

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 8 CANNABIS PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF CANNABIS
SUPPLY IN THE MEDICAL CANNABIS PROGRAM

16.8.8.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.

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

16.8.8.2 SCOPE: This rule applies to all persons licensed or seeking to be licensed to produce, manufacture, and sell cannabis pursuant to the Cannabis Regulation Act.

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

16.8.8.3 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 Lynn and Erin Compassionate Use Act.

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

16.8.8.4 DURATION: Permanent.

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

16.8.8.5 EFFECTIVE DATE: August 24, 2021, unless a different date is cited at the end of a section.

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

16.8.8.6 OBJECTIVE: The objective of Part 8 is to establish the limit of mature cannabis plants a licensee is authorized to cultivate pursuant to the Cannabis Regulation Act.

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

16.8.8.7 DEFINITIONS: Unless otherwise defined in Title 16, Chapter 8, Part 1, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the licensing authority under the Lynn and Erin Compassionate Use Act.

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

16.8.8.8 GENERAL PROVISIONS FOR PLANT COUNT:

A. Cannabis plant growth cycle: For purposes of this rule, the cannabis plant growth cycle is based on the following four stages:

- (1)** germination stage includes a seed sprouting to form a seedling;
- (2)** seedling stage includes a shoot emerging from the soil surface, eventually forming the first leaves;
- (3)** vegetative stage is the period of growth between germination and the beginning of flowering, including cloned cannabis plants; and
- (4)** flowering stage is the reproductive state of the cannabis plant in which there are physical signs of flower budding out of the nodes in the stem.

B. Mature cannabis plant: For purposes of this rule, a mature cannabis plant shall be a female cannabis plant in the flowering stage.

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

16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:

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

- (1)** applicant's requested mature cannabis plant limit level;
- (2)** applicant's demonstration of a legal right to use the quantity of water needed for the level of mature cannabis plants cultivated based on the applicant's cannabis cultivation plan;

(3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;

(4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and

(5) applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, federally designated opportunity zone, or other rural historic communities.

B. Designated mature cannabis plant levels:

- (1) Level 1: 201 – 2,000 mature cannabis plants;
- (2) Level 2: 2,001 – 6,000 mature cannabis plants;
- (3) Level 3: 6,001 – 12,000 mature cannabis plants; or
- (4) Level 4: 12,001 – 16,000 mature cannabis plants.

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

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

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

F. Maximum cannabis plant count: In no event shall a licensee be permitted to grow more than 20,000 mature cannabis plants at one time.

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

16.8.8.10 PLANT INCREASE REQUEST:

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

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

- (5) applicant's total cannabis sales; and
- (6) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.

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

- (1) the licensee has met the required minimum sale of medical cannabis each month for the last 3 months it has operated;
- (2) the licensee has sold at least eighty percent of its cannabis or cannabis products each month for the last 3 months it has operated;
- (3) the existence of any pending or final enforcement action taken by the division against the licensee;
- (4) whether there is a shortage of cannabis in the medical cannabis program during the most recent 6-month period, including throughout the state and in underserved geographical regions;
- (5) whether the licensee's cultivation plan to increase mature cannabis plants meets the requirements for licensure, including access to water and water usage; and

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

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

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

16.8.8.11 ADDRESSING A SHORTAGE OF MEDICAL CANNABIS:

A. Upon the division allowing commercial cannabis retail sales, cannabis retail establishments shall make reasonable efforts to sell a minimum of twenty-five percent of their monthly cannabis sales to qualified patients, primary caregivers, and reciprocal participants, or to other licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers, and reciprocal participants until December 31, 2022.

B. Upon the division allowing commercial cannabis retail sales, licensed cannabis producers, including cannabis producer microbusinesses, vertically integrated cannabis establishments, and integrated cannabis microbusinesses, and cannabis manufacturers shall make reasonable effort to sell wholesale to licensed cannabis retail establishments that meet or exceed the twenty-five percent sales to qualified patients, primary caregivers and reciprocal participants until December 31, 2022.

C. After December 31, 2022, the division may take the following measure to address a shortage of cannabis supply in the medical cannabis program:

(1) require all licensed cannabis retail establishments to ensure that at least ten percent of their cannabis and cannabis products in stock on a monthly basis is designated for sale to qualified patients, primary caregivers, and reciprocal participants; or

(2) reduce the per plant fee for designated medical cannabis plants to incentivize increased production of cannabis plants to remedy a shortage of cannabis supply in the medical cannabis program; and

(3) after having first exhausted measures to increase production of cannabis plants, the division may exclude commercial cannabis activity from the scope of new licenses issued to initial applicants for a vertically integrated cannabis establishment, cannabis producer, integrated cannabis microbusiness, cannabis producer microbusiness, or cannabis manufacturer license, which limitation shall be in force for a period of at least six months; and

(4) require licensees who are licensed to produce cannabis to produce a specified quota of mature cannabis plants to be designated for use in the medical cannabis program, provided that:

(a) the division may require a licensee to devote no more than twenty-five percent of the licensee's cultivated cannabis plants on a monthly basis for use in the medical cannabis program; and

(b) the division may require additional specific tracking of cannabis plants.

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

16.8.8.12 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.

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

History of 16.8.8 NMAC: [RESERVED]