

This is an amendment to 16.8.2 NMAC amending Sections 8, 9, 10, 20, 21, 22, 24, 25, 29, 30, 32, 35, 36, 38, 41, 43, 44 and 46, effective 3/22/2022.

**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.

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

**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.

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

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

**L. Multiple licensee premises:** Multiple licensees may, upon determination by the division, occupy a single licensed premises, provided each is individually licensed by the division.

**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.

**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.

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

**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.

~~[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. All licensing or renewal fees are non-refundable and must be paid for each new application.]~~

**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. All licensing or renewal fees are non-refundable and must be paid for each new application.

**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.

**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.

**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.

**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.

**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.

**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. — 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 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.]~~

**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 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.

**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.]~~

(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.

**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.

**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; A, 03/22/2022]

#### 16.8.2.9 CRIMINAL HISTORY SCREENING REQUIREMENTS:

~~A. Initial licensure: Applicants for initial licensure shall submit to a criminal history screening. For purposes of this rule, 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 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. 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 New Mexico department of public safety for a current New Mexico state criminal history report;~~

~~(2) the New Mexico department of public safety will review state records;~~

~~(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 New Mexico department of public safety state criminal history background checks shall be paid by the applicant or licensee.~~

~~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 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.]~~

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[16.8.2.9 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

**16.8.2.10 SECURITY AND LIMITED-ACCESS AREA:** All phases where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale areas, and any room or area storing a digital video surveillance system storage device shall take place in a designated limited-access area where cannabis and cannabis products are not visible from a public place without the use of binoculars, aircraft, or other optical aids. For purposes of this rule, cannabis or cannabis products are not visible if it cannot be reasonably identified. Licensees shall comply with the security requirements set out in this rule to ensure that licensed premises and limited-access areas, including a vault, are secure.

**A. Security alarm system:** Licensees shall install and maintain at each premises an operational security alarm system. The security alarm system must be continuously monitored, whether electronically, by a monitoring company, or other means determined to be adequate by the division, and provide an alert to designated employees of the licensee and, if necessary, law enforcement within 5 minutes after a notification of an alarm or a security alarm system failure, either by telephone, email, or text message. Monitored sensors are required on all perimeter entry points and perimeter windows, if applicable. The system must include an audible alarm, which must be capable of being disarmed remotely by the designated employee or the security company. Licensees shall maintain, and make available to the division upon request, a description of the location and operation of the security system, including the location of the central control, a schematic of the security zones, and the name of the security alarm company and monitoring company, if applicable.

**B. Security alarm system maintenance and failure:** Licensees shall conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the security alarm system. In the event of a security alarm system failure due to a loss of electrical power or mechanical malfunction that is expected to exceed an eight-hour period, the licensee shall immediately notify the division within 48 hours following the discovery of the failure, and provide alternative security that may include closure of the premises. All security system equipment shall be maintained in a secure location so as to prevent theft, loss, destruction and alterations.

**C. Inspection of security alarm system records:** Licensees shall maintain documentation for a period of at least 12 months of all maintenance inspections, servicing, alterations, and upgrades performed on the security alarm system. All documentation must be available during a division inspection.

**D. Digital video surveillance:** Licensees shall provide and maintain at each premises a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels. The digital video surveillance system shall further comply with the following requirements:

- (1) the digital video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance;
- (2) each camera shall be permanently mounted and in a fixed location;
- (3) cameras shall be placed in a location that allows the camera to clearly record activity occurring on the licensed premises that digital video surveillance is required under subsection E of this section, and shall provide a clear and certain identification of any person and activities in those areas.

**E. Areas of digital video surveillance:** Areas that shall be recorded on the digital video surveillance system include the following:

- (1) areas where cannabis and cannabis products are cultivated, produced, manufactured, weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
- (2) limited-access areas;
- (3) areas storing a digital video surveillance-system storage device;
- (4) entrances and exits to the licensed premises; and
- (5) all point of sale (POS) locations to capture sale transactions.

**F. Digital video surveillance recording:** Licensees shall comply with the following digital video surveillance recording requirements:

- (1) cameras shall record continuously 24 hours per day, or may be motion activated, and at a minimum of 15 frames per second (FPS);
- (2) the physical media or storage device on which digital video surveillance recordings are

stored shall be secured in a manner to protect the recording from tampering or theft;

(3) digital video surveillance recordings shall be kept for a minimum of 30 days and recordings of theft or security incidents as set forth in Subsection N of 16.8.2.8 NMAC shall be kept for a minimum of 12 months;

(4) digital video surveillance recordings are subject to inspection by the division, and shall be kept in a manner that allows the division to view and obtain copies of the recordings at the licensed premises immediately upon request;

(5) upon request, licensees shall send or otherwise provide copies of the recordings to the division within 48 hours;

(6) recorded images shall clearly and accurately display the time and date of the recording; and

(7) time shall be measured in accordance with the United States national institute standards and technology standards.

**G. Failure notification:** A digital video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the digital video surveillance system or digital video surveillance-system storage device. A digital video surveillance system failure shall be reported to the division immediately and operations shall cease as soon as safely possible until the system is again operational.

**H. Multiple licensees premises:** If multiple applicants or licensees seek to operate, or operate, within the same premises, a single security system and digital video surveillance system covering the entire premises may be used by all of the licensees under the following conditions:

(1) each applicant or licensee shall [~~disclose~~] include on their premises diagram where the security alarm system and the digital video surveillance cameras are located and where digital video surveillance recordings are stored;

(2) each applicant or licensee shall include in their application a certification that all licensees shall be individually responsible for the operation, maintenance, and record keeping requirements of the security alarm system, and that all licensees shall have access to live monitoring of the digital video surveillance system;

(3) each applicant or licensee shall include in their application an explanation of how the security alarm system and digital video surveillance system will be shared with the division and authorities, as well as who is responsible for maintenance of the security alarm system and the digital video surveillance system, who is authorized to monitor the video footage and who is responsible for storing any digital video surveillance recordings;

(4) each applicant or licensee shall have immediate access to the digital video surveillance recordings to produce them pursuant to subsection F of this section; and

(5) each applicant or licensee shall be held responsible for any violations of the security system or digital video surveillance requirements.

**I. Locks:** Licensees shall ensure that limited-access areas can be securely locked using commercial-grade locks that meet applicable building and fire codes. Licensees shall also use commercial-grade locks that meet applicable building and fire codes on all points of entry and exit to the licensed premises and access points to areas where cannabis and cannabis products are stored.

**J. Limited-access areas:** A limited access area shall only be accessible to a licensee and its authorized employees, authorized vendors, contractors or other individuals conducting business that requires access to a limited-access area, division staff or authorized designees, state and local law enforcement authorities acting within their lawful jurisdictions, fire departments and emergency medical services acting in the course of their official capacity, or volunteers specifically permitted by the licensed cannabis establishment. Licensees shall ensure:

(1) only authorized employees of the licensee and other authorized individuals have access to the limited-access areas of the licensed premises;

(2) a daily record log, which may be a sign-in and sign-out sheet at the entrance of a premises, of all authorized employees and authorized individuals that are not employees of the licensee who enter the limited-access areas is maintained;

(3) limited-access record logs are kept for a minimum of 90 days, or 12 months if a theft or security incident occurs, and must be made available to the division within 48 hours upon request;

(4) entrances to all limited-access areas have a solid door, or if appropriate, a gate adequate to block access, and a lock meeting the requirements set forth in subsection I of this section, and unless prohibited by building or fire codes, the entrance shall remain locked when not in use during regular business hours;

(5) all limited-access areas are identified by the posting of a sign that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height;

(6) authorized employees of the licensee visibly display an employee identification badge at all times while present within a limited-access area;

(7) other authorized individuals obtain a visitor identification badge prior to entering a limited-access area, the visitor identification badge shall be visibly displayed at all times while the visitor is in any limited access area, and all visitor identification badges shall be returned to the cannabis establishment on exit.

**K. Licensee identification badge requirement:** Licensees shall issue a laminated or plastic-coated identification badge to all agents, officers, or other persons acting for or employed by a licensee, which shall, at a minimum, include the licensee's "doing business as" name and license number, the individual's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

**L. Lighting:** Any perimeter entry point of a cannabis establishment must have lighting sufficient for observers to see, and cameras to record, any activity within 20 feet of the gate or entry; and a motion detection lighting system may be employed to light required areas in low-light conditions.

**M. Doors and windows:** All external entrances to indoor facilities on the licensed premises must be able to be locked and all perimeter doors and windows of indoor facilities must be in good condition and lockable.

**N. Fencing requirements for outdoor areas or greenhouses:** Any licensed premises that is an outdoor area or greenhouse shall also implement security measures to ensure that the outdoor area or greenhouse is not assessable to unauthorized individuals and is secure to prevent and detect diversion, theft, or loss of cannabis, which shall at a minimum include:

(1) a perimeter security fence designed to prevent unauthorized entry to any cannabis cultivation areas and signs that shall be a minimum of 12" x 12" and which states: "Do Not Enter - Limited Access Area - Access Limited to Authorized Personnel Only" in lettering no smaller than one inch in height; and

(2) a cover that obscures cannabis cultivation areas from being readily viewed from outside of the fenced area.

**O. Security guards:** Security guards are permitted but not required. Contract security guards must be licensed under the Private Investigations Act, Section 61-27B-1 *et seq.*, NMSA 1978. Security guards must not consume cannabis or cannabis products or be intoxicated while performing any duties for a licensee. Security guards must comply with all laws related to firearms and other weapons.

**P. Vault:** Licensees may store all non-growing cannabis, cannabis products, or cash not being actively handled for purposes of cultivating, packaging, processing, transporting, or selling within an adequately sized vault.

[16.8.2.10 NMAC - N, 08/24/2021; A, 03/22/2022]

#### **16.8.2.20 MONITORING OF LICENSEE:**

**A. Monitoring:** The division may perform on-site assessments of an applicant or licensee during normal business hours to determine compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

**B. Record access and review:** The division may review any and all records related to the operations of the licensee and may require and conduct interviews with such persons or entities and persons affiliated with such entities, for the purpose of determining compliance with division rules or applicable laws. The division shall have access to the financial records of a licensee, including sales records and data from point-of-sale systems, and shall be granted immediate access to inspect or copy those records upon request.

**C. Access to premises:** Licensees shall provide the division timely access to any material and information necessary for determining compliance with division rules or applicable laws. Failure by a licensee to provide the division access to the premises or materials may result in disciplinary action.

**D. Monitoring documents:** Any failure to adhere to division rules or applicable laws documented by the division during monitoring may result in disciplinary action.

**E. Report to law enforcement:** The division shall refer suspected criminal activity or complaints alleging criminal activity that are made against a licensee to appropriate federal, state, or local law enforcement authorities.

**F. Financial records:** Licensees shall maintain detailed sales records in a manner and format approved by the division, inform the division of the location where such records are kept, and promptly update the



division if the records are removed.

**G. Audit:** Licensees shall submit the results of a biennial audit to the division. The audit shall be conducted by an independent certified public accountant; the costs of which shall be borne by the licensee. Results of the audit shall be forwarded to the division. The division may extend, in writing, a licensee's audit requirement to three years following the timely submission of two biennial unqualified audits or two biennial unqualified reports.

**H. Producer reports:** A cannabis producer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- ~~(1)~~ number of cannabis plants and cannabis inventory;
- ~~(2)~~ revenue from the wholesale of cannabis;
- ~~(3)~~ total number of transactions;
- ~~(4)~~ number of units provided without charge;
- ~~(5)~~ number of cannabis plants in production, including mature and immature plants;
- ~~(6)~~ number of cannabis plants harvested;
- ~~(7)~~ total yield of usable cannabis harvested from cannabis plants (in grams);
- ~~(8)~~ average yield per plant (in grams);
- ~~(9)~~ amount of cannabis (in grams) sold by wholesale;
- ~~(10)~~ amount of cannabis (in grams) purchased by wholesale;
- ~~(11)~~ number of live cannabis plants (including clones) and cannabis seeds sold;
- ~~(12)~~ amount of dried cannabis leaves and flowers in stock;
- ~~(13)~~ average price per gram of dried cannabis leaves and flowers;
- ~~(14)~~ total amount of dried cannabis leaves and flowers sold (in units);
- ~~(15)~~ total sales of dried cannabis leaves and flowers (in dollars and units);
- ~~(16)~~ (1) actual water and energy use in the preceding 12 months;
- ~~(17)~~ (2) demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; ~~and~~
- (3) progress made toward the licensee's social and economic equity plan; and
- ~~(18)~~ (4) all quality testing reports, to be included as attachments.

**I. Manufacturer reports:** A cannabis manufacturer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- ~~(1)~~ actual water and energy use in the preceding 12 months;
- ~~(2)~~ demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan;
- ~~(3)~~ progress made toward the licensee's social and economic equity plan; and
- ~~(4)~~ all quality testing reports, to be included as attachments.

**J. Testing laboratory reports:** A cannabis testing laboratory licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- ~~(1)~~ total number of test failures by product type;
- ~~(2)~~ number of failures by product type;
- ~~(3)~~ total number of calibrations conducted;
- ~~(4)~~ total number of calibrations categorized by test code or analysis type;
- ~~(5)~~ total number of audits conducted by an accredited laboratory auditing service; and
- ~~(6)~~ number of proficiency tests conducted by test code or analysis type.

**K. Retailer reports:** A cannabis retailer licensee shall submit reports on an annual basis, or as otherwise reasonably requested, and in the format specified by the division. The annual report shall include:

- ~~(1)~~ demographic information required pursuant to the Cannabis Regulation Act, including data as defined by the applicant's social and economic equity plan, and the divisions published social and economic equity plan; and
- ~~(2)~~ progress made toward the licensee's social and economic equity plan.

[16.8.2.20 NMAC - N, 08/24/2021; A, 03/22/2022]

#### 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.]~~
  - ~~\_\_\_\_\_ **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 found on the division website.~~
  - ~~\_\_\_\_\_ **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.~~
- [16.8.2.21 NMAC – N, 08/22/2021; A/E, 12/06/2021; A, 03/22/2022]

**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) \_\_\_\_\_ 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.~~
  - ~~\_\_\_\_\_ (4) \_\_\_\_\_ 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;~~
- ~~\_\_\_\_\_ (5) 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;~~
- ~~\_\_\_\_\_ (6) 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;~~
- ~~\_\_\_\_\_ (7) 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;~~
- ~~\_\_\_\_\_ (8) 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;~~
- ~~\_\_\_\_\_ (9) 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;~~
- ~~\_\_\_\_\_ (10) 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;~~
- ~~\_\_\_\_\_ (11) 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;~~
- ~~\_\_\_\_\_ (12) 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;~~
- ~~\_\_\_\_\_ (13) 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;~~
- ~~\_\_\_\_\_ (14) 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;~~
- ~~\_\_\_\_\_ (15) 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;~~
- ~~\_\_\_\_\_ (16) 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;~~
- ~~\_\_\_\_\_ (17) 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;~~
- ~~\_\_\_\_\_ (18) certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.24 NMAC and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis which shall be made immediately available upon request by the division;~~
- ~~\_\_\_\_\_ (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

~~(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.]~~

~~**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) 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.~~~~~~
- ~~(4) 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;~~~~
- ~~(5) 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;~~
- ~~(6) 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;~~
- ~~(7) 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;~~

(8) 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;

(9) 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;

(10) 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;

(11) 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;

(12) 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;

(13) 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;

(14) 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;

(15) 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;

(16) 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;

(17) 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;

(18) certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility used for the cannabis establishment and the method(s) to be used to produce cannabis;

(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

(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; A/E, 1/13/2022; A, 03/22/2022]

**16.8.2.24 PRODUCER PREMISES DIAGRAM:**

~~A. — An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.~~

~~B. — The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~C. — The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~D. — The diagram shall be to scale.~~

~~E. — The diagram shall not contain any highlighting and the markings on the diagram shall be in black and white print.~~

~~F. — If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~G. — If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~H. — If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.]~~

A. — An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. — The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis plants will be cultivated, the location(s) and the dimensions of other areas where other horticulture will be cultivated, if applicable. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, location of lights in the cannabis plant cultivation area(s) and the maximum wattage or wattage equivalent, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. — The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. — The diagram shall be to scale.

E. — The diagram shall not contain any highlighting and the markings on the diagram shall be in black and white print.

F. — If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. — If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. — If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.24 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

**16.8.2.25 PHYSICAL MODIFICATION OF PRODUCER PREMISES:**

~~A. — Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises.~~

~~B. — Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.~~

~~C. — Material or substantial changes, alterations, or modifications requiring approval include:~~

~~(1) — when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;~~

~~(2) — when electrical wiring, plumbing or mechanical work and LP gas work, as defined and~~

~~described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;~~

~~(3) re roofing and application of roof coatings that requires a building permit and inspections; or~~

~~(4) changing the occupancy activities conducted in or the use of an area that requires a new certificate of occupancy or fire inspection.~~

~~D. Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:~~

~~(1) a copy of the applicable building permit; and~~

~~(2) a new certificate of occupancy, if applicable.~~

~~E. Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;~~

~~F. Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and~~

~~G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.]~~

~~A. Licensees shall not, without the prior written approval of the division, make a physical change, alteration, or modification of the licensed premises that materially or substantially alters the licensed premises or the use of the licensed premises.~~

~~B. Licensees whose licensed premises is to be materially or substantially changed, modified, or altered is responsible for filing a request for premises modification with the division.~~

~~C. Material or substantial changes, alterations, or modifications requiring approval include:~~

~~(1) when a building or structure will be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished, as defined and described in the applicable building codes, which require a permit from the construction industries division or the appropriate local jurisdiction;~~

~~(2) when electrical wiring, plumbing or mechanical work and LP gas work, as defined and described in the applicable construction codes for those trades, is to be installed, repaired or maintained in or on such building or structure, which require a permit from the construction industries division or the appropriate local jurisdiction;~~

~~(3) re-roofing and application of roof coatings that requires a building permit and inspections; or~~

~~(4) changing the occupancy activities conducted in or the use of an area that requires a new certificate of occupancy or fire inspection.~~

~~D. Licensees shall request approval of a material or substantial physical change, alteration, or modification in writing, and the request shall include:~~

~~(1) a copy of the applicable building permit; and~~

~~(2) a new certificate of occupancy, if applicable.~~

~~E. Licensees shall immediately notify the division within 24 hours if a federal or state authority requires a change to the premises;~~

~~F. Licensees shall promptly provide additional documentation requested by the division to evaluate the licensee's request to modify the licensed premises; and~~

~~G. The division shall notify the licensee, in writing, of approval or denial of a request for physical modification no later than 10 days after receiving a request.~~

[16.8.2.25 NMAC - N, 08/24/2021; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.2.29 CANNABIS MANUFACTURER LICENSE; GENERAL PROVISIONS:**

**A. License Types:** The division may license four classes of manufacture:

(1) Class I: A licensee that only packages or repackages cannabis products, or labels or relabels the cannabis product container;

(2) Class II: A licensee that conducts Class I activities, and manufactures edible products or topical products using infusion processes, or other types of cannabis products other than extracts or concentrates, and does not conduct extractions;

(3) Class III: A licensee that conducts Class I and Class II activities, and extracts using mechanical methods or nonvolatile solvents; and

(4) Class IV: A licensee that conducts Class I, Class II, and Class III activities, and extracts using volatile solvents or supercritical CO<sub>2</sub>.

**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~~] found on the division website.

**C. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not manufacture cannabis extract, unless for personal use pursuant to Section 26-2C-31, NMSA.

**D. Other activities prohibited:** Except as provided in Subsection BB of 16.8.2.8 NMAC, no cannabis manufacturer establishment licensee may produce cannabis, 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. Prohibited additives:** A manufacturer shall not manufacture or distribute a product that is intended to be consumed by inhalation that includes polyethylene glycol, polypropylene glycol, vitamin E acetate, or medium chain triglycerides. A manufacturer shall not combine nicotine, caffeine, or any other addictive substance with a cannabis product. This prohibition shall not apply to the combination of cannabis with sugar, or a product in which caffeine is naturally occurring, such as coffee, tea, or chocolate.

[16.8.2.29 NMAC – N/E, 09/08/2021; N, 12/28/2021; A, 03/22/2022]

### 16.8.2.30 APPLICATION REQUIREMENTS FOR CANNABIS MANUFACTURER LICENSE:

[~~A. An initial application or renewal for cannabis manufacturer 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 mailing address;~~
  - ~~(c) applicant's contact telephone number;~~
  - ~~(d) applicant's contact email address;~~
  - ~~(e) applicant's business physical address and mailing address, if different;~~
  - ~~(f) applicant's business legal name, including a DBA name if applicable;~~
  - ~~(g) applicant's business web address, if applicable;~~
  - ~~(h) applicant's business hours of operation;~~
  - ~~(i) name and contact information for each controlling person;~~
  - ~~(j) demographic data pursuant to the Cannabis Regulation Act; and~~
  - ~~(k) license type sought (Class I, Class II, Class III, or Class IV);~~~~
- ~~(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) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, 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 for cannabis manufacturing 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, 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;~~~~~~
- ~~(4) 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;~~
- ~~(5) 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;~~
- ~~(6) 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;~~



- \_\_\_\_\_ (7) \_\_\_\_\_ if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;
- \_\_\_\_\_ (8) \_\_\_\_\_ 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 cannabis sold;
- \_\_\_\_\_ (9) \_\_\_\_\_ for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;
- \_\_\_\_\_ (10) \_\_\_\_\_ certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- \_\_\_\_\_ (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;
- \_\_\_\_\_ (12) \_\_\_\_\_ certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- \_\_\_\_\_ (13) \_\_\_\_\_ 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;
- \_\_\_\_\_ (14) \_\_\_\_\_ 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, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;
- \_\_\_\_\_ (15) \_\_\_\_\_ 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 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;
- \_\_\_\_\_ (16) \_\_\_\_\_ certification the applicant is not licensed under the Liquor Control Act;
- \_\_\_\_\_ (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) \_\_\_\_\_ an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;
- \_\_\_\_\_ (19) \_\_\_\_\_ 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;
- \_\_\_\_\_ (20) \_\_\_\_\_ certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.32 NMAC 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 manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods, which shall be made immediately available upon request by the division;
- \_\_\_\_\_ (21) \_\_\_\_\_ 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
- \_\_\_\_\_ (22) \_\_\_\_\_ payment of any required fees as set forth in 16.8.11 NMAC.

\_\_\_\_\_ **B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

- \_\_\_\_\_ (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.

\_\_\_\_\_ **C. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as “confidential” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s

~~good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within ten days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.]~~

- A.** An initial application or renewal for cannabis manufacturer 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 mailing address;
    - (c) applicant's contact telephone number;
    - (d) applicant's contact email address;
    - (e) applicant's business physical address and mailing address, if different;
    - (f) applicant's business legal name, including a DBA name if applicable;
    - (g) applicant's business web address, if applicable;
    - (h) applicant's business hours of operation;
    - (i) name and contact information for each controlling person;
    - (j) demographic data pursuant to the Cannabis Regulation Act; and
    - (k) license type sought (Class I, Class II, Class III, or Class IV);
  - (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) demonstration of a legal right to use the quantity of water that the division determines is needed for cannabis manufacturing, 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 for cannabis manufacturing 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, 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;
  - (4) 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;
  - (5) 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;
  - (6) 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;
  - (7) if applicable, proof of prior approval by the New Mexico regulation and licensing department for the use of any compressed gas extraction equipment to be utilized by the manufacturer;
  - (8) 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 cannabis sold;
  - (9) for class II, III, and IV licenses, documentation that the applicant has obtain all necessary authority required for the production of edibles and topicals from the New Mexico environment department and that such authority is valid at the time the license application is submitted;
  - (10) certification the applicant will adhere to manufacturing requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
  - (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;
  - (12) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;

(13) 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;

(14) 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, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(15) 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 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;

(16) certification the applicant is not licensed under the Liquor Control Act.

(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) an attestation that the manufacturer will not use dimethylsulfoxide (DMSO) in the production of cannabis products, and will not possess DMSO on the premises of the manufacturer;

(19) 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;

(20) certification the applicant will maintain at all times a legible and accurate diagram containing information required by 16.8.2.32 NMAC 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 manufacture cannabis (extraction, infusion, packaging, labeling), including a description of extraction and infusion methods;

(21) 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

(22) payment of any required fees as set forth in 16.8.11 NMAC.

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

(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.

**C. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret or confidential by clearly identifying such information as "confidential" on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant's good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to 7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within 10 days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.30 NMAC – N/E, 09/08/2021; A/E, 12/02/2021; N, 12/28/2021; A/E, 01/13/2022; A, 3/22/2022]

### **16.8.2.32 MANUFACTURER PREMISES DIAGRAM:**

**A.** — An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

**B.** — The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The

~~diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~D. The diagram shall be to scale.~~

~~E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black and white print.~~

~~F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.]~~

A. An applicant must maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be manufactured, and the location of the extraction area. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.

H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.32 NMAC – N/E, 09/08/2021; N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

#### **16.8.2.35 CANNABIS RETAIL LICENSURE; GENERAL PROVISIONS:**

**A.** 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] found on the division website.

**B.** License required: Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

[16.8.2.35 NMAC - N, 12/28/2021; A, 03/22/2022]

#### **16.8.2.36 APPLICATION REQUIREMENTS FOR CANNABIS RETAILER LICENSE:**

**[ A. An initial application or renewal for cannabis retailer 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;~~
- ~~\_\_\_\_\_ (k) demographic data pursuant to the Cannabis Regulation Act; and~~
- ~~\_\_\_\_\_ (l) license type sought;~~
- ~~\_\_\_\_\_ (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) 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;~~
- ~~\_\_\_\_\_ (4) 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;~~
- ~~\_\_\_\_\_ (5) 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;~~
- ~~\_\_\_\_\_ (6) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;~~
- ~~\_\_\_\_\_ (7) 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;~~
- ~~\_\_\_\_\_ (8) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;~~
- ~~\_\_\_\_\_ (9) 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;~~
- ~~\_\_\_\_\_ (10) 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;~~
- ~~\_\_\_\_\_ (11) 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 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;~~
- ~~\_\_\_\_\_ (12) certification the applicant is not licensed under the Liquor Control Act;~~
- ~~\_\_\_\_\_ (13) 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;~~
- ~~\_\_\_\_\_ (14) certification the applicant will maintain at all times a legible and accurate diagram and description containing information required by 16.8.2.38 NMAC and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements which shall be made immediately available upon request by the division;~~
- ~~\_\_\_\_\_ (15) if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;~~
- ~~\_\_\_\_\_ (16) 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;~~
- ~~\_\_\_\_\_ (17) 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~~
- ~~\_\_\_\_\_ (18) payment of any required fees as set forth in 16.8.11 NMAC.~~

~~\_\_\_\_\_ **B. Verification of information:** The division may verify information contained in each application and accompanying documentation by:~~

- ~~\_\_\_\_\_ (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.]~~
- A.** An initial application or renewal for cannabis retailer 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;
    - (k) demographic data pursuant to the Cannabis Regulation Act; and
    - (l) license type sought;
  - (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) 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;
  - (4) 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;
  - (5) 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;
  - (6) certification the applicant will adhere to retail requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
  - (7) 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;
  - (8) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
  - (9) 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;
  - (10) 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;
  - (11) 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 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;
  - (12) certification the applicant is not licensed under the Liquor Control Act;
  - (13) 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;
  - (14) certification the applicant will maintain at all times a legible and accurate diagram and description of the location of the land or facility to be used for the cannabis establishment, including a description of each retail area and all security requirements;
  - (15) if applicable, certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
  - (16) 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;

(17) 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

(18) payment of any required fees as set forth in 16.8.11 NMAC.

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

(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.

[16.8.2.36 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

### **16.8.2.38 RETAIL PREMISES DIAGRAM:**

~~A. An applicant maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.~~

~~B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.~~

~~C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.~~

~~D. The diagram shall be to scale.~~

~~E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black and white print.~~

~~F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.~~

~~G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises will be managed on the property.~~

~~H. If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.]~~

A. An applicant shall maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

B. The diagram shall show the boundaries of the property and the proposed premises to be licensed, the dimensions of each area that cannabis will be stored and available to the public. The diagram shall also include, as applicable, any equipment to be used, entrances and exits, interior partitions, walls, rooms, windows, and doorways. The diagram shall include a brief statement or description of the principal activity to be conducted in each area on the premises.

C. The diagram shall show where all cameras are located and assign a number to each camera for identification purposes.

D. The diagram shall be to scale.

E. The diagram shall not contain any highlighting and the markings on the diagram shall be in black-and-white print.

F. If the proposed premises consists of only a portion of a property, the diagram must be labeled indicating which part of the property is the proposed premises and what the remaining property is used for.

G. If the proposed premises consists of only a portion of a property that will contain two or more licensed premises, then the diagram shall be supplemented with a description of how two or more licensed premises

will be managed on the property.

**H.** If a proposed premise is located on only a portion of a property that also includes a residence, the diagram shall clearly show the designated buildings for the premises and the residence.

[16.8.2.38 NMAC – N, 12/28/2021; A/E, 01/13/2022; A, 03/22/2022]

**16.8.2.41 CANNABIS COURIER LICENSURE; GENERAL PROVISIONS:**

**A. 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~~] found on the division website.

**B. License required:** Unless licensed pursuant to the Cannabis Regulation Act and division rules, a person shall not transport cannabis products directly to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.

**C. Consumer delivery:**

(1) A licensee may deliver cannabis or cannabis products [~~directly~~] from a licensed retail establishment to a qualified patient who is at least 18 years of age, a primary caregiver or a reciprocal participant, or [~~directly to~~] a consumer who is at least 21 years of age.

(2) Licensees shall only deliver [~~cannabis or cannabis products~~] to the person who is identified by the retail cannabis licensee as an intended, authorized recipient.

(3) Licensees shall only deliver cannabis, cannabis products, or products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated.

**D. Operational requirements:**

(1) All cannabis and cannabis products delivered by a licensed cannabis courier shall be obtained from a retail cannabis licensee with which the cannabis courier is employed or has a delivery agreement.

(2) All delivery agreements between a retail cannabis licensee and a cannabis courier licensee shall be disclosed to the division. The division shall be notified in writing of a new delivery agreement or modification to a delivery agreement prior to delivery of cannabis or cannabis products under a new or modified delivery agreement.

(3) Licensees shall not transport or deliver cannabis or cannabis products that are not individually packaged, or that are not labeled in accordance with the Cannabis Regulation Act and division rules.

(4) Upon obtaining a package of cannabis or cannabis product from a retail cannabis licensee, the cannabis courier shall hold the package in a secure area or areas that are locked and otherwise resistant to tampering or theft, until the package is delivered to its intended recipient or returned to the retail cannabis licensee.

(5) Licensees shall not relinquish possession of cannabis or cannabis products unless and until the package of cannabis or cannabis products is either successfully delivered to its intended recipient or returned to the retail cannabis licensee. For purposes of this section, a package of cannabis or cannabis product is successfully delivered only upon the licensee's verification that an intended recipient has taken actual, physical possession of the package. Licensees shall not leave a package at any location for any reason, unless the package is successfully delivered to its intended recipient.

(6) At the time of delivery, a licensee shall verify the recipient's identity by requiring presentation of the recipient's photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient. Identification must match the pre-verified identification of the consumer who placed the order for delivery. Licensees shall not deliver cannabis or cannabis product to any person whose identity is not verified in accordance with this rule. Upon delivery to the intended recipient, the licensee shall certify having verified the recipient's identification in accordance with this rule for each transaction. Licensee shall view proof of the order generated at the time of the order and receive the signature of the consumer who ordered the cannabis or cannabis product.

(7) Licensees shall not possess a delivery package of cannabis or cannabis product for a time period greater than 24 hours. Licensees shall return any cannabis or cannabis product that is not successfully delivered to its intended recipient to the originating retail cannabis licensee within this time-period.

(8) Licensees shall not, when transporting cannabis or cannabis products utilize a delivery vehicle that advertises or otherwise displays signage, logos, or symbols that would indicate that the vehicle is used for the transport of cannabis.

(9) Only shelf stable cannabis [~~and~~] cannabis products [~~that is~~], and products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated [~~shelf-stable~~] may be delivered. Products that are perishable or time and temperature controlled to prevent deterioration



may not be delivered.

**E. Confidentiality:** Licensees shall at all times take measures to ensure confidentiality and safety in the transport and delivery of cannabis and cannabis product. A licensee may obtain contact information of a purchasing qualified patient or primary caregiver, and a reciprocal participant, as permitted by agreement between the licensee and a respective retail cannabis licensee, and may utilize such information solely for the purpose of arranging a delivery location and time with the qualified patient or primary caregiver, or reciprocal participant. Licensees shall not otherwise disseminate, disclose, or use identifying information or contact information concerning a qualified patient or primary caregiver, or reciprocal participant.

**F. Maximum retail value:** The maximum retail value ~~[of cannabis and cannabis product]~~ allowed in a cannabis courier's vehicle at any one time shall be \$10,000 and each product shall be associated with a specific order for delivery. For purposes of this provision, "maximum retail value" shall mean the aggregate value of cannabis, cannabis products, and products not containing THC that are for sale within the licensed retail establishment from which the sale and delivery is initiated as priced on the day of the order for delivery.

**G. Track and trace:** All cannabis and cannabis product deliveries shall be tracked using the track and trace system as designated by the division. Records of sales of cannabis accessories shall be maintained by the cannabis courier, but may not be tracked in the track and trace system designated by the division.

**H. Record retention:** Delivery records, including certification of delivery, the cannabis and cannabis product delivered, the date of delivery, and the time of delivery, shall be maintained by the cannabis courier for a minimum of 12 months.

**I. Delivery time and location:**

- (1) Limitations on the time of delivery shall comply with all local laws.
- (2) Licensees shall only deliver packages of cannabis or cannabis products to the address provided by the retail cannabis licensee.
- (3) Licensees are prohibited from delivery to an individual consumer of more than two ounces of cannabis, 16 grams or cannabis extract and 800 milligrams of edible cannabis.

[16.8.2.41 NMAC – N, 12/28/2021; A, 03/22/2022]

**16.8.2.43 CANNABIS TESTING LABORATORY LICENSE: GENERAL PROVISIONS:**

**A. Testing categories:** The division may license cannabis testing laboratories to perform analytical testing of cannabis products in one or more of the following categories:

- (1) visual inspection;
- (2) microbiological;
- (3) residual solvents;
- (4) potency and homogeneity;
- (5) heavy metals;
- (6) pesticides; and
- (7) such other testing categories as the department may identify.

**B. License not required for internal testing:** A cannabis establishment may conduct analytical testing using validated methods for internal quality control purposes without obtaining a cannabis testing laboratory license but may not offer testing services to another person or entity.

**C. 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]~~ found on the division website.

**D. Other activities prohibited:** No person with a direct or indirect interest in any cannabis establishment other than a cannabis research laboratory may hold an interest in a cannabis testing laboratory. [16.8.2.43 NMAC – Rp, 16.8.2.43 NMAC, 01/11/2022; A, 03/22/2022]

**16.8.2.44 APPLICATION REQUIREMENTS FOR CANNABIS TESTING LABORATORY LICENSE:**

**A. Contents of application:**

(1) for any initial or renewal application, contact information for the applicant and the cannabis establishment, to include:

- (a) applicant's full legal name;
- (b) applicant's mailing address;
- (c) applicant's contact telephone number;
- (d) applicant's contact email address;

(e) applicant's business physical address and mailing address, if different;

(f) applicant's business legal name, including a DBA name, if applicable;

(g) applicant's business web address, if applicable;

(2) for any initial application, information about controlling persons, to include:

(a) name and contact information;

(b) documentation of legal name change, if applicable;

(c) criminal history screening documents. as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(d) a detailed description of any criminal convictions, including for each: the date of the conviction; dates of incarceration, probation, or parole; description of the offense; and any evidence of rehabilitation, including court documents, personal or professional references, completion of treatment, employment records, and other relevant information;

(e) demographic data pursuant to the Cannabis Regulation Act; and

(f) A copy of identification issued by a federal or state government, including name, date of birth, and picture and indicating the person is at least 21 years of age;

(3) for any renewal application, certifications that the applicant:

(a) attests to 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;

(b) will adhere to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules, including:

(i) testing requirements;

(ii) transport requirements;

(iii) security requirements;

(iv) quality assurance requirements; and

(v) the prohibition on any person holding an interest in one or more cannabis testing laboratories from holding an interest in any other cannabis license other than a cannabis research laboratory;

(c) 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, fire safety, environmental impacts, natural resource protections, air quality, solid and hazardous waste management, and wastewater discharge;

(d) 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 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; and

(e) is not licensed at the same location under the Liquor Control Act;

(f) 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; and

~~[(g) maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.]~~

(g) maintain on its licensed premise at all times, a complete and detailed diagram of the premises containing information required by 16.8.2.46 NMAC, which shall be made immediately available to the division upon request.

~~[(4) for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:~~

~~(a) a list of categories of testing for which licensure is sought; and~~

~~(b) 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 premises are located in an underserved rural community, including tribal, acequia, land grant merced, federally designated opportunity zone, or other rural historic communities; and]~~

(4) for any initial application, and, unless a statement is included that no material changes exist, for any renewal application:

(a) a list of categories of testing for which licensure is sought; and

(b) 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 premises are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities; and

(5) for any initial or renewal application, payment of any required fees as set forth in 16.8.11 NMAC.

**B. Initial demonstration of capability:** The division requires the submission of an initial demonstration of capability (IDC) for every test a cannabis testing laboratory intends to conduct, except tests for research and development purposes only. The IDC must identify a limit of quantitation that is equal to or lower than the action level for the specified test.

(1) An IDC is required whenever:

(a) an initial application is submitted, except that an applicant may instead submit evidence of prior completion of an IDC as a requirement of licensing under the Lynn and Erin Compassionate Use Act;

(b) the cannabis testing laboratory proposes to use a new analytical instrument to test for an analyte; or

(c) the cannabis testing laboratory proposes material changes to testing methods.

(2) Every IDC shall include the following elements:

(a) Demonstration of method calibration: The calibration range shall use at least five calibration points consisting of five different concentration levels of target compounds. The calibration range shall include a low calibration point equal to, or less than, the action level for each targeted compound. The cannabis testing laboratory shall provide the equation and the type of curve fit used for the calibration range, and the percent relative standard deviation or the goodness of fit. The percent relative standard deviation shall be less than twenty percent, or the goodness of fit (correlation coefficient) shall be 0.995 or better.

(b) Demonstration of method accuracy and precision: A cannabis testing laboratory shall supply the quantitation data for five positive control samples analyzed by its testing method utilizing median or mid-level calibration concentration. The cannabis testing laboratory shall identify and justify acceptance criteria and shall calculate and provide the calculated mean (average) result and the standard deviation. Any standard deviations greater than twenty percent shall be noted and explained.

(c) Demonstration of method detection limit: A cannabis testing laboratory shall calculate its method detection limit using a generally accepted method.

(d) Demonstration of low system background: A cannabis testing laboratory shall supply the analytical data of at least three negative control samples that do not contain any target analytes.

(e) Demonstration of analyte identification: A cannabis testing laboratory that uses, high performance liquid chromatography (HPLC) or gas chromatography with flame ionization detector or photoionization detector (GC-FID or GC-PID/FID) instrumentation shall supply analytical data where each targeted compound is analyzed as a single compound giving it its characteristic retention time. A cannabis testing laboratory that uses gas chromatography–mass spectrometry (GCMS), liquid chromatography–mass spectrometry (LCMS), or liquid chromatography–tandem mass spectrometry (LCMSMS) instrumentation shall supply analytical data with the characteristic mass spectrum of each targeted compound.

**C. Continuing demonstration of capability:** A cannabis testing laboratory shall submit a continuing demonstration of capability (CDC) for each test performed annually as part of the laboratory's application for renewal of licensure. A CDC may consist of:

(1) Evidence that the cannabis testing laboratory has the test within its current scope of accreditation to the current standards of ISO/IEC 17025, *Testing and Calibration Laboratories*;

(2) Evidence that each analyst performing the test has successfully completed, within the previous year, relevant proficiency testing administered by a provider accredited to the standards of ISO/IEC 17043, *Conformity Assessment—General Requirements for Proficiency Testing*; or

(3) The re-performance of the IDC.

**D. Verification of information:** The division may verify information contained in each application and accompanying documentation by:

(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.

**E. Trade secrets:** Any applicant submitting operating procedures and protocols to the division pursuant to the Lynn and Erin Compassionate Use Act, the Cannabis Regulation Act, or division rules, may claim such information as a trade secret by clearly identifying such information as “confidential trade secrets” on the document at the time of submission. Any claim of confidentiality by an applicant must be based on the applicant’s good faith belief that the information marked as confidential constitutes a trade secret as defined in the Uniform Trade Secrets Act, Sections 57-3A-1 to -7, NMSA 1978. In the event the division receives a request to inspect such documents, the division will notify the applicant or licensee, via the current email of record. If the division does not receive an injunction pursuant to the Uniform Trade Secrets Act within five days of the request to inspect, the division will make the documents marked confidential available for inspection as required pursuant to the Inspection of Public Records Act.

[16.8.2.44 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022]

**16.8.2.46 TESTING LABORATORY PREMISES DIAGRAM:**

~~A. **Detailed diagram required:** An applicant maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.~~

- ~~B. **Contents of diagram:** The diagram shall show:~~
- ~~(1) the boundaries of the property and the proposed premises to be licensed;~~
  - ~~(2) if applicable, the uses of any portion of the property not included in the premises;~~
  - ~~(3) a brief statement or description of the principal activity to be conducted in each area on the premises;~~
  - ~~(4) the dimensions of each area where testing of cannabis products will take place;~~
  - ~~(5) the location and identity of equipment; and~~
  - ~~(6) entrances and exits;~~

- ~~C. **Format of diagram:** The diagram shall:~~
- ~~(1) be drawn to scale;~~
  - ~~(2) be rendered in black and white print; and~~
  - ~~(3) contain no highlighting.]~~

A. **Detailed diagram required:** An applicant shall maintain on its licensed premise at all times, a complete and detailed diagram of the premises. The diagram shall be used by the division to determine whether the premises meets the requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

- B. **Contents of diagram:** The diagram shall show:
- (1) the boundaries of the property and the proposed premises to be licensed;
  - (2) if applicable, the uses of any portion of the property not included in the premises;
  - (3) a brief statement or description of the principal activity to be conducted in each area on the premises;
  - (4) the dimensions of each area where testing of cannabis products will take place;
  - (5) the location and identity of equipment; and
  - (6) entrances and exits;

- C. **Format of diagram:** The diagram shall:
- (1) be drawn to scale;
  - (2) be rendered in black and white print; and
  - (3) contain no highlighting.

[16.8.2.46 NMAC – N, 01/11/2022; A/E, 01/13/2022; A, 03/22/2022]