

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS**  
**PART 2 LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS**  
**ESTABLISHMENTS**

**16.8.2.1 ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Cannabis Control Division.  
[16.8.2.1 NMAC - N, 08/24/2021]

**16.8.2.2 SCOPE:** This rule applies to all licensees and applicant for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.  
[16.8.2.2 NMAC - N, 08/24/2021]

**16.8.2.3 STATUTORY AUTHORITY:** The requirements set forth herein are promulgated by the cannabis control division pursuant to the authority granted under the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act.  
[16.8.2.3 NMAC - N, 08/24/2021]

**16.8.2.4 DURATION:** Permanent.  
[16.8.2.4 NMAC - N, 08/24/2021]

**16.8.2.5 EFFECTIVE DATE:** August 24, 2021, unless a later date is cited at the end of a section.  
[16.8.2.5 NMAC - N, 08/24/2021]

**16.8.2.6 OBJECTIVE:** The objective of Part 2 is to ensure the safe production, testing, sale, and consumption of commercial and medical cannabis. Part 2 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.  
[16.8.2.6 NMAC - N, 08/24/2021]

**16.8.2.7 DEFINITIONS:** Unless otherwise defined below, terms used in Title 16, Chapter 8, Part 1, have the same meanings as set for in 16.8.1 NMAC, the Cannabis Regulation Act, and the Lynn and Erin Compassionate Use Act.  
[16.8.2.7 NMAC - N, 08/24/2021]

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

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

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

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

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

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

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

for sales of alcoholic beverages.

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

**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:** All applications for initial licensure, amended licensure, additional premises, and renewal must be made available on the division website. 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.

**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.

**Y. Application for variance:**

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

(2) Petitions shall:

- (a) state the petitioner's name and address;
- (b) state the date of the petition;
- (c) describe the facility or activity for which the variance is sought;
- (d) state the address or description of the premises upon which the cannabis

establishment or activity is located;

- (e) identify the rule(s) from which the variance is sought;
- (f) state in detail the extent to which the petitioner wishes to vary from the rule(s)

and how the petitioner will ensure public health and safety is not negatively impacted;

(g) state why the petitioner believes that compliance with the regulation will impose an unreasonable regulatory burden upon the cannabis establishment or activity; and

(h) state the period of time for which the variance is desired, including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

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

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

(5) The division may grant the requested variance, in whole or in part, subject to conditions, if the variance is not contrary to the Cannabis Regulation Act, or public interest, does not have a negative environmental impact, and is not detrimental to public health and safety, or the division may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the division shall specify the length of time that the variance shall be in place. A permanent variance may be granted. If a permanent variance is not granted, a petitioner may reapply for a variance once the time period expires.

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

**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.

[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 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]

#### **16.8.2.11 RECALL OF CANNABIS:**

**A. Written procedures:** Licensees shall establish and implement written procedures for recalling cannabis and cannabis products that have been sold or otherwise distributed to the public or other cannabis establishments. Recall procedures shall be made available for the division's inspection upon request.

**B. Recall procedures:** The recall procedures shall identify:

- (1) the circumstances in which a recall will be conducted, including the circumstances involving the mislabeling or contamination of products;
- (2) personnel responsible for implementing the recall procedures;
- (3) procedures for notification of all customers who have, or reasonably could have, obtained an affected product, including communication and outreach via broadcast media, as appropriate;
- (4) procedures for notification of any other cannabis establishment that supplied or received the recalled product;
- (5) instructions to be provided to customers or other cannabis establishments for the return or destruction of the recalled product; and
- (6) procedures for the collection and wastage (as may be required by the division) of any recalled product.

**C. Destruction of recalled product:** All recalled products that are intended to be destroyed shall be wasted in accordance with the wastage requirements of the division.

**D. Division notification:** The licensee shall notify the division of any recall within 24 hours of initiating the recall.

**E. Division recall order:** The division may order the immediate recall of cannabis or cannabis products if it deems such action necessary to protect public health and safety.

[16.8.2.11 NMAC - N, 08/24/2021]

#### **16.8.2.12 CHAIN OF CUSTODY:**

**A.** Licensees shall adopt, maintain, and enforce chain of custody procedures and documentation requirements to ensure appropriate tracking and tracing of cannabis and cannabis products. Licensees shall use a paper-based or electronic chain of custody form that documents the possession of cannabis or cannabis products, and includes the following:

- (1) the originating location of the cannabis or cannabis products;
- (2) the time and date of transfer of the cannabis or cannabis products;
- (3) the size, number of boxes, and number of pieces of cannabis or cannabis products;
- (4) the internal batch or lot numbers, and if different, the track and trace batch or lot numbers;
- (5) a dated signature of the person receiving the cannabis or cannabis products; and
- (6) for cannabis samples, in addition to the above, the types of containers, mode of collection, the authorized individual who collected the sample, the date and time of collection, preservation, and requested analyses of the sample.

**B.** Licensees shall also adopt, maintain, and enforce security requirements to ensure security and the safety of cannabis and cannabis products and transport personnel.

[16.8.2.12 NMAC - N, 08/24/2021]

#### **16.8.2.13 REQUIREMENTS FOR THE TRANSPORTATION OF CANNABIS:**

**A. General requirements:** The following requirements apply when disposing of wasted cannabis or cannabis plants or transporting cannabis or cannabis products between licensees or licensed premises:

- (1) transportation of cannabis or cannabis products shall only be conducted by persons holding a cannabis establishment license under the Cannabis Regulation Act or designated employees, or contractors, of a licensee;
  - (2) prior to transporting any cannabis or cannabis products to another licensee, the licensee shall have a completed transfer or sales invoice or receipt and a chain of custody form, the licensee shall only transport cannabis or cannabis products listed on the invoice or receipt and chain of custody form, and the invoice or receipt and chain of custody form may not be altered or changed once transport begins;
  - (3) transportation of cannabis or cannabis products by means of a human powered vehicle or unmanned vehicle is prohibited;
  - (4) cannabis or cannabis products shall only be transported inside of a motor vehicle or trailer in reasonable operating condition and shall not be visible or identifiable from outside of the vehicle or trailer;
  - (5) cannabis or cannabis products shall be locked in a box, container, or cage that is secured within the inside of the vehicle or trailer, including when such a box, container, or cage is located inside of the trunk;
  - (6) vehicles and trailers shall be locked and secured while left unattended;
  - (7) licensees shall not leave a vehicle or trailer containing cannabis or cannabis products unattended in a residential area;
  - (8) vehicles shall have a vehicle alarm system ;
  - (9) packages or containers holding cannabis or cannabis products shall not be tampered with, or opened, during transport;
  - (10) when engaged in the transportation of cannabis or cannabis products, a licensee shall only travel between licensees shipping or receiving cannabis or cannabis products and its own licensed premises;
  - (11) licensees may transport multiple shipments of cannabis or cannabis products at one time in accordance with applicable laws;
  - (12) licensees shall not deviate from the travel requirements described in this section, except for necessary rest, fuel, or vehicle repair stops;
  - (13) under no circumstances may alcoholic beverages be transported with cannabis or cannabis products;
  - (14) vehicles and trailers transporting cannabis or cannabis products are subject to inspection by the division at any licensed premises or during transport at any time;
  - (15) notwithstanding subsection A of this section, cannabis or cannabis products may be transported by foot, hand truck, forklift, or other similar means if it is not operationally feasible to transport cannabis products inside of a vehicle or trailer because the licensed premises that the cannabis products will be transported from and the licensed premises that will be receiving the cannabis products are located within the same building or on the same premises;
  - (16) storage and transportation of cannabis and cannabis products shall be under conditions that will maintain and protect the cannabis or cannabis products against physical, chemical, and microbial contamination as well as against deterioration of the cannabis or cannabis products and the container;
  - (17) the vehicle must be properly registered with the New Mexico motor vehicle division;
  - (18) the driver of the vehicle must be prepared to show proper identification, including a licensee employee badge, driver's license, vehicle registration and proof of insurance, and the appropriate shipping manifest and chain of custody form to law enforcement and the division when requested.
- B. Shipping manifest:** Prior to transporting cannabis or cannabis products, a licensee shall generate a shipping manifest through the track and trace system for the following activities:
- (1) testing and sampling of cannabis or cannabis products;
  - (2) sale of cannabis or cannabis products to a licensee;
  - (3) destruction, wastage, or disposal of cannabis or cannabis products; and
  - (4) any other activity, as required by the division or any other government authority.
- C. Transmittal of manifest:** Licensees shall transmit the shipping manifest to the division and (if applicable) the licensee that will receive the cannabis or cannabis products via the online track and trace portal prior to transporting the cannabis or cannabis products.
- D. Verification of manifest:** Licensees shall ensure and verify that the cannabis or cannabis products being taken into possession for transport at the originating licensed premises are described and accurately reflected in the shipping manifest. For purposes of this section, the licensee may verify that the cannabis or cannabis products are accurately reflected in the shipping manifest by confirming that the number of boxes of cannabis or cannabis

products, type of cannabis or cannabis products, or the units of cannabis or cannabis products matches the label on the boxes containing the cannabis or cannabis products.

**E. Rejection of shipment:** Licensees shall not take into possession or transport:

(1) Any cannabis or cannabis products that are not on the shipping manifest; or

(2) Any cannabis or cannabis products that are less than or greater than the amount reflected on the shipping manifest, with the exception of marginal weight difference due to curing during transport.

**F. Responsibility for discrepancy:** The licensee transporting the cannabis or cannabis product is responsible for any discrepancies between the shipping manifest and the cannabis or cannabis products in its possession during transport, and subject to any enforcement or disciplinary action related to such discrepancy.

**G. Void or change prohibited:** Licensees shall not void or change a shipping manifest after departing from the originating licensed premises.

**H. Documentation of all transport:** A shipping manifest and chain of custody form shall accompany every transport of cannabis products.

**I. Alternative notice of shipment:** Notwithstanding any provision of this section to the contrary, if a transporting licensee cannot obtain access to the track and trace system, the licensee shall complete the shipping manifest outside of the track and trace system and promptly transmit it to the division and the licensee receiving the shipment by electronic mail. If the transporting licensee has access to the track and trace system and the licensee receiving the shipment does not have access to the track and trace system, the transporting licensee shall complete the shipping manifest in the track and trace system, transmit it to the division, and send a copy to the licensee receiving the shipment by electronic mail.

[16.8.2.13 NMAC - N, 08/24/2021]

#### **16.8.2.14 LICENSURE PERIOD, EXPIRATION AND RENEWAL:**

**A. License period:** The licensure period of a license shall be from the date of approval of the license application for a period of 12 months.

**B. Automatic expiration of license:** Unless otherwise renewed, suspended, or revoked, a license shall expire at 11:59 p.m. on the day indicated on the license as the expiration date or other written notification by the division.

**C. License renewal:** To timely renew a license, a completed license renewal application and annual license fee set forth in 16.8.11 NMAC shall be received by the division from the licensee no earlier than 60 calendar days before the expiration of the license and no later than 30 days before the expiration of the license through the division's electronic licensing portal. Failure to receive a notice for license renewal from the division does not relieve a licensee of the obligation to renew all licenses as required. In the event a license renewal application is not submitted and approved prior to the license expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any medical or commercial cannabis or cannabis products until the license is renewed. Upon the nonrenewal of a license, the division may initiate disciplinary action pursuant to the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA 1978.

[16.8.2.14 NMAC - N, 08/24/2021]

#### **16.8.2.15 WASTAGE OF CANNABIS OR CANNABIS PRODUCTS; PERMITTED METHODS:**

Licensees that waste cannabis or cannabis products shall do so by rendering the cannabis or cannabis products unusable and unrecognizable prior to removal from licensed premises. The wastage of cannabis or cannabis products shall be documented, tracked by batch, and recorded in an electronic track and trace system specified by the division. Wastage of cannabis or cannabis products shall occur only within the licensee's ordinary business hours. Licensees shall dispose of wasted cannabis or cannabis products and shall not attempt to incorporate wasted cannabis or cannabis plants into any product intended for human consumption.

**A. Permitted methods of wastage:** Wastage of cannabis or cannabis plants shall be accomplished by grinding and incorporating the cannabis into other ground material, such as soil, compost material, or leaf and yard waste, so that the resulting mixture is at least fifty percent non-cannabis material by volume;

**B. Disposal of wasted cannabis:** Disposal of wasted cannabis or cannabis plants shall be conducted in accordance with all applicable waste disposal laws, including hazardous waste disposal laws.

**C. Holding time:** Cannabis or cannabis products that a licensee intends to waste shall be held in a secured designated holding area for a minimum of 72-hours prior to being wasted. Licensees shall affix to each batch that is held for wasting documents that record information concerning the batch, including batch number or code, plant number, and weight. The batch to be wasted shall not be handled, moved, or wasted during the 72-hour period, unless by specific instruction of the division. Cannabis or cannabis products that are intended to be wasted

may be subject to inspection by the division.

**D. Documentation of wastage; retention:** Licensees shall record the wastage of cannabis or cannabis products, including batch number, weight, plant number, the name of the receiving solid waste facility, dates of wastage and disposal, and any test results associated with a wasted batch, using an electronic system specified by the division, and shall deduct any wasted usable cannabis or cannabis plants from the licensee's inventory. The electronic record shall be retained for no less than two years following the disposal. Licensees shall additionally document the wastage of any cannabis using a video recording and shall retain the video recording of the destruction for no less than 120 days. Licensees shall make the video recording of the destruction available for the division's inspection and copying upon the division's request.

**E. Notice to division:** Licensees shall notify the division of the wastage of cannabis within five business days of the wastage.

[16.8.2.15 NMAC - N, 08/24/2021]

#### **16.8.2.16 QUALITY ASSURANCE TESTING; COMPLAINT PROCEDURE:**

**A. Quality assurance testing by the division:** The division or its representative may conduct quality assurance sampling and testing of cannabis or cannabis products, and may require a licensee to provide samples of cannabis or cannabis products for this purpose. The division may additionally adopt and enforce a randomized testing schedule for the sampling and testing of cannabis or cannabis products. The division may prohibit the sale or transfer of cannabis or cannabis products that are determined by the division to contain prohibited levels of contaminants, or that is found to have been improperly tested, or may require remediation of such cannabis that is consistent with the remediation standards of the division.

**B. Complaints:** If the division receives a verified complaint regarding the presence of mold, bacteria, or another contaminant in cannabis or cannabis products, or if the division has reason to believe that the presence of mold, bacteria, or another contaminant may jeopardize public health and safety, the division or its representative may conduct an inspection and may require a licensee to provide samples of cannabis or cannabis products for testing by the division. Licensees shall allow the division or its representative access to a facility or to collect cannabis or cannabis product samples. To be considered verified, a complaint must be made on a form provided by the division that at a minimum identifies:

- (1) date the complaint is filed;
- (2) location of the cannabis or cannabis product;
- (3) any identifiable features of the cannabis or cannabis product at issue, including the type and amount;
- (4) the nature of the complaint;
- (5) name and contact information of the complainant; and
- (6) complaint must be emailed to the licensee within 5 business days of the division receiving the complaint.

**C. Division sampling and testing requirements:** Division employees may possess cannabis samples for the sole purposes of establishing compliance with the Cannabis Regulation Act or division rules. The division shall comply with the following testing requirements:

- (1) the division shall maintain chain of custody documentation for any cannabis or cannabis product samples taken;
- (2) a written receipt shall be given to the licensee for all testing samples;
- (3) all testing samples shall be placed into a sealed container and clearly labeled;
- (4) all testing samples shall be tested by the division or a designated testing facility; and
- (5) the quantity of cannabis or cannabis products that is gathered by the division from a licensee for testing purposes shall not exceed the applicable sample sizes required by division rules.

**D. Cost of testing:** The licensee shall bear the cost of any testing required by the division.  
[16.8.2.16 NMAC - N, 08/24/2021]

**16.8.2.17 FIRE SAFETY LAWS:** Licensees shall ensure all licensed premises are compliant with Article 52 of the New Mexico Statutes Annotated and any associated rules, including rules governing: posting of address, exit signs, emergency lighting, egress paths, evaluation plan, electrical wiring and lighting, exits and exit access, doors, egress hardware, aisle width, chemical storage, fire extinguishers, fire alarm, sprinkler system and fire suppression system, firewalls, combustible waste and housekeeping, storage, access from the exterior, and weeds, grass, vines or other growth capable of igniting.

[16.8.2.17 NMAC - N, 08/24/2021]

**16.8.2.18 CONSTRUCTION OR ALTERATION OF CANNABIS ESTABLISHMENT BUILDINGS:**

If applicable, licensees shall ensure that all licensed premises are in compliance with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978 and the LPG and CNG Act, Section 70-5-1 *et seq.*, NMSA 1978, including associated rules, as well as applicable codes, standards, zoning laws, licensing laws, and fire codes. If applicable, licensees shall further ensure that each structure, including manufactured homes used pursuant to Section 60-14-4(S), NMSA 1978, obtains a Certificate of Occupancy pursuant to 14.5.3.13 NMAC prior to occupancy and use of the structure.

[16.8.2.18 NMAC - N, 08/24/2021]

**16.8.2.19 OCCUPATIONAL SAFETY:** Licensees shall comply with the Occupational Health and Safety Act, Section 50-9-1 *et seq.*, NMSA 1978 and any associated rules.

[16.8.2.19 NMAC - N, 08/24/2021]

**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) 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.

**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 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 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]

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

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

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

**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, or the purchase of additional property for the use of the cannabis establishment;

- (2) a change in the licensee’s access to the water source submitted with an application for initial, amended, or renewal licensure or a ten percent, or more, increase in the licensee’s water usage;

- (3) change to a license’s security system, including relocation or security points or installation of a new security system; or

- (4) modification of the premises to relocate cannabis activities.

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

#### **16.8.2.24 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.

[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.

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

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

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

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

(a) employee health and safety training materials;

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

(c) representative sampling and analytical testing of cannabis or cannabis products

for contaminants prior to wholesale or transfer to another cannabis establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices;

(d) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory, consistent with 16.8.2.12 NMAC and 16.8.2.13 NMAC;

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

(f) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion, consistent with Subsection L of 16.8.7.8 NMAC;

(g) protocols for testing sample collection that ensures accurate test results, establishment consistent with self-sampling guidance issued annually by the division on September 1 and made available on the division website, the sunshine portal, and at the division's district, field and regional offices; and

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

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

(a) adherence to state and federal laws;

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

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

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

(g) if applicable, confidentiality laws, including the Health Insurance Portability and

Accountability Act of 1996; and

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

**B. Training program:**

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

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

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

(e) emergency procedures;

(f) security procedures; and

(g) record keeping requirements.

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

**C. Training documentation:**

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

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

(b) documentation of training topics and dates of training completion for all personnel;

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

(d) the signature of verifying receipt and understanding of each training or refresher training completed.

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

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

[16.8.2.26 NMAC – N, 08/22/2021; A/E, 12/06/2021; A/E, 03/10/2022]

#### 16.8.2.27 MINIMUM REQUIREMENTS FOR THE PRODUCTION OF CANNABIS:

**A. General requirements:** Licensees shall ensure the following:

(1) all production activities are done on premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Acts;

(2) the licensee's right to use the quantity of water sufficient to meet the production facility's needs remains in good standing;

(3) plumbing shall be of adequate size and design, adequately installed, and maintained to carry sufficient quantities of water to required locations throughout the facility, including sufficient quantities of water to properly convey sewage and liquid disposable waste from the facility; and

(4) all weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture.

**B. Cultivation plan:** Licensees shall create and maintain a cultivation plan, which shall include all of the following:

(1) a detailed premises diagram showing all cultivation activity areas, boundaries, and dimensions in feet.

(2) square foot measurement of mature cannabis plant cultivation area(s), including aggregate square footage if the mature cannabis plant cultivation areas are noncontiguous;

(3) area(s) outside of the mature cannabis plant cultivation areas where only immature plants shall be maintained, if applicable;

(4) designated pesticide and other agricultural chemical storage area(s);

(5) designated processing area(s) if the licensee will process on site;

(6) designated packaging area(s) if the licensee will package products on site;

(7) designated composting area(s) if the licensee will compost plant or cannabis waste on site;

(8) designated secured area(s) for cannabis waste if different than composting area(s);

(9) designated area(s) for harvested cannabis storage;

(10) designated seed production area(s) which may contain mature plants for nursery purposes only.

**C. Lighting:** For indoor and mixed-light cultivation, a licensee shall create and maintain a lighting diagram, which shall include the following:

(1) location of all lights in the cannabis plant cultivation area(s); and

(2) maximum wattage, or wattage equivalent, of each light.

**D. Pest management:** Licensees shall create and maintain a pest management plan, which shall include product name and active ingredient(s) of all pesticides to be applied to cannabis during any stage of plant growth. Licensees are encouraged to create and implement integrated pest management protocols, including chemical, biological, and cultural methods to control or prevent the introduction of pests on the cultivation site.

**E. Cannabis waste:** Licensees shall create and maintain cannabis waste procedures meeting the requirements set forth in 16.8.2.22 NMAC.

**F. Safety and health requirements:** Licensees shall ensure the following:

(1) all equipment, implements, and fixtures that are used for the production of cannabis shall be used exclusively for the production of cannabis and meet sanitation and safety standards required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, division rules, and any other state or federal laws;

(2) production is conducted in a manner that does not allow cross-contamination from chemical or biological hazards;

(3) any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including a boil, sore, or infected wound, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with preparation surfaces for cannabis, shall be excluded from any operations which may be anticipated to result in such contamination until the condition is

corrected;

- (4) hand-washing facilities are provided that are adequate, accessible, furnished with running water at a suitable temperature, conveniently located in indoor production facilities, in restrooms, and wherever good sanitary practices require employees to wash or sanitize their hands, and stocked with effective hand-cleaning and sanitizing preparations, and sanitary towel service or suitable drying devices;
- (5) all persons involved in preparing or handling cannabis conform to hygienic practices while on duty, including:
  - (a) maintaining adequate personal cleanliness;
  - (b) wearing gloves while handling processed cannabis or unpackaged but processed cannabis products;
  - (c) possessing a valid food handler card issued by an ANSI/ASTM e2659-09 accredited Food Handler Training Certificate Program approved by the New Mexico environment department if handling processed cannabis or unpackaged but processed cannabis products; and
  - (d) washing hands thoroughly in an adequate hand-washing facility before starting work, at any other time when the hands may have become soiled or contaminated, and both before putting gloves on and after removal of gloves, if the person is handling processed cannabis or unpackaged but processed cannabis products;
- (6) operating systems for waste disposal are maintained in an adequate manner so that they do not constitute a source of contamination in areas where cannabis is exposed;
- (7) water damage is properly and timely treated to protect health and safety of employees and the public, and that fiberglass and other insulation material is not exposed;
- (8) adequate safety-type lighting in all areas where cannabis is produced or stored, if applicable, and where equipment is cleaned;
- (9) rubbish is disposed of so as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage, or breeding place for pests;
- (10) premises, fixtures, and physical facilities where cannabis or cannabis products are produced are maintained to ensure the health and safety of employee and the public;
- (11) contact surfaces, including utensils and equipment used for preparation of cannabis or cannabis products, are cleaned and sanitized as frequently as necessary to protect against contamination;
- (12) only environmental protection agency (EPA) registered sanitizing agents are used in production operations and that they are used in accordance with labeled instructions;
- (13) toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of cannabis or cannabis products and that otherwise satisfies the requirements of this rule;
- (14) storage and transportation of cannabis and cannabis products is accomplished under conditions that will maintain security and protect the cannabis or cannabis products against physical, chemical, and microbial contamination, as well as against deterioration of the cannabis or cannabis products and the container; and
- (15) that there is sufficient space for placement of equipment and storage of material as is necessary for the maintenance of sanitary operations for production of cannabis.

[16.8.2.27 NMAC - N, 08/24/2021; A/E, 12/02/2021]

**16.8.2.28 USE OF PESTICIDES BY LICENSED PRODUCERS:** The use of any pesticide by a licensed producer in the growth of cannabis shall be in accordance with the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978, and any associated rules.

[16.8.2.28 NMAC - N, 08/24/2021]

**16.8.2.29 CANNABIS MANUFACTURER LICENSURE; 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 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;
- (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]

**16.8.2.31 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS MANUFACTURER LICENSE:**

**A. Application:** A licensed manufacturer shall submit to the division an application form for an amended license, if applicable, and obtain approval from the division, prior to implementing any of the following:

- (1) material or substantial change of the size of the premises;
- (2) change of licensee’s legal or business name;
- (3) change or modification in extraction type(s) or equipment;
- (4) material or substantial change in water source;
- (5) addition or elimination of a controlling person;
- (6) material or substantial change to a licensee’s security system; or
- (7) 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;
- (2) a modification in the licensee’s access to the water source submitted with an application for initial or renewal licensure or a 10 percent, or more, increase in the licensee’s water usage;
- (3) change to a licensee’s security system, including relocation or security points or installation of a new security system; or
- (4) modification of the premises to relocate cannabis activities.

[16.8.2.31 NMAC – N/E, 09/08/2021; N, 12/28/2021]

**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.

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

**16.8.2.33 CANNABIS MANUFACTURER POLICIES AND PROCEDURES:**

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

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

(a) representative sampling and analytical testing of cannabis or cannabis products for contaminants prior to wholesale or transfer to another cannabis establishment;

(b) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product samples to a cannabis testing laboratory;

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

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

(e) protocols for testing sample collection that ensures accurate test results; and

(f) procedures for destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;

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

(a) adherence to state and federal laws;

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

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

(d) safety and security procedures;

(e) occupational health and safety;

(f) crime prevention techniques; and

(g) if applicable, 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, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:

(a) employee health and safety training materials;

(b) health and safety hazards;

(c) hazard communication training for all solvents or chemicals used at the licensed premises and as described in the safety data sheet for each solvent or chemical;

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

(e) emergency procedures;

(f) security procedures; and

(g) record keeping requirements.

(2) Prior to independently engaging in any cannabis manufacturing process, including but not limited to extraction:

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

(b) quality control procedures;

(c) hazard analysis and control procedures as appropriate;

(d) proper and safe usage of equipment or machinery;

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

(f) cleaning and maintenance requirements;

- (g) emergency operations, including shutdown; and
- (h) any additional information reasonably related to an employee's job

duties.

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

**C. Training documentation:**

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

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

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

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

[16.8.2.33 NMAC – N/E, 09/08/2021; N, 12/28/2021]

**16.8.2.34 MINIMUM STANDARDS FOR THE MANUFACTURE OF CANNABIS PRODUCTS:**

**A. General requirements:** Licensees shall ensure the following:

- (1) manufacturing shall be done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;
- (2) the licensee's right to use the quantity of water sufficient to meet the manufacturing facility's needs remains in good standing;
- (3) weighting or measuring devices that are used in the wholesale of cannabis be appropriately documented as having undergone certified registration and calibration that is in accordance with applicable requirements of the New Mexico department of agriculture; and
- (4) licensee shall notify the division of any changes to the days or hours of business operation;

**B. Permissible Extractions:**

- (1) Except as provided in Paragraph (2), cannabis extraction shall only be conducted using the following methods:
  - (a) Mechanical extraction, such as dry screens, sieves, or presses, potable water and ice made from potable water, cryogenic or subzero manufacturing not involving a solvent, or pressure and temperature;
  - (b) Chemical extraction using a nonvolatile solvent such as a nonhydrocarbon-based or other solvent such as water, vegetable glycerin, vegetable oils, animal fats, or food-grade glycerin, (nonhydrocarbon-based solvents shall be food grade);
  - (c) Chemical extraction using a division approved closed loop extraction system; or
  - (d) A-method authorized by the division pursuant to Paragraph (2) below.
- (2) To request authorization from the division to conduct cannabis extraction using a method other than those specified in Subparagraphs (a) – (c) above, the applicant or licensee shall submit a detailed description of the extraction method, including any documentation that validates the method and any safety procedures to be utilized to mitigate any risk to public or worker health and safety.
- (3) Extraction equipment shall be used and operated in accordance with its intended manufacturer use and design.
- (4) Current safety data sheets shall be kept on the premises for all chemicals used in the extraction process.

**C. Volatile Solvent Extractions:** Chemical extractions using volatile solvents shall be subject to the following minimum requirements:

- (1) hydrocarbon-based solvents shall be at least 99.5 percent purity with a certificate of analysis from the manufacturer to confirm purity;
- (2) ethyl alcohol must be food grade, and non-denatured in composition;
- (3) solvents shall be free of odorants, bitterants, or other additives and stored, handled, and disposed of in accordance with local, state, and federal regulations,
- (4) all extractions shall be performed in a closed loop extraction system, unless approved by the division, as described in Subsection B of 16.8.2.34 NMAC; and
- (5) licensees shall not use ignition sources including but not limited to a heat gun or any open flame source next to extraction equipment that utilizes volatile solvents, including in rooms designated solely for extraction or in areas that contain or uses flammable liquids and gasses.

**D. Closed-Loop Extraction System Requirements:**

(1) Closed loop systems, other equipment used, the extraction operation, and facilities must be approved for use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

- (a) National Fire Protection Association (NFPA) standards;
  - (b) International Building Code (IBC);
  - (c) International Fire Code (IFC); or
  - (d) Other applicable standards including all applicable fire, safety, and building codes related to the processing, handling and storage of the applicable solvent or gas.
- (2) All pressure vessels must comply with the Construction Industries Licensing Act, Section 60-13-1 *et seq.*, NMSA 1978, including associated rules, applicable codes, and standards.
- (3) A list of the name(s) of all trained employees must be prominently displayed inside or immediately outside of the extraction area.
- (4) A licensee that is currently approved to use CO<sub>2</sub> or a volatile solvent for extraction has 6 months from the effective date of this rule to comply with the applicable requirements. Nothing in this subsection is intended to relieve a licensee of its obligation to comply with any applicable federal, state, or local laws and regulations.

[16.8.2.34 NMAC – N/E, 09/08/2021; N, 12/28/2021]

**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 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 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]

### **16.8.2.37 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RETAILER LICENSE:**

**A. Application:** A licensed retailer 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;
- (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 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;
- (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.

[16.8.2.37 NMAC – N, 12/28/2021]

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

**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]

#### **16.8.2.39 CANNABIS RETAILER POLICIES AND PROCEDURES:**

**A. Minimum policy and procedure requirements:** A licensed retailer 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 or cannabis products to another cannabis establishment for any purpose;
- (e) protocols to ensure that cannabis or cannabis products, including any samples of cannabis or cannabis products, are transported and stored in a manner that prevents degradation, contamination, tampering, or diversion;
- (g) if applicable, protocols for testing sample collection that ensures accurate test results; and
- (h) if applicable, procedures for remedial measures to bring cannabis or cannabis products into compliance with division standards or destruction of a tested batch of cannabis or cannabis products if the testing samples from the tested batch indicate noncompliance with applicable health and safety standards;
- (2) employee policies and procedures to address the following minimum requirements:
  - (a) adherence to state and federal laws;
  - (b) responding to an emergency, including robbery or a serious accident;
  - (c) alcohol and drug-free workplace policies and procedures;
  - (d) safety and security procedures;
  - (e) occupational safety;
  - (f) crime prevention techniques; and
  - (g) 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, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:
  - (a) health and safety hazards;
  - (b) security procedures; and
  - (c) record keeping requirements.
- (2) Prior to engaging in any cannabis retail 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 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). The licensee shall obtain documentation evidencing the fulfillment of this requirement.

**C. Training documentation:**

- (1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:
  - (a) a list of all personnel at the premises, including at minimum, name and job duties of each;
  - (b) documentation of training topics and dates of training completion for all personnel;
  - (c) dates of refresher training completion for all personnel; and
  - (d) the signature of each employee verifying receipt and understanding of each training or refresher training completed.
- (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 two years for current employees and at least six months after the termination of an employee's employment.

[16.8.2.39 NMAC - N 12/28/2021]

**16.8.2.40 MINIMUM STANDARDS FOR RETAIL OF CANNABIS PRODUCTS:**

**A. Access to retailer premises prior to authorization of retail sale of commercial cannabis:** Prior to 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 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 retailer premises upon authorization of 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 retail area:**

(1) Individuals shall be granted access to purchase cannabis goods only after the licensed retailer or an employee of the licensed retailer 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 retailer or at least one employee shall be physically present in the retail 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 retailer shall sell and deliver cannabis goods only between the hours reported to the division as regular business hours.

**D. Requirements While Not Open for Business:**

(1) At any time the licensed premises is not open for retail sales, a licensed retailer shall ensure that:

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

(b) the licensed premises is equipped with an active alarm system 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

(c) 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 retail customers:**

(1) **Commercial sales:** A licensed retailer shall only sell 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) **Medical sales:** A licensed retailer shall only sell 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 of the person; 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 retail area.

(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 retailer personnel. A container must be provided to the customer by the licensed retailer 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.

**G. Cannabis and cannabis products for sale:**

(1) A licensed retailer shall not make any cannabis or cannabis products available for sale or delivery to a customer unless:

(a) the cannabis or cannabis products were received by the retail licensee from a licensed producer, licensed producer microbusiness, licensed manufacturer, licensed vertically integrated cannabis establishment, or licensed integrated cannabis microbusiness;

(b) the licensed retailer has verified that the cannabis or cannabis products have not exceeded their expiration or sell-by date if one is provided;

(c) in the case of manufactured cannabis products, the cannabis product complies with all requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(d) the cannabis or cannabis products have undergone laboratory testing as required by the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;

(e) the packaging and labeling of the cannabis or cannabis product complies with Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules; and

(f) the cannabis or cannabis product complies with all applicable requirements found in the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules.

**H. Commercial and medical cannabis purchase limits and excise tax:**

(1) A licensed retailer shall not sell more than the following amounts at one time to a single commercial cannabis customer:

(a) two ounces of cannabis;

(b) 16 grams of cannabis extract;

(c) 800 milligrams of edible cannabis; and

(d) six immature cannabis plants.

(2) A licensed retailer shall adhere to department of health medical cannabis rules related to the sale of cannabis and cannabis products to qualified 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.

(3) Pursuant to the Cannabis Tax Act, Section 7-42-2 NMSA 1978, cannabis excise tax shall not apply to retail sale of medical cannabis or cannabis products. Cannabis excise tax shall apply to commercial sales of cannabis and cannabis products.

(4) The limits provided in Paragraph (1) and Paragraph (2) of this subsection shall not be combined to allow a customer to purchase cannabis or cannabis products in excess of the limits provided in this section.

(5) The prohibition set forth in paragraph one above shall not prohibit the sale of different product types to a single customer, as long as the total amount sold does not exceed the limits set forth above.

**I. Customer Return of Cannabis Goods:**

(1) For the purposes of this subsection, "customer return" means a customer's return of cannabis or cannabis products that were purchased from a licensed retailer, back to the licensed retailer the cannabis or cannabis products were purchased from.

(2) A licensed retailer may accept customer returns of cannabis or cannabis products that were previously sold to a customer.

(3) A licensed retailer shall not resell cannabis or cannabis products that have been returned.

(4) A licensed retailer shall treat any cannabis or cannabis products abandoned on the licensed retailer premises as a customer return.

(5) A licensed retailer shall destroy all cannabis or cannabis products that have been returned to the licensed retailer by a customer, pursuant to Section 15 of this rule.

**J. Free cannabis or cannabis products:**

(1) A licensed retailer shall not provide free cannabis or cannabis product(s) to any person. A licensed retailer shall not allow individuals who are employed or not employed by the licensed retailer to provide free cannabis or cannabis product(s) to any person on the licensed premises.

(2) Notwithstanding Paragraph (1) of this section, in order to provide access to medicinal

cannabis patients who have difficulty accessing medicinal cannabis or cannabis product(s), a licensee may provide free cannabis or cannabis product(s) if all of the following criteria are met:

- (a) free cannabis or cannabis products are provided only to a qualified patient, primary caregiver, or a reciprocal participant in possession of a valid registry identification card from the department of health medical cannabis program;
- (b) the cannabis or cannabis products comply with all applicable requirements of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act and division rules;
- (c) the cannabis or cannabis products have been properly recorded in the track and trace system as belonging to the licensed retailer;
- (d) the cannabis or cannabis products shall be applied toward the adequate supply for a medicinal cannabis customer pursuant to department of health rules;
- (e) the transaction shall be properly recorded in the licensed retailer's inventory records and the track and trace system.

**K. Inventory reconciliation:**

- (1) A licensed retailer shall perform a reconciliation of its inventory at least once every calendar month.
- (2) In conducting an inventory reconciliation, a licensed retailer shall verify that the licensed retailer's physical inventory is consistent with the licensed retailer's records pertaining to inventory.
- (3) The result of inventory reconciliation shall be retained in the licensed retailer's records and shall be made available to the division upon request.
- (4) If a licensed retailer identifies any evidence of theft, diversion, or loss, the licensed retailer shall notify the division pursuant to Subsection N of 16.8.2.8 NMAC.

**L. Record of Sales:**

- (1) A licensed retailer shall maintain an accurate record of every sale of cannabis and cannabis product made to a customer.
- (2) A record of cannabis or cannabis product sold to a customer shall contain the following minimum information:
  - (a) the first name and employee number of the employee who processed the sale;
  - (b) the date and time of the transaction;
  - (c) a list of all the cannabis or cannabis product purchased, including the quantity purchased; and
  - (d) the total amount paid for the sale including the individual prices paid for each cannabis or cannabis product purchased and any amounts paid for cannabis excise tax.
- (3) For the purposes of this section, an employee number is a distinct number assigned by a licensed retailer to their employees that would allow the licensed retailer to identify the employee on documents or records using the employee number rather than the employee's full name. A licensed retailer shall be able to identify the employee associated with each employee number upon request from the division.
- (4) All licensed retailer-specific records shall be maintained for at least 12 months.

**M. Retailer premises to retailer premises transfer:**

- (1) A licensee who has multiple licensed retail premises may arrange for the transfer or sale of cannabis or cannabis products from one licensed retail premises to another licensed retail premises if both licensed retail premises are held under the same ownership.
- (2) A licensee may arrange for the transfer or sale of cannabis or cannabis products to another cannabis retailer if both licensees properly record the transaction in the licensed retailer's inventory records and the track and trace system
- (3) Cannabis or cannabis product transferred to a licensed retail premises under this subsection may be sold by the licensed retailer receiving the cannabis or cannabis product only if the cannabis or cannabis products comply with all requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.

**N. Use of licensed cannabis couriers:**

- (1) A retail cannabis licensee may, consistent with this rule, and with the consent of a qualifying patient, primary caregiver, reciprocal participant, or an individual who is at least 21 years of age, utilize a license cannabis courier to deliver cannabis or cannabis products to a qualifying patient, primary caregiver, reciprocal participant, or an individual who is at least 21 years of age;
- (2) A retail cannabis licensee shall require a consumer making a purchase for delivery by a cannabis courier licensee to have the valid government-issued identification card, the consumer intends to use to

verify their age at the time of delivery, and if applicable, a medical cannabis program registry identification card, examined and authenticated by the retail cannabis licensee prior to the order; and

(3) Pre-verification of the consumer's identity shall be performed through a division approved electronic means, which may include a third-party technology platform, and shall include examination of a consumer's valid, unexpired, medical cannabis identification card, if applicable, and photo identification issued by a federal or state government that includes the name, date of birth, and picture of the intended recipient.

[16.8.2.40 NMAC – N, 12/28/2021]

**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 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 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 a consumer who is at least 21 years of age.

(2) Licensees shall only deliver 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 products, and products not containing THC that are

for sale within the licensed retail establishment from which the sale and delivery is initiated 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 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]

**16.8.2.42 APPLICATION REQUIREMENTS FOR CANNABIS COURIER LICENSE:**

- A.** An initial application or renewal for cannabis courier licensure shall include the following:
- (1) Contact information for the applicant, 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) physical address and mailing address, if different; and
    - (g) demographic data pursuant to the Cannabis Regulation Act;
  - (2) proof the applicant 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) criminal history screening documents as set forth in 16.8.2.9 NMAC and the Cannabis Regulation Act;
  - (4) a detailed description of any criminal convictions of the applicant, 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;
  - (5) certification the applicant will adhere to courier requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
  - (6) 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;
  - (7) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
  - (8) 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;
  - (9) 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;

(10) certification the applicant is not licensed under the Liquor Control Act;

(11) 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

(12) 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 by telephone, mail, or electronic mail;

(2) requiring a face-to-face or virtual meeting and the production of additional documentation;

or

(3) consulting with state or local governments.

[16.8.2.42 NMAC – N, 12/28/2021]

#### **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 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.

(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]

#### **16.8.2.45 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS TESTING LABORATORY LICENSE:**

**A. Application:** A cannabis testing laboratory shall submit to the division an application form for an amended license and obtain approval from the division, prior to implementing any of the following:

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

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

- (3) material or substantial change in testing methods or equipment;
- (4) addition or elimination of a controlling person;
- (5) material or substantial change to a licensee’s security system; or
- (6) material or substantial modification of the premises.

**B. Requirements and processing of application for amended license:** The application for amended license shall:

- (1) be clearly designated as one for an amended license;
- (2) supply any information representing a material change from the most recent application;

and

(3) include an initial demonstration of capability for any new or materially different method for performing a required test, including testing for an additional analyte or testing for an analyte using a different type of instrument.

**C. Approval or denial:** 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) testing for an analyte required in required testing using a different type of instrument; or

(3) change to a licensee’s security system, including relocation of security points or installation of a new security system.

**E. Amended license not required:** Other changes to standard operating policies and procedures, unless material or substantial, 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.

[16.8.2.45 NMAC – N, 01/11/2022]

**16.8.2.46 TESTING LABORATORY PREMISES DIAGRAM:**

**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]

**16.8.2.47 CANNABIS TESTING LABORATORY POLICIES AND PROCEDURES:**

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

- (1) sample collection procedures, including:
  - (a) specifications for sampling tools and containers;
  - (b) use of gloves and other personal protective equipment to prevent contamination
- (c) access to complete batches of cannabis products;

of batches;

- and
  - (d) determination of the number of sample increments required, based on batch size;
  - (e) random selection of sample increments;
- (2) chain of custody;
- (3) data recording;
- (4) sample storage and integrity, including sealing of sample containers and, if applicable, the use of preservatives, inert gas, or other measures;
- (5) transportation, including protection from light, heat, and humidity;
- (6) sample preparation of each matrix for each test;
- (7) methodology for each test, including:
  - (a) sample preparation;
  - (b) reagent, solution, and reference standard preparation;
  - (c) instrument setup, as applicable;
  - (d) standardization of volumetric reagent solutions, as applicable;
  - (e) data acquisition; and
  - (f) calculation of results
- (8) data quality parameters for each test, including:
  - (a) specificity;
  - (b) limit of detection; and
  - (c) limit of quantitation;
- (9) reporting of results;
- (10) quality assurance;
- (11) employee policies and procedures, including but not limited to:
  - (a) adherence to state and federal laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act;
  - (b) responding to an emergency, including robbery or a serious accident or incident;
  - (c) alcohol and drug-free workplace policies and procedures;
  - (d) safety and security procedures;
  - (e) occupational health and safety;
  - (f) crime prevention techniques; and
  - (g) if applicable, confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996;
- (12) equipment cleaning, maintenance, and inspection standards and schedules;
- (13) standards for labeling, storage, expiration, and re-qualification dates and records relating to reagents, solutions, and reference standards;
- (14) sample analysis procedures, including but not limited to procedures for the use of only primary or secondary standards for quantitative analyses;
- (15) standards for data recording, review, storage, and reporting that include, but are not limited to, standards to ensure:
  - (a) that data is recorded in a manner consistent with this rule, and that it is reviewed to verify that applicable standards of practice, equipment calibration, and reference standards were applied before reporting;
  - (b) that all data, including raw data, documentation, protocols, and reports are retained in accordance with the requirements of this rule; and
  - (c) that reports are the property of the business or individual who provided the sample, and reports meet the requirements of this rule; and
- (16) creation of chain of custody documentation for each sample.

**B. Training program:**

- (1) Licensee shall implement a training program, approved by the division, to ensure that all personnel present at the premises are provided information and training that, at minimum, covers the following topics within 30 days of the start of employment:
  - (a) employee health and safety;
  - (b) health and safety hazards;
  - (c) hazard communication;
  - (d) security procedures; and
  - (e) record keeping/track and trace.

- (2) A cannabis testing laboratory must provide and document training on the following subjects before permitting any authorized person to independently collect samples of cannabis products:
  - (a) an overview of the process and standard operating procedures of the laboratory;
  - (b) quality control procedures, including sterile collection of samples and storage;
  - (c) chain of custody, recordkeeping, and tracking requirements;
  - (d) calibration, use, and maintenance of measuring devices;
  - (e) transportation procedures; and
  - (f) any additional information reasonably related to sample collection.
- (3) A cannabis testing laboratory must provide and document training on the following subjects before an agent or employee independently performs any cannabis testing process:
  - (a) an overview of the process and standard operating procedure(s);
  - (b) quality control procedures;
  - (c) chain of custody and tracking requirements;
  - (d) proper and safe usage of equipment or machinery;
  - (e) safe work practices applicable to an employee's job tasks, including appropriate use of any necessary safety or sanitary equipment;
  - (f) cleaning and maintenance requirements;
  - (g) emergency operations, including shutdown; and
  - (h) any additional information reasonably related to an employee's job duties.

**C. Training documentation:**

- (1) Licensee shall ensure that all personnel receive annual refresher training to cover, at minimum, the topics listed in this section. The licensee shall maintain a record which contains at minimum:
  - (a) a list of all personnel at the premises, including at minimum, name and job duties of each;
  - (b) documentation of training topics and dates of training completion for all personnel;
  - (c) dates of refresher training completion for all personnel; and
  - (d) the signature of each employee verifying receipt and understanding of each training or refresher training completed.

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

(3) Licensees shall maintain documentation of an employee's training for a period of two years for current employees and at least six months after the termination of an employee's employment.

**D. Materials to be maintained on premises:** A cannabis testing laboratory shall maintain on its premises, and shall promptly present to the department upon request:

- (1) all results of laboratory tests conducted on cannabis or cannabis derived products for a period of at least two years;
- (2) operating manuals and other documentation for each piece of equipment;
- (3) records of required inspection, calibration, and maintenance for each piece of equipment, including:
  - (a) the date of the operation;
  - (b) the person who performed it;
  - (c) the written procedure used; and
  - (d) any deviations from the written procedure;
- (4) records of non-routine repairs performed on equipment as a result of failure and malfunction, including:
  - (a) the nature of the repair;
  - (b) how and when the need for the repair was discovered; and
  - (c) any remedial action taken in response to the repair;
- (5) the certificate of analysis for all reference standards, whether acquired or internally produced.
- (6) current material safety data sheets for all chemicals used;
- (7) documentation of proficiency training.

[16.8.2.47 NMAC – N, 01/11/2022]

**16.8.2.48 MINIMUM STANDARDS FOR THE TESTING OF CANNABIS PRODUCTS:**

- A. General requirements:** Cannabis testing laboratories shall ensure the following:
- (1) testing is done in premises that are in compliance with state and local laws that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act; and
  - (2) weighting or measuring devices that are used in testing are appropriately documented as having undergone certified registration and calibration that is in accordance with requirements of the New Mexico department of agriculture applicable to commercial transactions.
- B. Sample collection:** For all required testing or testing for the purposes of labeling claims, a person authorized by this rule shall collect the required samples according to the following guidelines:
- (1) Only the quantity of cannabis product specified in the cannabis testing laboratory’s operating procedures as necessary for all tests to be performed and to ensure the proper number of representative samples shall be collected.
  - (2) The number of sample increments per batch, as specified in the cannabis testing laboratory’s operating procedures as necessary for all tests to be performed, shall be collected.
    - (a) The number of sample increments shall not be less than the minimum quantity specified in Table 2.
    - (b) Samples shall be taken randomly throughout the length, width, and depth of the batch.
    - (c) The standard sample increment size shall be 0.5 grams, unless specified otherwise in the cannabis testing laboratory’s operating procedures.
  - (3) Samples from the same batch shall be secured in a single use, tamper-evident container that meets the specifications of the laboratory’s policies and procedures.
  - (4) Samples shall be labeled according to the laboratory’s policies and procedures, with, at minimum:
    - (a) the license number of the establishment from which the sample was collected;
    - (b) the batch number assigned by the establishment;
    - (c) the date the sample was taken;
    - (d) the name of the person collecting the sample; and
    - (e) the tests to be performed;
  - (5) If homogeneity testing is required, each sample increment necessary for homogeneity testing shall be collected and transported in individual sealed containers.

Table 1, Minimum quantity of sample increments		
Matrix Type	Batch Size	Minimum Sample Increments
Dried cannabis	≤5.0 lbs.	10
	>5.0 lbs.; ≤15.0 lbs.	10 + 5 per pound or fraction thereof above 5 pounds
Other products	≤2.0 lbs.	10
	>2.0 lbs.	5 per pound

- C. Transportation:** All samples shall be transported according to the general requirements of 16.8.2.13 NMAC and the specifications found in the cannabis testing laboratory’s policies and procedures.
- D. Receipt of test samples:** A cannabis testing laboratory may receive test samples of cannabis products from any cannabis establishment, adult 21 years of age or older, qualified patient, or primary caregiver as authorized by this rule.
- E. Storage:** A cannabis testing laboratory shall segregate and store cannabis samples in a manner that prevents contamination or degradations and shall safeguard any cannabis products and cannabis waste against diversion.
- (1) A cannabis testing laboratory shall provide one or more secure cabinets or vaults for the storage of cannabis samples, reference standards, and cannabis waste, and access shall be limited to persons authorized to conduct tests or dispose of cannabis waste.
  - (2) Cannabis samples shall be stored in environmental conditions that minimize physical or chemical degradation and microbial contamination, including protection from light, heat, and humidity. Any

cannabis product that requires refrigeration shall be kept at a temperature no greater than 40 degrees Fahrenheit (4 degrees Celsius) prior to sample preparation.

**F. Sample retention and disposal:**

(1) Samples testing positive for a prohibited pesticide must be retained for a minimum of 30 days. All other samples must be retained for a minimum of 15 days. Upon notification from the division that samples are needed for an investigation by the division, a law enforcement agency, or another department, the cannabis testing laboratory shall retain the sample until further directed by the division.

(2) Any portion of a cannabis or cannabis-derived test sample that is not destroyed during analysis shall be:

- (a) returned to the person who provided the sample;
- (b) provided to the division, the state chemist laboratory (department of agriculture), or state laboratory division for additional testing;
- (c) upon written notification to the department, used to make for internal quality control purposes; or
- (d) destroyed in accordance with the wastage requirements of this rule.

**G. Laboratory premises:** A cannabis testing laboratory shall maintain the premises of the laboratory in a clean and orderly condition; shall equip the premises with such utensils and equipment as necessary to conduct the operations of the laboratory; and shall ensure adequate space for laboratory operations, sample storage, and document storage.

**H. Equipment:**

(1) Equipment used for the analysis of test samples shall be adequately inspected, cleaned, and maintained by laboratory staff, the manufacturer, or other trained persons according to manufacturer recommendations. Equipment used for the generation or measurement of data shall be adequately tested and calibrated on an appropriate schedule, as applicable.

(2) Laboratory operations shall document procedures setting forth in sufficient detail the methods and schedules to be used in the routine inspection, cleaning, maintenance, testing, and calibration of equipment, and shall specify, as appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The procedures shall designate the personnel responsible for the performance of each operation.

(3) Computer systems used for the analysis of samples, retention of data, sample tracking, calibration scheduling, management of reference standards, or other critical laboratory management functions shall ensure that electronic records, electronic signatures, and handwritten signatures executed to electronic records are trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper.

**I. Reagents, solutions, and reference standards:**

(1) A cannabis testing laboratory is authorized to possess reagents, solutions, and reference standards. Such items shall be:

- (a) secured in accordance with the approved laboratory's storage policies;
- (b) labeled to indicate identity, date received or prepared, and expiration or requalification date; and, where applicable, concentration or purity, storage requirements, and date opened;
- (c) stored under appropriate conditions to minimize degradation or deterioration of the material; and
- (d) used only within the item's expiration or requalification date.

(2) Deteriorated or outdated reagents and solutions shall be properly destroyed.

(3) A cannabis testing laboratory may:

- (a) acquire commercial reference standards for cannabinoids and other chemicals or contaminants, for the exclusive purpose of conducting testing for which the laboratory is approved;
- (b) internally produce reference standards, using standard analytical techniques to document the purity and concentration of the internally produced reference standards;
- (c) obtain cannabis products from a cannabis establishment for the purpose of producing reference standards.

**J. Recording of analytical data:**

(1) A cannabis testing laboratory shall ensure that all data generated during the testing of a test sample, except data generated by automated data collection systems, is recorded directly, promptly, and legibly in ink.

(2) When automated data collection systems are used, the cannabis testing laboratory shall log the name of the individual performing the test.

(3) All data shall be annotated with the date of entry and signed or initialed by the person recording the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or initialed at the time of the change.

(4) Any change in an entry shall:

- (a) be made so as not to obscure the original entry;
- (b) indicate the reason for such change;
- (c) be dated and signed or initialed at the time of the change; and
- (d) be accompanied by a corrective action report to be made available to the

division or the cannabis establishment that submitted the sample upon request for up to two years after the analysis is completed.

(5) For each final result reported, a cannabis testing laboratory shall verify that:

- (a) any calculations or other data processing steps were performed correctly;
- (b) the data meet any data quality requirements such as for accuracy, precision,

linearity, etc.;

- (c) any reference standards used were of the appropriate purity and within their expiration or requalification dates;

- (d) any volumetric solutions were properly standardized before use; and

(e) any test or measuring equipment used has been properly tested, verified, and calibrated, and is within its verification or calibration period.

**K. Data storage:**

(1) A cannabis testing laboratory shall ensure that all raw data, documentation, protocols, and certificates of analysis associated with analysis of a test sample are retained for two years from the date of the completion of analysis.

(2) A cannabis testing laboratory shall designate an individual as responsible for records maintenance;

(3) A cannabis testing laboratory shall maintain the records identified in this section. Such records must be maintained:

- (a) in a manner that allows retrieval as needed;

(b) under conditions of storage that minimize deterioration throughout the retention period; and

- (c) in a manner that prevents unauthorized alteration.

(4) Only authorized personnel may access the records.

**L. Data reporting:**

(1) A certificate of analysis shall contain the following information:

- (a) the date of receipt of the test sample;

(b) the description of the type or form of the test sample (leaf, flower, powder, oil, specific edible product, etc.);

(c) the batch number or code that is associated with the product batch and that is recorded in the track and trace system;

- (d) the identity of the person who collected the sample;

- (e) the date on which analysis occurred;

(f) the analytical method used, including at a minimum identification of the type of analytical equipment used (e.g., GC, HPLC, etc.);

- (g) the analytical results, including units of measure where applicable;

(h) the identity of the supervisory or management personnel who reviewed and verified the data and results and ensured that data quality, calibration, and other applicable requirements were met; and

(i) the name, address, and contact information of the cannabis testing laboratory that conducted the test.

(2) The certificate of analysis shall state that reported analytical results apply only to the test sample received.

(3) The certificate of analysis shall contain in minimum 12-point type, all capital letters, the disclaimer, "UNOFFICIAL TEST RESULTS. NOT VALID FOR TRANSFER OR SALE" whenever:

- (a) The person submitting the test sample is not a licensed cannabis establishment;

(b) The test sample was not collected by a person authorized to collect samples for required testing under this rule; or

(c) The person submitting the test sample requested that the analysis be performed for research and development purposes.  
[16.8.2.48 NMAC – N, 01/11/2022]

**16.8.2.49 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;

results; and

- (g) if applicable, protocols for testing sample collection that ensures accurate test

- (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 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>“Cannabis may only be consumed in designated areas out of public view No consumption of alcohol products on site We reserve the right to refuse entry or service for reasons including visible intoxication It is against the law to drive while impaired by cannabis”</p>
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[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]**