

This is an emergency amendment to 16.8.2 NMAC amending Sections 8, 9, 21, 22, 23, and 26, effective 12/06/2021.

**16.8.2.8 GENERAL OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS:**

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

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

**C. Age requirements:** All applicants for licensure, including controlling persons of applicants, must be at least 21 years of age. All employees of a commercial cannabis establishment must be at least 21 years of age.

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

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

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

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

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

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

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

~~[L.]~~ **K. Limitation of licensed premises:** Licensees shall conduct cannabis establishment operations solely on licensed premises approved by the division.

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

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

~~[O.]~~ **N. Non-transferable or assignable license:** A license shall not be transferred by assignment or otherwise to other persons or locations. Unless the licensee applies for and receives an amended license, the license

shall be void and returned to the division when any one of the following situations occurs:

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

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

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

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

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

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

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

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

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

**[X.] W. Closure of a licensed cannabis establishment:** A licensee that anticipates permanently ceasing its business operations shall notify the division no later than 30 days prior to closure. The licensee shall post public notice of the anticipated closure at all licensed premises that are accessible to the public at least 14 days prior to the closure. Any cannabis or cannabis products that are held by a licensee on behalf of the licensee ceasing its business

operations shall be returned to the licensee ceasing business operations. Any cannabis or cannabis products that are held by the licensee ceasing its business operations on behalf of another licensee shall be returned to the originating licensee. Cannabis or cannabis products that are otherwise held by a licensee shall, prior to the licensee's closure, be surrendered to either state or local law enforcement, destroyed by the licensee in accordance with the wastage standards of this rule, or donated to patients via a licensed cannabis establishment, provided that the donation has been approved in writing by the division and that the licensee has submitted documentation of the donation to the division. State and local law enforcement are authorized to remove and destroy any cannabis or cannabis products that are held by a person who has ceased to be licensed by the division.

~~[X.]~~ **X. Persons licensed pursuant to the medical cannabis program:** In order to be entitled to continue operating as a cannabis establishment, a person properly licensed and in good standing pursuant to the Lynn and Erin Compassionate Use Act on June 29, 2021, must submit a completed renewal application for a cannabis establishment license, along with required fees, within 30 days of the ~~[effective date of this rule]~~ division notifying the licensee that a renewal application is available. In the event the person does not apply for such a license renewal within the required timeframe, the person shall cease all production operations immediately. Upon approval, the licensee shall operate pursuant to the Cannabis Regulation Act and rules adopted by the division pursuant thereto, provided that the licensee shall continue to operate pursuant to rules promulgated by the department of health for activities authorized by virtue of the licensee's medical program license to the extent they do not conflict with rules adopted by the division pursuant to the Cannabis Regulation Act.

~~[Z.]~~ **Y. Application for variance:**

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

(2) Petitions shall:

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

(3) At the discretion of the division, the adjudicatory procedures of the Uniform Licensing Act may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the division. The division shall deny any request for a waiver related to a legal right to water pursuant to Paragraphs (3) and (4) of Subsection B of Section 26-2C-7 NMSA 1978.

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

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative

environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

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

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

~~[BB.]~~ **AA. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness:**

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

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

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

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

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

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

[16.8.2.8 NMAC - N 08/22/2021; A/E 12/06/2021]

#### 16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:

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

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

**B. Authorized change:** If there is a change in membership of any of the above listed person(s), an amended application and ~~[background check documentation]~~ a criminal history screening shall be submitted, and each new member must be approved by the division prior to a person assuming any duties or responsibilities for a licensee.

**C. ~~[Procedure]~~ Criminal history screening procedure for applicants and the division:**

(1) an applicant shall submit a background screening request, including an authorization for release of information, to the ~~[federal bureau of investigation, the]~~ New Mexico department of public safety ~~[, or a designee vendor]~~ for a current New Mexico state criminal history report; ~~[through the national crime information center (NCIC)]~~

~~\_\_\_\_\_~~ (2) ~~the division shall provide applicants the division's originating agency identification (ORI) number;~~

~~\_\_\_\_\_~~ (3) ~~an applicant shall provide to the department of public safety, or its designated vendor, a criminal background screening request, fingerprints, and supporting documentation, including an authorization for release of information to the division in accordance with the procedures of the department of public safety or its designated vendor;~~

~~\_\_\_\_\_~~ (4) ~~(2) the New Mexico department of public safety [or its designated vendor] will review state records; [and shall transmit the fingerprints to the federal bureau of investigation for a national screening and]~~

~~\_\_\_\_\_~~ (5) ~~(3) the results of the screening will be made available to the division for review;~~

(4) the applicant shall submit a signed and sworn affidavit, witnessed and notarized by a notary public with a valid commission, affirming that the applicant has or has not been convicted of the following offenses:

- (a) a felony conviction involving fraud, deceit, or embezzlement;
- (b) a felony conviction for hiring, employing, or otherwise using a person younger than 18 years of age to:
  - (i) prepare for sale, transport or carry a controlled substance; or
  - (ii) sell, give away or offer to sell a controlled substance to any person; or
- (c) a felony conviction for the possession, use, manufacture, distribution, or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance, which no longer includes cannabis.

**D.** Fees: All applicable fees associated with the [~~national criminal history background check and~~] New Mexico department of public safety [~~statewide~~] state criminal history background checks shall be paid by the applicant or licensee.

~~[E. Substantially related convictions: The division shall review felony convictions pursuant to the Cannabis Regulation Act and the Criminal Offender Employment Act. The following are considered substantially related to the qualifications, functions, or duties of an applicant or person:~~

- ~~(1) a felony conviction involving fraud, deceit, or embezzlement;~~
- ~~(2) a felony conviction for hiring, employing, or otherwise using a person younger than eighteen years of age to:~~
  - ~~(a) prepare for sale, transport or carry a controlled substance; or~~
  - ~~(b) sell, give away or offer to sell a controlled substance to any person; and~~
  - ~~(3) a felony offense for the possession, use, manufacture, distribution or dispensing or possession with the intent to manufacture, distribute or dispense a controlled substance. For purposes of this rule, a controlled substance shall not include cannabis.~~

~~—~~ **F.] E.** Duty to report potentially disqualifying event: Applicants and licensees must notify the division in writing within seven days of any change of fact that would potentially result in the applicant or licensee, including any of the persons listed in Subsection A of this section, being disqualified from holding a license pursuant to the Cannabis Regulation Act or division rules, including a conviction for any [~~crime~~] offense specified in this section. Failure to make required notification to the division may be grounds for administrative disciplinary action. If the division has determined that the person's conviction does not disqualify the licensee from licensure, the division shall notify the licensee in writing. The division may also initiate administrative disciplinary action pursuant to the Uniform Licensing Act.

[16.8.2.9 NMAC - N 08/22/2021; A/E 12/06/2021]

#### **16.8.2.21 CANNABIS PRODUCER LICENSURE; GENERAL PROVISIONS:**

- A. License types:** The division may license two classes of producers:
  - (1) A cannabis producer; and
  - (2) A cannabis producer microbusiness.
- B. Division application forms:** All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division using the online application portal.
- C. License required:** Unless licensed pursuant to the Cannabis Regulation Act or division rules, a person shall not cultivate cannabis, including planting, growing, and harvesting cannabis, except for personal use as provided by the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
- D. Other activities prohibited:** Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis producer establishment licensee may manufacture cannabis products, courier cannabis or cannabis products, or engage in the retail sale of cannabis or cannabis products unless the licensee has properly applied for, and the division has approved, the applicable license type required for those activities.

~~[E. Vertically integrated cannabis establishment and integrated cannabis establishment microbusiness: Applicants for a vertically integrated cannabis establishment or integrated cannabis establishment microbusiness must meet all qualifications for a cannabis producer or cannabis producer microbusiness to be approved for, and authorized to conduct, cannabis producer activities.]~~

[16.8.2.21 NMAC - N 08/22/2021; A/E 12/06/2021]

#### **16.8.2.22 APPLICATION REQUIREMENTS FOR CANNABIS PRODUCER LICENSE:**

- A.** An initial application or renewal for cannabis producer licensure shall include the following:

- (1) Contact information for the applicant and the cannabis establishment, to include:
  - (a) applicant's full legal name;
  - (b) applicant's date of birth, if applicable;
  - (c) applicant's mailing address;
  - (d) applicant's contact telephone number;
  - (e) applicant's contact email address;
  - (f) applicant's business physical address and mailing address, if different;
  - (g) applicant's business legal name, including a DBA name if applicable;
  - (h) applicant's business web address, if applicable;
  - (i) applicant's business hours of operation;
  - (j) name and contact information for each controlling person; and
  - (k) demographic data pursuant to the Cannabis Regulation Act;
- (2) proof the applicant or each controlling person is at least 21 years of age, which shall include identification issued by a federal or state government that includes the name, date of birth, and picture of the applicant or controlling person;
- (3) legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment and the method(s) to be used to produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;
- ~~[(4) fully executed and dated documentation of the applicant's ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;~~
- ~~(5)]~~ (4) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis production, as evidenced by either:
  - (a) documentation from a water provider that the applicant has the right to use water from the provider and that the use of water from cannabis production is compliant with provider's rules, or
  - (b) documentation from the office of the state engineer showing that the applicant has a valid and existing water right, or a permit to develop a water right, for irrigation purposes for outdoor cultivation, or a commercial purpose for indoor cultivation at the proposed place of use of the cannabis establishment. The documentation may include any of the following:
    - (i) a state engineer permit or license in good standing, but not including a permit issued pursuant to Sections 72-12-1, -1.1, -1.2, or -1.3, NMSA 1978;
    - (ii) a subfile order or decree issued by a water rights adjudication court;
    - (iii) the findings of an office of the state engineer hydrographic survey; or
    - (iv) other documentation the office of the state engineer has deemed in writing as acceptable to the office of the state engineer under this rule.
- ~~[(6)]~~ (5) a plan to use, or certification that the applicant cannot feasibly use, energy and water reduction opportunities, including:
  - (a) drip irrigation and water collection;
  - (b) natural lighting and energy efficiency measures;
  - (c) renewable energy generation; and
  - (d) estimated water and energy use related to the applicants cultivation plan;
- ~~[(7) a copy of a current business license, fire inspection report, and zoning approval;~~
- ~~(8)]~~ (6) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;
- ~~[(9)]~~ (7) a list of all controlling persons, a list of other current or prior licensed cannabis businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;
- ~~[(10)]~~ (8) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;
- ~~[(11) if applicable, a description and legible electronic image of the labeling and packaging of the cannabis or cannabis products that the producer shall utilize, which satisfies the labeling requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and other state or federal rules applicable to labeling and packaging;~~
- ~~(12) if applicable, a sample of the record form(s), which shall identify (among other items) the name of the wholesale purchaser, the date of the sale, the quantity, and price of medical or commercial cannabis sold;~~

\_\_\_\_\_~~(13)~~ (9) the initial number of mature cannabis plants, and immature cannabis plants, the applicant proposes for production and the amount of water the applicant plans to use on a monthly basis for a twelve month period;

~~[(14)]~~ a summary of the proposed operations, including a list of cannabis or cannabis products produced at the location;

~~(15)~~ (10) certification the applicant will adhere to production requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including creating and maintaining a cultivation plan, and cannabis waste procedures for cannabis or cannabis products;

~~[(16)]~~ (11) certification the applicant will adhere to cannabis transport requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the transport of unprocessed cannabis or cannabis products to other cannabis establishments;

~~[(17)]~~ (12) certification the applicant will adhere to New Mexico department of agriculture (NMDA) pesticide registration, licensing, and use requirements to ensure a safe product and environment;

~~[(18)]~~ (13) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to safety and security procedures, security devices to be used, placement of security devices, personal safety, and crime prevention techniques;

~~[(19)]~~ (14) certification the applicant will adhere to quality assurance requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including requirements relating to routine testing by a licensed testing laboratory, division inspection of licensed premises during normal business hours, and testing of cannabis;

~~[(20)]~~ (15) certification the applicant will adhere to applicable federal, state and local laws governing the protection of public health and the environment, including occupational health and safety, food safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

~~[(21)]~~ (16) certification the applicant has never been denied a license or had a license suspended or revoked by the division or any other state cannabis licensing authority or a detailed description of any administrative orders, civil judgements, denial or suspension of a cannabis license, revocation of a cannabis license, or sanctions for unlicensed medical or commercial cannabis activity by any state licensing authority, against the applicant, controlling person, or a business entity in which the applicant or controlling person was a controlling person within the three years immediately preceding the date of the application;

~~[(22)]~~ (17) applicant's social and economic equity plan to encourage economic and social diversity in employment, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities;

(18) certification the applicant has obtained a current local jurisdiction business license, or will prior to operation of the cannabis establishment, and the applicant shall adhere to local zoning ordinance;

~~[(23)]~~(19) an attestation of the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact or violation of these rules may result in denial of the license application or revocation of a license issued; and

~~[(24)]~~ (20) payment of any required application or licensure fees as set forth in 16.8.11 NMAC. Cannabis plant fees, if applicable, shall be accessed by the division upon approval of an initial application, additional premises application or renewal application. The division must receive payment of cannabis plant fee prior to cultivation of cannabis plants or, if applicable, at the time of renewal.

**B. Verification of information:** The division may verify information contained in each application and accompanying documentation, including:

- (1) contacting the applicant or controlling person by telephone, mail, or electronic mail;
- (2) conducting an on-site visit;
- (3) requiring a face-to-face or virtual meeting and the production of additional documentation;

or

- (4) consulting with state or local governments.

[16.8.2.22 NMAC - N 08/22/2021; A/E 12/06/2021]

#### **16.8.2.23 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS PRODUCER LICENSE:**

**A. Application:** A licensed producer shall submit to the division an application form for an amended license, pay the required fee, and must obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size ~~[or location]~~ of the premises;
- (2) change of licensee's legal or business name;
- (3) change in water source, or licensee's water and energy conservation plan, including, the reuse of water and disposal of effluent;
- (4) increase in plant count beyond which licensee is currently licensed to produce;
- (5) addition or elimination of a controlling person;
- (6) material or substantial change to a license's security system; or
- (7) material or substantial modification of the premises~~[-; or~~
- ~~(8) engaging in an activity which requires an addition or change of a license type].~~

**B. Amended license not required:** Changes to standard operating policies and procedures may be made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

**C. Requirements and processing of application for amended license:** The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. ~~[The division shall prorate required fees to align with the expiration date of the licensee's original license, which shall be the expiration date of the licensee's amended license, if approved.]~~ The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

**D. Material or substantial change:** Material or substantial changes requiring approval include:

- (1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, or the purchase of additional property for the use of the cannabis establishment ~~[-, or a change in the location of the cannabis establishment];~~
- (2) a change in the licensee's access to the water source submitted with an application for initial, amended, or renewal licensure or a ten percent, or more, increase in the licensee's water usage;
- (3) change to a license's security system, including relocation or security points or installation of a new security system; or
- (4) modification of the premises to relocate cannabis activities.

[16.8.2.23 NMAC - N 08/22/2021; A/E 12/06/2021]

#### **16.8.2.26 CANNABIS PRODUCER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A producer shall develop, implement, and maintain on the licensed premises, standard policies and procedures, which shall include the following:

(1) cannabis testing criteria and procedures, which shall be consistent with the testing requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, and shall include at a minimum, the following topics:

- (a) employee health and safety training materials;
  - (b) training requirements for the proper use of health and safety measures and controls;
  - (c) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;
  - (d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;
  - (e) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis products to another cannabis establishment for any purpose;
  - (f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;
  - (g) protocols for testing sample collection that ensures accurate test results; and
  - (h) procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;
- (2) employee policies and procedures to address the following minimum requirements:
- (a) adherence to state and federal laws;



- (b) responding to an emergency, including robbery or a serious accident;
- (c) alcohol and drug-free workplace policies and procedures;
- (d) safety and security procedures;
- (e) occupational safety;
- (f) crime prevention techniques; and
- (g) if applicable, confidentiality laws, including the Health Insurance Portability and

Accountability Act of 1996; and

(3) ~~[training]~~ documentation prepared for each employee and statements signed by employees indicating [the topics discussed, names and titles of presenters, and the date, time, and place the employee received said ~~[training]~~ receipt of policies and procedures.

~~[B. — Retention of training documentation: Licensees shall maintain documentation of an employee's training for a period of five years for current employees and at least six months after the termination of an employee's employment.]~~

**B. Training program:**

(1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

- (a) employee health and safety training materials;
- (b) health and safety hazards;
- (c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;
- (d) training requirements for the proper use of health and safety measures and controls;
- (e) emergency procedures;
- (f) security procedures; and
- (g) record keeping requirements.

(2) A licensee, or employee, involved in the handling, transportation, manufacture, extraction, testing, or packaging of cannabis products must successfully complete a food handler course accredited by the American National Standards Institute (ANSI) prior to conducting any related activities. Such training shall be maintained while employed under a manufacturing licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**C. Training documentation:**

(1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record, which contains at minimum:

- (a) a list of all personnel at the premises, including at minimum, name and job duties of each;
- (b) documentation of training topics and dates of training completion for all personnel;
- (c) dates of refresher training completion for all personnel;
- (d) the signature of verifying receipt and understanding of each training or refresher training completed.

(2) Licensee may designate supervisory personnel with responsibility to oversee the requirements of this section.

**D. Retention of training documentation:** Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.26 NMAC - N 08/22/2021; A/E 12/06/2021]