

This is an emergency amendment to 16.8.8 NMAC amending Sections 9 and 10, effective 1/13/2022.

**16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:**

**A. Initial license designation:** For the purpose of determining the number of mature cannabis plants a licensee may be allocated to cultivate, all cannabis producer and vertically integrated cannabis establishment licenses issued on or after August 15, 2021, will be designated by the division as a level 1, level 2, level 3, or level 4. Cannabis plant count level placement shall be based on the following factors:

- (1) applicant's requested mature cannabis plant limit level;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;
- ~~[(3) applicant's facility diagram and canopy size;]~~
- ~~[(4)]~~ (3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;
- ~~[(5)]~~ (4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and
- ~~[(6)]~~ (5) applicant's social equity plan, 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.

**B. Designated mature cannabis plant levels:**

- (1) Level 1: ~~[201—1,000]~~ 401 – 2,000 mature cannabis plants;
- (2) Level 2: ~~[1,001—3,000]~~ 2,001 – 6,000 mature cannabis plants;
- (3) Level 3: ~~[3,001—6,000]~~ 6,001 – 12,000 mature cannabis plants; or
- (4) Level 4: ~~[6,001—8,000]~~ 12,001 – 16,000 mature cannabis plants.

**C. Incremental increase:** A licensee may increase the number of mature cannabis plants, at the time of renewal and one other time per year. An authorized mature cannabis plant count increase shall only be approved in increments of ~~[500]~~ 1,000 mature cannabis plants.

**D. Limit of incremental increase:** A licensee may be allowed to increase its authorized mature cannabis plant count up to four increments at a time upon application and approval by the division.

**E. Immature Plants:** For purposes of calculating the maximum number of authorized mature cannabis plants, the germination, seedling, and vegetative stages are classified as immature cannabis plants and are excluded from a licensee's approved cannabis plant level.

**F. Maximum cannabis plant count:** In no event shall a licensee be permitted to grow more than ~~[10,000]~~ 20,000 mature cannabis plants at one time.  
[16.8.8.9 NMAC - N, 08/24/2021; A/E, 01/13/2022]

**16.8.8.10 PLANT INCREASE REQUEST:**

**A.** A licensee may request an increase of the number of mature plants licensed at the time of renewal and at one other time per year. To be considered for approval by the division, the licensee shall provide, in addition to required fees set forth in 16.8.11 NMAC, the following information to demonstrate the licensee's capacity for a mature cannabis plant count increase, licensee's compliance with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules:

- (1) a current inventory of mature cannabis plants and harvested cannabis;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;
- ~~[(3) applicant's facility diagram and canopy size;]~~
- ~~[(4)]~~ (3) applicant's reported number of plants harvested in the preceding three months;
- ~~[(5)]~~ (4) applicant's medical cannabis and commercial cannabis sales in the preceding three months;
- ~~[(6)]~~ (5) applicant's total cannabis sales; and

[~~(7)~~] **(6)** progress on implementation of applicant's social equity plan, 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, or other rural historic communities.

**B.** The division shall make a determination to approve or deny a licensee's request to increase mature cannabis plant count based on the information provided and the following factors:

(1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;

(2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;

(3) the existence of any pending or final enforcement action taken by the division against the licensee;

(4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;

(5) whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and

(6) the completeness of information and data provided to the division.

**C. Ground for Denial:** The division may deny a request for additional mature cannabis plants based on the information provided or for violating the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules, including the licensee exceeding its authorized mature cannabis plant count during the prior three-month period.

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