

This is an amendment to 16.8.2 NMAC amending Section 49 and adding Sections 50, 51, 52, 53, 54, 55 and 56, effective 06/07/2022.

16.8.2.49 ~~[SEVERABILITY: If any part or application of this rule is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Any section of this rule legally severed shall not interfere with the remaining protections and duties provided by this rule.]~~ **CANNABIS CONSUMPTION AREA LICENSURE; GENERAL PROVISIONS:**

- A. License types:** The division may license two classes of cannabis consumption areas:
 - (1) Type I permit:** A licensed cannabis consumption area where cannabis products may be consumed on the licensed premises, except for products consumed through the respiratory system.
 - (2) Type II permit:** A licensed cannabis consumption area where cannabis products may be consumed, including products that are consumed through the respiratory system.
- 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 and division rules, a person shall not sell cannabis products to qualified patients, primary caregivers or reciprocal participants, or directly to consumers.
- D. Other activities allowed:** A licensee may conduct any lawful activity or any combination of lawful activities at a licensed premises; provided that the licensee is not a licensee pursuant to the Liquor Control Act.
- E. Cannabis consumption area license:** Applicants for a cannabis consumption area must meet all qualifications for a cannabis retailer to be approved for, and authorized to conduct, a cannabis consumption area. [16.8.2.49 NMAC – Rp, 16.8.2.49 NMAC, 06/07/2022]

16.8.2.50 APPLICATION REQUIREMENTS FOR CANNABIS CONSUMPTION AREA LICENSE:

- A. An initial application or renewal for cannabis consumption area 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) 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 consumption or retail area and all security requirements, in a portable document format (.pdf), and if requested by the division, digital photographic photos;**
 - (4) fully executed and dated documentation of the applicant’s ownership or legal authority to use the property, buildings, or other facilities, establishing the applicant is, or will be, entitled to possession of the premises for which the application is made;**
 - (5) a copy of a current business license, fire inspection report, and zoning approval;**
 - (6) if applicable, certification the applicant is in good standing with the New Mexico secretary of state, including all documents filed with the New Mexico secretary of state;**
 - (7) a list of all controlling persons, a list of other current or prior licensed cannabis**

businesses, documentation of the applicant's or a controlling person legal name change, and criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;

(8) a detailed description of any criminal convictions of the applicant and any controlling person, including the date of each conviction, dates of incarceration, probation or parole, if applicable, description of the offense, and statement of rehabilitation of each conviction;

(9) 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 purchased for retail sale;

(10) certification the applicant will adhere to retail 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, 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 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

(19) 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.

[16.8.2.50 NMAC - N, 06/07/2022]

16.8.2.51 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS CONSUMPTION AREA LICENSE:

A. Application: A licensed cannabis consumption area shall submit to the division an application form for an amended license, if applicable, pay the required fee, and obtain approval from the division, prior to implementing any of the following:

(1) material or substantial change of the size or location of the premises;

(2) change of licensee's legal or business name;

(3) addition or elimination of a controlling person;

(4) material or substantial change to a license's security system; or

(5) material or substantial modification of the premises.

B. Amended license not required: Changes to standard operating policies and procedures may be

made without providing notification to the division, provided that licensees shall maintain at each licensed premises a copy of all current and prior operating policies and procedures.

C. Requirements and processing of application for amended license: The application for amended license must comply with all requirements applicable to initial applications, except that the application shall be clearly designated as one for an amended license. The division shall approve or deny an application for amended license within 90 days of receiving a completed application. Denial of an application for amendment shall be pursuant to the Uniform Licensing Act.

D. Material or substantial change: Material or substantial changes requiring approval include:
(1) increase or decrease in the size of the premises, including the sale of property used for the cannabis establishment, the purchase of additional property for the use of the cannabis establishment, or a change in the location of the cannabis establishment;

(2) change to a license's security system, including relocation or security points or installation of a new security system; or

(3) modification of the premises to relocate cannabis activities.

[16.8.2.51 NMAC - N, 06/07/2022]

16.8.2.52 PREMISES DIAGRAM:

A. An applicant must submit to the division, with the application, a complete and detailed diagram of the proposed 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. The division shall deny an application if the premises does not qualify for licensure pursuant to federal, state or local laws.

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 a type II cannabis consumption area permit, the diagram shall clearly show the location of the designated smoking area or the area immediately surrounding the building to ensure smoke will not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act.

I. 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.

[16.8.2.52 NMAC - N, 06/07/2022]

16.8.2.53 CANNABIS CONSUMPTION AREA POLICIES AND PROCEDURES:

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

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

(a) employee health and safety training materials;

(b) training requirements for the proper use of health and safety measures and controls;

(c) if applicable, recordkeeping and chain of custody protocols for transportation of

cannabis or cannabis product samples to a cannabis testing laboratory;

(d) recordkeeping and chain of custody protocols for transportation of cannabis products to another cannabis establishment for any purpose;

(e) protocols to ensure that cannabis products, including any samples of cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;

(g) if applicable, protocols for testing sample collection that ensures accurate test results; and

(h) if applicable, procedures for remedial measures to bring cannabis products into compliance with division standards or destruction of a tested batch of cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

(2) employee policies and procedures to address the following minimum requirements:

(a) adherence to state and federal laws;

(b) responding to an emergency, including robbery or a serious accident;

(c) alcohol and drug-free workplace policies and procedures;

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996; and

(3) documentation prepared for each employee and statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program:

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

(a) health and safety hazards;

(b) security procedures; and

(c) record keeping requirements.

(2) Prior to engaging in any cannabis consumption area process:

(a) an overview of the process and standard operating procedure(s);

(b) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;

(c) cleaning and maintenance requirements;

(d) emergency operations, including shutdown; and

(e) any additional information reasonably related to an employee's job duties.

(3) A licensee that retails unpackaged edible cannabis products shall ensure that all personnel who handle edible products successfully complete a food handler course accredited by the American national standards institute (ANSI). Such training shall be maintained while employed by a cannabis consumption area. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

C. Training documentation:

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

(a) a list of all personnel at the premises, including at minimum, name and job duties of each;

(b) dates of training completion for all personnel;

(c) dates of refresher training completion for all personnel;

(d) the signature of each employee verifying receipt and understanding of each training or refresher training completed by the personnel;

(e) any official documentation attesting to the successful completion of required training by personnel.

(2) Licensee may assign responsibility for ensuring compliance by individual personnel with the requirements of this section to supervisory personnel.

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

[16.8.2.53 NMAC - N, 06/07/2022]

16.8.2.54 MINIMUM STANDARDS FOR CANNABIS CONSUMPTION AREAS:

A. Access to cannabis consumption area premises prior to authorization of consumption or retail sale of commercial cannabis: Prior to the division authorizing the consumption or retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection B of Section 26-2C-7 of the Cannabis Regulation Act, NMSA 1978, access to the licensed premises of a retailer shall be limited to:

- (1) individuals who are at least 21 years of age and possess a valid form of identification;
- (2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

B. Access to cannabis consumption area premises upon authorization of consumption or retail sale of commercial cannabis: Upon the division authorizing the retail sale of commercial cannabis, pursuant to Subsection K of Section 26-2C-6 and Paragraph (5) of Subsection B of Section 26-2C-7 of the Cannabis Regulation Act, NMSA 1978, access to the licensed premises of a retailer shall be limited to the following:

- (1) individuals who are at least 21 years of age and possess a valid form of identification; and
- (2) individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program.

C. Customer access to the consumption area:

(1) Individuals shall be granted access to consume or purchase cannabis goods only after the licensed cannabis consumption area or an employee of the licensed cannabis consumption area has confirmed the individual's age and identity, and if applicable, the individual's status as a qualified patient, primary caregiver, or reciprocal participant.

(2) The licensed cannabis consumption area or at least one employee shall be physically present in the consumption area at all times when individuals who are not employees of the licensed retailer are in the retail area.

(3) All sales of cannabis goods, with the exception of cannabis goods sold through delivery, must take place within the retail area of the retailer's licensed premises.

(4) A licensed cannabis consumption area shall only allow cannabis consumption between the hours reported to the division as regular business hours.

(5) A licensed cannabis consumption area may allow qualified patients to bring previously purchased goods from the licensed cannabis consumption area for consumption provided the cannabis product is properly stored in the requisite resealable packaging and the qualified patient provides proof of purchase from the cannabis consumption licensee of the product to be consumed.

D. Requirements while not open for business: At any time the licensed premises is not open for cannabis consumption, a licensed cannabis consumption area shall ensure that:

(1) the licensed premises is securely locked with commercial-grade, nonresidential door locks;

(2) the licensed premises is equipped with an active alarm system pursuant to pursuant to Section 10 of this rule, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and

(3) only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

E. Commercial and medical cannabis consumers:

(1) A licensed cannabis consumption area shall only sell and allow for the consumption of commercial cannabis and cannabis products to individuals who are at least 21 years of age after confirming the customer's age and identity by inspecting a valid form of identification provided by the customer as required by Subsection B of this section.

(2) A licensed cannabis consumption area shall only sell and allow for the consumption of cannabis and cannabis products to individuals who are at least 18 years of age and possess a valid qualified patient, primary caregiver, or reciprocal participant registry identification card from the department of health medical cannabis program, after confirming the customer's age, identity, and valid registry identification.

(3) Acceptable forms of identification include the following

- (a) a document issued by a federal, state, county, or municipal government, or a

political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, and photo of the person;

(b) a valid identification card issued to a member of the armed forces that includes the person's name, date of birth, and photo; or

(c) a valid passport issued by the United States or by a foreign government.

F. Cannabis product display:

(1) Cannabis and cannabis products for customer inspection and sale shall only be displayed in the area where retail activities take place.

(2) Cannabis and cannabis products may be removed from their packaging and placed in containers to allow for customer inspection. The containers shall not be readily accessible to customers without assistance of cannabis consumption area personnel. A container must be provided to the customer by the licensed cannabis consumption area or its employees, who shall remain with the customer at all times that the container is being inspected by the customer.

(3) Cannabis and cannabis products removed from their packaging for display shall not be sold, shall not be consumed, and shall be destroyed, pursuant to Section 15 of this rule, when the cannabis or cannabis products are no longer used for display.

F. Cannabis server permit requirements: all employees of the licensed cannabis consumption area who directly offer, sell or serve cannabis must hold a current and valid cannabis server permit according to 18.8.10 NMAC.

G. No visible consumption of cannabis products: a licensed cannabis consumption area shall ensure that the display and consumption of any cannabis product is not visible from outside of its licensed premises. Licensed cannabis consumption areas may be located outdoors provided that:

(1) all cannabis product is kept out of plain sight and is not visible from a public place without the use of optical aids, such as telescopes or binoculars, or aircraft; and

(2) the licensed cannabis consumption area shall ensure that the outdoor consumption area is surrounded by a sight-obscuring wall, fence, hedge, or other opaque or translucent barrier.

H. Required signage: a licensed cannabis consumption area must post, at all times and in a prominent place inside the consumption area, a warning that is at minimum 12 inches high and 12 inches wide that reads as follows:

<p style="text-align: center;"><u>"Cannabis may only be consumed in designated areas out of public view</u> <u>No consumption of alcohol products on site</u> <u>We reserve the right to refuse entry or service for reasons including visible intoxication</u> <u>It is against the law to drive while impaired by cannabis"</u></p>

[16.8.2.54 NMAC - N, 06/07/2022]

16.8.2.55 DEE JOHNSON CLEAN INDOOR AIR ACT: Smoking and vaping shall be allowed on the licensed premises of type II cannabis consumption area only if the cannabis consumption area is in a designated smoking area or in a standalone building from which smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited pursuant to the Dee Johnson Clean Indoor Air Act.

[16.8.2.55 NMAC - N, 06/07/2022]

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

[16.8.2.56 NMAC – Rn, 16.8.2.49 NMAC, 06/07/2022]

History of 16.8.2 NMAC: [RESERVED]