WHILE USING TRACK AND TRACE SYSTEM:**

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

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

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

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

**16.8.7.12 COMPLIANCE NOTIFICATIONS:**

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

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

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

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

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

**16.8.7.14 TRACK AND TRACE SYSTEM PROCEDURES:**

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

B. Track and trace procedures include:

(1) properly indicating the creation of a harvest batch or production batch including the assigned harvest batch or production batch number;

(2) accurately identifying the cultivation room or outdoor location where each plant is located on the licensed premises;

(3) accurately identifying when inventory is no longer on the licensed premises;

(4) properly identifying cannabis or cannabis products identified as test batch;

(5) properly indicating test results from a cannabis testing laboratory;

(6) accurately indicating the track and trace system category for all cannabis or cannabis products;

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

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

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

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

A. Required testing: Unless an exception applies:

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

- (a) packaging for retail sale;
- (b) transfer to another cannabis establishment for the purposes of retail sale;
- (c) retail sale; or
- (d) delivery to a patient or consumer.
- (2) A cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:
- (a) packaging for retail sale
- (b) transfer to another cannabis establishment for the purposes or retail sale;
- (c) retail sale; or
- (d) delivery to a qualified patient, primary caregiver or consumer.
- (3) A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.
- (4) Testing for homogeneity will be required beginning April 1, 2024.

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

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

**B. Staggered implementation:**

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

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

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

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

- (a) cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;
- (b) cannabis producers, cannabis manufacturers, and vertically integrated

cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire batch of cannabis product. Precautions may include, but are not limited to:

(a) requiring the use of gloves and other personal protective equipment

(b) inspecting tools and containers prior to their use;

(c) specifying the location within the cannabis establishment at which the samples will be collected;

(d) specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and

(e) the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions

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

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

**D. Compliance with all rules and applicable laws required:** Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use

Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

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

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

**E. Exceptions to required testing:**

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

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

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

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

(1) no living or dead insects, hair, eggs, or feces; and

(2) no more than two percent sand, soil, mold, or rocks.

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

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

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

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

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

<b><u>Target Microbe</u></b>	<b><u>Action Level</u></b>
<u>*<i>E. coli</i></u>	<u>100 CFU/gram</u>
<u><i>Aspergillus flavus</i>, <i>Aspergillus fumigatus</i>, <i>Aspergillus niger</i>, or <i>Aspergillus terreus</i></u>	<u>Present in 1 gram</u>
<u><i>Salmonella</i> spp.</u>	<u>Present in 1 gram</u>
<u>†Shiga-toxin producing <i>E. coli</i></u>	<u>Present in 1 gram</u>
<u>†<i>Clostridium botulinum</i></u>	<u>Present in 1 gram</u>
<u>†<i>Pseudomonas aeruginosa</i></u>	<u>Present in 1 gram</u>

\*Cannabis product may be tested for shiga-toxin producing *E. coli*, rather than generic *E. coli*.  
 †Testing for shiga-toxin producing *E. coli*, *Clostridium botulinum*, and *Pseudomonas aeruginosa* is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.

**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.

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

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

**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.

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

<b>Table 5. Pesticide Testing Requirements</b>			
<u>Targeted Pesticide</u>	<u>CAS Number</u>	<u>Action Level: Inhalable*</u>	<u>Action Level: Non-Inhalable*</u>
<u>†Abamectin</u>	<u>71751-41-2</u>	<u>0.1</u>	<u>0.15</u>
<u>†Acequinocyl</u>	<u>57960-19-7</u>	<u>2.0</u>	<u>2.0</u>
<u>†Bifenazate</u>	<u>149877-41-8</u>	<u>0.2</u>	<u>0.2</u>
<u>†Bifenthrin</u>	<u>82657-04-3</u>	<u>0.1</u>	<u>0.1</u>
<u>†Etoxazole</u>	<u>153233-91-1</u>	<u>0.1</u>	<u>1.0</u>
<u>†Imazalil</u>	<u>35554-44-0</u>	<u>0.1</u>	<u>0.1</u>
<u>†Imidacloprid</u>	<u>138261-41-3</u>	<u>0.1</u>	<u>3.0</u>



† <u>Myclobutanil</u>	<u>88671-89-0</u>	<u>0.1</u>	<u>0.4</u>
† <u>Paclotrazol</u>	<u>76738-62-0</u>	<u>0.04</u>	<u>0.04</u>
<u>Piperonyl butoxide</u>	<u>51-03-6</u>	<u>3.0</u>	<u>8.0</u>
† <u>Pyrethrins</u> (cumulative total)	<u>121-21-1</u> <u>25402-06-6</u> <u>4466-14-2</u>	<u>0.5</u>	<u>1.0</u>
† <u>Spinosyn A, D</u> (cumulative total)	<u>131929-60-7</u> <u>131929-63-0</u>	<u>0.1</u>	<u>3.0</u>
† <u>Spiromesifen</u>	<u>283594-90-1</u>	<u>0.1</u>	<u>0.2</u>
† <u>Spirotetramat</u>	<u>203313-25-1</u>	<u>0.1</u>	<u>0.2</u>
† <u>Trifloxystrobin</u>	<u>141517-21-7</u>	<u>0.02</u>	<u>0.02</u>
<u>Other pesticide not registered with NMDA for use on cannabis</u>	<u>Varies</u>	<u>0.02</u>	<u>0.02</u>
<p>*Micrograms of pesticide per gram (<u>µg/g</u>) of sample/parts per million (ppm).  Report levels less than the Limit of Quantitation for each pesticide residue according to the following example:  "Paclotrazol &lt; 0.4 µg/g"  †Not registered with NMDA for use on cannabis.</p>			

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

**L. Procedures for testing:** A cannabis establishment shall adhere to the following procedures:

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

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

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

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

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

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

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

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.

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

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

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

volatile solvent.

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

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

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

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

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

[16.8.7.15 NMAC – N, 07/12/2022]

#### **16.8.7.16 ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) aflatoxin B1, B2, G1, and G2 and ochratoxin A, at a total concentration of 20 µg/kg (parts per billion) or greater;

(2) arsenic, cadmium, lead, or mercury, at a concentration of 0.4 µg/g (parts per million) or greater;

(3) the residue of any pesticide not required to be tested or not registered in New Mexico for use on cannabis, at any level detectable by the cannabis testing laboratory’s methodology; or

(4) any microorganism not required to be tested at a level that poses a significant threat to human health.

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

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

**F. Testing services for the division or other governmental entities:** A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.

[16.8.7.16 NMAC – N, 07/12/2022]

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

**A. Growing media:** The cannabis establishment shall maintain, and make available for division inspection, records of all growing media purchased.

**B. Water:** If using for irrigation water from a non-municipal source, a cannabis establishment shall maintain quarterly testing data indicating concentrations at or below the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below.

**C. Soil:** If growing cannabis directly in the ground, the cannabis establishment shall submit at least annually representative soil samples to a laboratory for analysis of arsenic, cadmium, lead, and mercury levels and shall retain a certificate of analysis for inspection by the division. If the concentration of any heavy metal exceeds the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below, the cannabis establishment shall remediate the soil and shall not produce additional plants until soil concentrations are below the applicable action levels.

**D. Choice of laboratories:** The cannabis establishment may submit water or soil samples to any laboratory in the United States offering water or soil analysis for the four required analytes.

<b>Table 1. Heavy Metal Testing Requirements for Water and Soil</b>				
<b>Analyte</b>	<b>Symbol</b>	<b>CAS Number</b>	<b>Action Level: Soil*</b>	<b>Action Level: Water†</b>
<b>Arsenic</b>	As	7440-38-2	4.25	10.0
<b>Cadmium</b>	Cd	7440-43-9	7.05	5.0
<b>Lead</b>	Pb	7439-92-1	400	15.0
<b>Mercury</b>	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 *Risk Assessment Guidance for Site Investigations and Remediation*.  
†Reported in micrograms per liter (µg/L) of sample. Based on U.S. Environmental Protection Agency’s maximum contaminant levels.

[16.8.7.17 NMAC – N, 07/12/2022]

~~[16.8.7.14]~~ **16.8.7.18** **SEVERABILITY:** If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.  
[16.8.7.18 NMAC – N, 3/1/2022; Rn, 16.8.7.11 NMAC, 07/12/2022]