

Commercial and Medical Cannabis
New Mexico Administrative Code
Title 16 – Chapter 8

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TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 1 GENERAL PROVISIONS

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

16.8.1.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.1.2 NMAC - N, 08/24/2021]

16.8.1.3 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.
[16.8.1.3 NMAC - N, 08/24/2021]

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

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

16.8.1.6 OBJECTIVE: The objective of Part 1 is to set forth the general provisions that apply to all of Chapter 8, and to all persons affected or regulated by Chapter 8 of Title 16.
[16.8.1.6 NMAC - N, 08/24/2021]

16.8.1.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.

A. Definitions beginning with “A”:

(1) **“Advisory committee”** means the cannabis regulatory advisory committee.

(2) **“Applicant”** means any person who is seeking to become licensed pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

B. Definitions beginning with “B”: **“Batch”** means, with regard to cannabis, an identified quantity of cannabis no greater than 15 pounds that is of the same strain of cannabis, that is harvested during the same specified time period from the same specified cultivation area, and with respect to which the same agricultural practices were utilized, including the use of any pesticides; and with regard to concentrated and cannabis product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.

C. Definitions beginning with “C”:

(1) **“Cannabis Regulation Act”** means the Cannabis Regulation Act, as enacted in Chapter 4, Sections 1 through 42 of New Mexico Laws of 2021, and as may be amended thereafter.

(2) **“Cannabis Waste”** means all parts of the plant genus Cannabis which may or may not contain a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination which has been designated as no longer usable cannabis.

(3) **“Carbon dioxide solvent”** means carbon dioxide in a liquid or supercritical state.

(4) **“CBD”** means cannabidiol, a cannabinoid and a non-psychoactive ingredient found in cannabis.

(5) **“CBDA”** means cannabidiolic acid, a non-psychoactive ingredient found in cannabis and an acid precursor to CBD.

(6) **“Closed loop extraction system”** means a commercially manufactured extraction system that is sealed during operation and designed to recover all solvents used during the extraction process through a feedback loop.

(7) **“Concentrated cannabis product (“concentrate”)**” means a cannabis product that is manufactured by a division approved mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains or that is intended to contain at the time of sale or distribution, no less than thirty-percent THC by weight.

D. Definitions beginning with “D”:

(1) **“Delivery agreement”** means a contract between a licensed cannabis establishment and a licensed cannabis courier to deliver cannabis or cannabis products from the cannabis establishment directly to consumers as permitted under the provisions of the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rule.

(2) **“Division”** means the cannabis control division.

(3) **“Diversion”** means the unlawful transfer of a cannabis plant, plant material, or cannabis product.

(4) **“Dried cannabis”** means the dried leaves, flowers, and trim of the female cannabis plant, but does not include the seeds, stalks, or roots of the cannabis plant.

E. Definitions beginning with “E”: **“Extraction area”** means the area of a licensed manufacturer’s processing facility that is designed for solvent-based extraction, which the division has inspected and approved for the area’s designated use.

F. Definitions beginning with “F”: [RESERVED]

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”:

(1) **“Homogeneity”** means the reasonably equal dispersion of cannabinoids throughout a batch of cannabis product and within the cannabis product as packaged or as intended for sale.

(2) **“Hydrocarbon solvent”** means N-butane, isobutene, propane, pentane, heptane, or any isomer or combination thereof.

I. Definitions beginning with “I”: **“Independent professional engineer”** means an engineer licensed pursuant to the Engineering and Surveying Practice Act, Section 61-23-1 *et seq.*, NMSA 1978, that is not an employee, owner, officer, controlling person, board member, or manager of the cannabis establishment licensee.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Licensee”** means any person who holds a license issued by the division pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules.

(2) **“Limited-access area”** means an indoor or outdoor area on the premises of a licensed cannabis establishment where cannabis or cannabis products are cultivated, stored or held, weighed, packaged, manufactured, disposed or wasted, all point-of-sale (POS) areas, and any room or area storing a digital video surveillance system storage device.

(3) **“Limit of detection”** means an estimate of the minimum amount of an analyte in a given matrix that an analytical process can reliably detect.

(4) **“Limit of quantitation”** means the minimum level, concentration, or quantity of a target analyte in a given matrix that an analytical process can reliably quantitate.

(5) **“Liquor Control Act”** mean the Liquor Control Act, Chapter 60, Articles 3A, 5A, 6A, 6B, 6C, 6E, 7A, 7B and 8A, NMSA 1978.

(6) **“Lot”** means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.

- (7) **“Lynn and Erin Compassionate Use Act”** means the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.
- M. Definitions beginning with “M”:** **“Minor”** means an individual who is less than 18 years of age.
- N. Definitions beginning with “N”:** [RESERVED]
- O. Definitions beginning with “O”:** [RESERVED]
- P. Definitions beginning with “P”:**
- (1) **“Pesticide”** means a pesticide as defined by the New Mexico Pesticide Control Act, Section 76-4-1 *et seq.*, NMSA 1978.
- (2) **“Plant”** means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.
- (3) **“Plant material”** means leaves, stalks, stems, roots, and any other part of the cannabis plant.
- (4) **“Pressure vessel”** means a component of a closed loop system containing cannabis plant material and solvents used during solvent-based extraction and designed to withstand pressure greater than 15 psi.
- (5) **“Policy”** means a written statement of principles that guides and determines present and future decisions and actions of the licensed person.
- (6) **“POS”** means point of sale system.
- (7) **“Person”** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.
- (8) **“Produce”** means to engage in any activity related to the planting or cultivation of cannabis.
- (9) **“Proficiency testing”** means a standardized test administered by an ISO 17043 accredited laboratory to evaluate the ability of a laboratory to measure, within acceptable limits, the presence, quantity, or other factors pertaining to a given analyte.
- Q. Definitions beginning with “Q”:** [RESERVED]
- R. Definitions beginning with “R”:**
- (1) **“Recall”** means to request the return of a product after the discovery of a safety issue or product defect.
- (2) **“RLD”** means the regulation and licensing department.
- S. Definitions beginning with “S”:**
- (1) **“Safe moisture level”** means a level of moisture low enough to prevent the growth of undesirable microorganisms in the finished produce.
- (2) **“Security alarm system”** means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.
- (3) **“Segregate”** means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis products in order to first determine its suitability for use through testing by an approved laboratory.
- (4) **“Solvent”** means a hydrocarbon solvent, carbon dioxide solvent, or organic solvent, which is used to dissolve or disperse chemical compounds from cannabis plant material in a closed loop system.
- (5) **“Solvent-based extraction”** means the process of dissolving or dispersing specific chemical compounds from the cannabis plant material using a solvent in a closed loop system.
- T. Definitions beginning with “T”:**
- (1) **“THC”** means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.
- (2) **“THCA”** means tetrahydrocannabinolic acid, a non-psychoactive ingredient in cannabis and an acid precursor to THC.
- (3) **“Testing”** means testing of cannabis and cannabis products consistent with division rules.
- (4) **“Track and trace system”** means the electronic system designated by the division to track and trace the production, transportation, sale, and wastage of cannabis and cannabis products.

U. Definitions beginning with “U”: [RESERVED]

V. Definitions beginning with “V”:

(1) **“Vault”** means a limited access storage room that is within a licensed cannabis establishment and is outfitted with adequate security features for the purposes of storing cannabis, cannabis products, or cash.

(2) **“Volatile solvent”** means a hydrocarbon solvent, alcohol, or acetone.

W. Definitions beginning with “W”:

(1) **“Waste” or “wastage”** means the process of rendering cannabis or cannabis products unusable and unrecognizable, including the destruction of cannabis or cannabis products.

(2) **“Water activity”** means the measure of the free moisture in a manufactured cannabis product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED]

[16.8.1.7 NMAC - N, 08/24/2021; A, 12/28/2021; A, 01/11/2022]

16.8.1.8 SOCIAL AND ECONOMIC EQUITY:

A. Division mandate: Pursuant to the Cannabis Regulation Act, Paragraphs (7) and (8) of Subsection B of Section 26-2C-3 NMSA 1978, the division must adopt procedures to promote and encourage full participation in the cannabis industry of representatives of communities that have disproportionately been harmed by rates of arrest through the enforcement of cannabis prohibitions and encourage racial, ethnic, gender, geographic diversity, and New Mexico residency among license applicants, licensees and cannabis industry employees. Policies must also encourage representatives from rural communities that are likely to be impacted by cannabis production, including agricultural producers from economically disadvantaged communities.

B. Division goal: To accomplish these mandates, the division establishes a goal that at least fifty percent of applicants for licensure, licensees, and cannabis industry employees will represent these groups.

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

16.8.1.9 FEDERAL LAW: The activities described in these rules may be considered a violation of federal law. Persons cultivating, manufacturing, collecting samples of, testing, selling, purchasing or otherwise receiving cannabis or cannabis products may be subject to federal sanctions for what may otherwise be considered authorized conduct in the State of New Mexico, and compliance with the rule does not exempt licensees, their employees or customers from possible federal prosecution. The division is not responsible or liable for the actions of licensed cannabis establishments under the rule.

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

16.8.1.10 LABOR PEACE AGREEMENT: Cannabis establishment licensees, excluding cannabis producer microbusiness and integrated cannabis microbusiness, are encouraged to maintain a labor peace agreement with a bona- fide labor organization that is actively engaged in representing or attempting to represent the applicant’s employees. For purposes of this section, a labor peace agreement between a cannabis establishment and a bona fide labor organization includes protecting the state’s interests by, at a minimum, prohibiting the labor organization from engaging in picketing, work stoppages, or boycotts against the cannabis establishment. An applicant, whether for an initial license or renewal of a license, must submit an attestation confirming whether or not the applicant has entered into a labor peace agreement with a bona fide labor organization that is actively engaged in representing or attempting to represent the applicant’s employees.

[16.8.12.10 NMAC – Rp, 16.8.1.10 NMAC, 07/12/2022]

16.8.1.11 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.

[16.8.12.11 NMAC - N, 08/24/2021; Rn, 16.8.1.10, 07/12/2022]

History of 16.8.1 NMAC: [RESERVED]

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: 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; and

(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.

16.8.2.20 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 CO₂.
- 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 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;

- (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 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.
- [16.8.2.31 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;

accident or incident;

- (b) responding to an emergency, including robbery or a serious
- (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 CO2 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 licensee'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 consumers 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 retain 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;

instrument; or

- (2) testing for an analyte required in required testing using a different type of

installation of a new security system.

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

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 of batches;
 - (c) access to complete batches of cannabis products;
 - (d) determination of the number of sample increments required, based on batch size; and
 - (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;

incident;

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

- (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.

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;

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

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

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

(a) adherence to state and federal laws;

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

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

(d) safety and security procedures;

(e) occupational safety;

(f) crime prevention techniques; and

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

Accountability Act of 1996; and

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

B. Training program:

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

(a) health and safety hazards;

(b) security procedures; and

(c) record keeping requirements.

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

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

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

(c) cleaning and maintenance requirements;

(d) emergency operations, including shutdown; and

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

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

C. Training documentation:

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

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

(b) dates of training completion for all personnel;

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

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

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

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

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

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

16.8.2.54 MINIMUM STANDARDS FOR CANNABIS CONSUMPTION AREAS:

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

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

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

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

C. Customer access to the consumption area:

- (1) Individuals shall be granted access to consume or purchase cannabis goods only after the licensed cannabis consumption area or an employee of the licensed cannabis consumption area has confirmed the individual's age and identity, and if applicable, the individual's status as a qualified patient, primary caregiver, or reciprocal participant.
- (2) The licensed cannabis consumption area or at least one employee shall be physically present in the consumption area at all times when individuals who are not employees of the licensed retailer are in the retail area.
- (3) All sales of cannabis goods, with the exception of cannabis goods sold through delivery, must take place within the retail area of the retailer's licensed premises.
- (4) A licensed cannabis consumption area shall only allow cannabis consumption between the hours reported to the division as regular business hours.
- (5) A licensed cannabis consumption area may allow qualified patients to bring previously purchased goods from the licensed cannabis consumption area for consumption provided the cannabis product is properly stored in the requisite resealable packaging and the qualified patient provides proof of purchase from the cannabis consumption licensee of the product to be consumed.

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

- (1) the licensed premises is securely locked with commercial-grade, nonresidential door locks;
- (2) the licensed premises is equipped with an active alarm system pursuant to pursuant to Section 10 of this rule, which shall be activated when the licensed retailer or its employees are not on the licensed premises; and
- (3) only employees of the licensee and other authorized individuals are allowed access to the licensed premises. For the purposes of this section, authorized individuals include individuals employed by the licensee as well as any outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

E. Commercial and medical cannabis consumers:

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

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

(3) Acceptable forms of identification include the following

(a) a document issued by a federal, state, county, or municipal government, or a political subdivision or agency thereof, including, but not limited to, a valid motor vehicle operator's license, that contains the name, date of birth, and photo of the person;

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

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

F. Cannabis product display:

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

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

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

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

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

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

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

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

<p>“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>

[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 CANNABIS RESEARCH LABORATORY LICENSURE; GENERAL PROVISIONS:

A. License Types: The division may license three classes of research:

(1) Tier I: A cannabis research laboratory Tier I may produce cannabis to be ingested by human or animal subjects, or produce cannabis not meant for ingestion, for division approved clinical,

agricultural, or market research studies; produce federally legal cannabis products; and may conduct division approved clinical, agricultural, or market research studies;

(2) Tier II: A cannabis research laboratory Tier II may produce cannabis not meant for ingestion, or purchase cannabis to be ingested by human or animal subjects, for division approved clinical, agricultural, or market research studies; and may conduct division approved clinical, agricultural, or market research studies

(3) Tier III: A cannabis research laboratory Tier III may not produce cannabis and may only purchase cannabis or cannabis products from licensed cannabis research laboratories Tier I and Tier II, as appropriate for approved clinical, agricultural, or market research studies; and may conduct clinical, agricultural, or market research studies.

B. A Tier II or Tier III cannabis research laboratory may purchase cannabis from another licensed cannabis establishment with approval from the cannabis control division only if such research relates to brand specific inquiries (e.g., including studies comparing similar products from different brands or conducting cultivar specific efficacy studies for certain conditions) where use of cannabis or cannabis products produced by a cannabis research laboratory is impossible.

C. Except as noted in Subsection B, a cannabis research laboratory license permits a licensee to produce, process, transport, transfer, sell and possess cannabis consistent with its license type for research and related purposes.

D. A cannabis research laboratory may also produce and distribute federally legal cannabis products as authorized by state and federal law pertaining to drug products.

E. A cannabis research laboratory will provide notice to the cannabis control division prior to commencing the production and distribution of any federally legal cannabis product, including evidence of federal authorizations.

F. All applications for licensure authorized pursuant to the Cannabis Regulation Act shall be made upon current forms prescribed by the division.

[16.8.2.56 NMAC – Rp 16.8.2.56 NMAC, 07/12/2022]

16.8.2.57 APPLICATION REQUIREMENTS FOR CANNABIS RESEARCH LABORATORY LICENSE:

A. An initial application or renewal for cannabis research laboratory licensure shall include the following:

- (1) Business and controlling person(s) contact information, to include:
 - (a) legal business name, including DBA if applicable
 - (b) type of business entity;
 - (c) business mailing address;
 - (d) business telephone number;
 - (e) business email address;
 - (f) business physical address, if different;
 - (g) business web address, if applicable;
 - (h) 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 (Tier I, Tier II, or Tier III);
- (2) proof 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 controlling person;
- (3) if applicable, certification the applicant is in good standing with the New Mexico secretary of state;
- (4) a list of other current or prior licensed cannabis businesses;
- (5) a list of other names used by controlling person(s);
- (6) name and contact information for the primary controlling person for the business or an authorized representative of the business if not a controlling person;

- (7) 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 detailed research plan, including but not limited to the applicant's plan for recruiting research subjects, producing or acquiring cannabis, dispensing cannabis, plans for continuing research, and the forms of usable cannabis and cannabis-derived products to be examined; if applicable, a detailed description of any private or public partnerships with higher education institutions, other cannabis research laboratories, or private business;
- (10) if applicable, drug enforcement administration license to conduct research;
- (11) 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;
- (12) if applicable, the applicant's DEA license or any conditional approval from the DEA to bulk manufacture cannabis for research, or the applicant's plan for seeking such licensure in the future;
- (13) certification the applicant will not use dimethylsulfoxide (DMSO) in the production of cannabis derived products, and will not possess DMSO on the premises of the licensee;
- (14) evidence that the applicant has obtained all necessary permits required for the production of edible and topical cannabis products from the New Mexico environment department and that such permits are valid at the time the license application is submitted
- (15) 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;
- (16) certification the applicant will adhere to security requirements pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, or division rules;
- (17) 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;
- (18) 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;
- (19) certification the applicant will adhere to production and manufacturing 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 products;
- (20) 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;
- (21) 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;
- (22) an attestation by a person authorized to act on behalf of the business 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
- (23) 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.
[16.8.2.57 NMAC – N, 07/12/2022]

16.8.2.58 SUBMITTAL OF APPLICATION FOR AMENDED CANNABIS RESEARCH LABORATORY LICENSE:

A. Application: A licensed research laboratory 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 or location 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 license’s security system; or
- (7) material or substantial modification of the premise.

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) a modification in the licensee’s access to the water source submitted with an application for initial 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.

[16.8.2.58 NMAC – N, 07/12/2022]

16.8.2.59 EXPEDITED APPROVAL PROCESS: The division shall create an early approval process for entities that are either registered or conditionally approved by the FDA to manufacture bulk cannabis for research or to research cannabis.

A. Any entity conditionally approved for or holding a valid DEA registration as enumerated below may, within 60 days of the effective date, apply to the cannabis control division for expedited approval as follows:

(1) An entity that is registered with or conditionally approved by the DEA to manufacture bulk cannabis for research may seek early approval for a Tier I License; or

(2) An entity that is registered with or conditionally approved by the DEA to research cannabis may seek early approval for a Tier III license.

B. If an applicant meets all the relevant requirements of this section, the division shall issue the research laboratory license within 30 days of receiving a completed application.

[16.8.2.59 NMAC – N, 07/12/2022]

16.8.2.60 PREMISES DIAGRAM:

All licensees shall have a detailed diagram of the premises on hand at all times and made available for in person inspection by the Division or its agents upon request. This premises diagram shall conform to the requirements set forth in 16.8.2 NMAC.

[16.8.2.60 NMAC – N, 07/12/2022]

16.8.2.61 CANNABIS RESEARCH LABORATORY POLICIES AND PROCEDURES:

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

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

(2) protocols for research;

(3) recordkeeping and chain of custody protocols for transportation of cannabis or cannabis product; and procedures for testing and destruction of cannabis or cannabis products;

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

(5) adherence to state and federal laws;

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

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

(8) safety and security procedures;

(9) occupational health and safety;

(10) crime prevention techniques; and

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

(12) statements signed by employees indicating receipt and understanding of policies and procedures.

B. Training program: 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:

(1) employee health and safety;

(2) health and safety hazards;

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

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

(5) emergency procedures;

(6) security procedures; and

(7) record keeping requirements.

C. 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 cannabis research licensee. The licensee shall obtain documentation evidencing the fulfillment of this requirement.

D. Training documentation:

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

E. 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.

[16.8.2.61 NMAC – N, 07/12/2022]

16.8.2.62 HUMAN SUBJECT PROTECTIONS:

A. Before conducting research involving human subjects, the licensee shall:

- (1) provide the division with documentation that the study has received institutional review board (IRB) approval, as defined and described in 45 CFR Part 46, federal policy for the protection of human subjects; and
- (2) obtain "informed consent," as defined and described in 45 CFR Part 46, federal policy for the protection of human subjects, from the human research subject.

B. Nothing in this part relieves the licensee from complying with applicable FDA and state requirements governing cannabis research.

[16.8.2.62 NMAC – N, 07/12/2022]

16.8.2.63 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.

[16.8.2.63 NMAC – Rn, 16.8.2.43 NMAC, 01/11/2022; Rn, 16.8.2.56 NMAC, 07/12/2022]

History of 16.8.2 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 3 PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL
DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS

16.8.3.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.3.1 NMAC – N, 04/01/2022]

16.8.3.2 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.
[16.8.3.2 NMAC - N, 04/01/2022]

16.8.3.3 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.
[16.8.3.3 NMAC - N, 04/01/2022]

16.8.3.4 DURATION: Permanent.
[16.8.3.4 NMAC - N, 04/01/2022]

16.8.3.5 EFFECTIVE DATE: April 1, 2022, unless a later date is cited at the end of a section.
[16.8.3.5 NMAC - N, 04/01/2022]

16.8.3.6 OBJECTIVE: The objective of Part 3 is to establish standards for packaging, labeling, advertising, marketing, and commercial display requirements for cannabis products. Part 3 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.3.6 NMAC - N, 04/01/2022]

16.8.3.7 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.
[16.8.3.7 NMAC – N, 04/01/2022]

16.8.3.8 ADVERTISING AND MARKETING:

A. Required Practices. The following practices are required in all advertising and marketing activities:

(1) Responsible persons. All advertisements and marketing for cannabis products shall accurately and legibly identify all licensees or organizations who are responsible for the proliferation of the advertisement or marketing activity.

(2) Reasonable expectation of audience age. All advertisements in print and digital communications shall only be placed in areas where at least seventy percent of the audience is reasonably expected to be 21 years of age or older as determined by reliable, current audience composition data. For the purposes of this section, “reliable, current audience composition data” means data regarding the age and location demographics of the audience viewing a particular advertising or marketing medium. Immediately upon request, a licensee shall provide to the division audience composition data as required in this section for advertising or marketing placed by the licensee. If the audience composition data for advertising or marketing provided by a licensee does not comply with the requirements of this section, or the licensee fails to provide audience composition data to the division upon request, the licensee shall remove the advertising or marketing placement in question.

(3) Statements and warnings: Any advertising or marketing materials created for viewing by the public shall include the statement "Please Consume Responsibly" in a conspicuous manner on the

face of the advertisement and shall include the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

- (a) for use only by adults 21 and older;
- (b) keep out of reach of children;
- (c) this product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality;
- (d) do not drive a motor vehicle or operate machinery while under the influence of cannabis; and
- (e) there may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding.

B. Prohibited practices. Advertising and marketing activities of cannabis products shall not:

- (1) occur on radio, television or other broadcast media, internet pop-ups and mass transit vehicles. The division shall not prohibit advertising and marketing activities on these forums where:
 - (a) subscribers of subscription-based radio, television or other broadcast media are 21 years of age or older; or
 - (b) persons 21 years of age or older have solicited the advertising or marketing activities.
- (2) be done in such a manner that is deemed to be is deceptive, misleading, false or fraudulent, or that tends to deceive or create a misleading impression, whether directly or by omission or ambiguity;
- (3) make unproven health benefit claims and any health benefit claims must be supported by substantial evidence or substantial clinical data;
- (4) be on billboards, posters, handbills or other visual media that are located or can be viewed within 300 feet of a school, daycare center or church;
- (5) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors;
- (6) use predatory marketing or advertising practices targeting minors; and
- (7) be designed to mimic any other product brand;
- (8) promote the over consumption of cannabis or cannabis products; or
- (9) depict the actual consumption of cannabis or cannabis products.

C. Branding. “Branding” means promotion of a cannabis establishment’s brand through publicizing the cannabis establishment’s name, logo, or distinct design feature of the brand.

- (1) Branding shall not be designed to be appealing to a child and shall not contain:
 - (a) cartoons;
 - (b) a design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;
 - (c) contain symbols or images, including a celebrity or celebrity likeness, that are commonly used to market products to minors.
- (2) Branding is not considered a marketing or advertising activity.
- (3) Branding is allowed without the required warnings and statements for advertising and marketing of cannabis establishments.

[16.8.3.8 NMAC – N, 04/01/2022; A, 04/01/2022]

16.8.3.9 CANNABIS FINISHED PRODUCT LABELING:

- A.** Unless otherwise provided, cannabis finished products shall meet the minimum labeling requirements of this section.
- B.** The label shall be printed on or affixed to the container and printed on or affixed to any outer package or container that is used to display the edible or topical cannabis finished product for retail sale.
- C.** Font size used on a label shall be no smaller than 1/16 of an inch by measuring the height of a lower-case letter “o”.
- D.** Labels shall identify the intended use and directions for use. Products having more than one intended use shall identify every intended use on the label and shall comply with all labeling requirements for each intended use. If there is any conflict between the labeling requirements for multiple intended uses, the most restrictive labeling requirements shall be followed.

E. Labels shall be in English, though it can be in other languages.

F. Labels shall be unobstructed and conspicuous.

G. If the cannabis finished product's target potency or potency value of the Total THC or CBD is less than one milligram per serving, the potency may be expressed as "<1 mg." If "<1 mg" was used to display the Total THC or CBD per serving, then a corresponding statement regarding the Total THC or CBD content for the entire container shall be included on the container. For example, if there are five servings in the container, "<5 mg" should be displayed for the Total THC or CBD statement that was represented as "<1 mg" per serving.

H. The potency statement stated on an edible or topical cannabis finished product label shall not deviate by more than fifteen percent of what is stated on the label.

I. A label shall not:

(1) contain any untruthful or misleading statements including, but not limited to, health or benefit claims, and

(2) contain advertising or marketing; and

(3) contain words that refer to products that are commonly associated with minors or marketed by minors; including use of the word(s) "candy" or "candies" on the label of any container, unless the words identify the strain of cannabis in the cannabis finished product.

J. Cannabis finished product labels shall have a principal display panel.

K. The principal display panel shall include:

(1) the product identity or common name in bold type, in a size reasonably related to the most prominent printed matter on the principal display panel and shall be parallel to the base on which the package rests as it is designed and displayed.

(2) Net quantity, net weight, or volume in U.S. customary and metric units of contents displayed in bold type in the bottom thirty percent of the principal display panel in lines generally parallel with the base of the container; and shall be in terms of fluid measure if the item is liquid, or in terms of weight if the item is solid, semi-solid, or viscous.

(3) Potency, as confirmed by a cannabis testing laboratory, in bold font and including:

(a) for edible products, Total THC and CBD in milligrams per serving;

(b) percent of Total THC per container; and

(c) if detected, percent of CBD per container.

(4) A logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch.

(5) A logo designed and provided by the division that demonstrates a cannabis product is produced or manufactured by an integrated cannabis microbusinesses or cannabis producer microbusinesses or owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities;

(6) for an edible or topical cannabis finished product that is perishable or meets the definition of a time/temperature control for safety food, the label shall bear a statement that the product must be refrigerated; and

(7) the following warning statement in bold font "For use only by adults 21 and older. Keep out of reach of children. Do not drive a motor vehicle or operate machinery while under the influence of cannabis.

BE CAUTIOUS. Cannabinoid edibles can take up to two hours or more to take effect."

L. Except as provided in Subsections M and N of this section, cannabis finished product labels shall have an information panel or static quick response (QR) code that links the consumer to the required information that contains the following without intervening material:

(1) cannabis manufacturer business or trade name;

(2) unless the business or trade name placed on the package is the actual manufacturer, it must be accompanied by a qualifying phrase which states the firm's relation to the product (e.g., "manufactured for" or "distributed by");

(3) cannabis manufacturer license number;

(4) pesticide used in the product by the cannabis producer;

(5) date product was manufactured;

(6) ingredient list;

(a) using the common or usual name;
(b) sub-ingredients, as follows: any ingredient containing two or more sub-ingredients shall parenthetically list the component ingredients in descending order of predominance after the multi-component ingredient;

(c) identifying the cannabis extract/concentrate and each isolated cannabinoid as an ingredient; and

(d) in descending order of predominance by weight or volume.
(7) if utilized, pharmacologically active ingredients;
(8) a "contains" statement identifying allergens at the end of or immediately adjacent to the ingredient list; or listing the allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen;

(9) nutritional information meeting the requirements of 21 CFR 101.9;
(10) the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease. FDA has not evaluated this product for safety, effectiveness, and quality. There may be long term adverse health effects from consumption of cannabis, including additional risks for women who are or may become pregnant or are breastfeeding."

(11) the New Mexico poison and drug information center phone number;
(12) the product expiration date. Persons shall not alter that expiration date or affix a new label with a later expiration date;

(13) the state track and trace system number or identifier associated with the product;
and

(14) a list of any solvent(s), processing aids, and chemicals used to manufacture cannabis product, cannabis concentrate or extract, or isolated cannabinoid identified.

M. When, because of its container size, an edible cannabis finished product label does not have sufficient space for a label meeting the requirements of Subsections K-L of this section, labels shall, at a minimum, contain:

(1) a principal display panel containing the net weight or volume, product identity, and logos designed and provided by the division;

(2) cannabis manufacturer business or trade name;
(3) cannabis manufacturer license;
(4) potency, as specified in Paragraph (3) of Subsection K of this section;
(5) the warning statements, as specified in Paragraph (7) of Subsection K of this section;

(6) the state track and trace system number or identifier associated with the product;
and

(7) all other required labeling as specified in Subsections K-L of this section through the use of a static quick response (QR) code that links the consumer to the required information or a peel-back or accordion label that can be easily identified by a consumer as containing important information.

N. When the surface area being labeled is less than two inches squared and does not have sufficient space for a label meeting the requirements of Subsections K-L of this section, labels shall, at a minimum, contain:

(1) a principal display panel containing the product identity and logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch;

(2) cannabis manufacturer business or trade name;
(3) cannabis manufacturer license number;
(4) potency, as specified in Paragraph (3) of Subsection K of this section;
(5) the warning statement "For use only by adults 21 and older. Keep out of reach of children."

(6) the state track and trace system number or identifier associated with the product;
and

(7) all other required labeling as specified in Subsections K-L of this through the use of a static quick response (QR) code that links the consumer to the required information or use a peel-back or accordion label that can be easily identified by a consumer as containing important information.

[16.8.3.9 NMAC - N, 04/01/2022]

16.8.3.10 CANNABIS SEED AND IMMATURE CANNABIS PLANT LABELING:

- A.** Unless otherwise provided, cannabis seeds and immature cannabis plants sold to consumers, qualified patients, or reciprocal patients shall meet the minimum labeling requirements of this section.
- B.** The label shall be printed on or affixed to the container or receptacle and printed on or affixed to any outer package or container that is used to display the cannabis seed or immature cannabis plant for retail sale.
- C.** Font size used on a label shall be no smaller than 1/16 of an inch by measuring the height of a lower-case letter “o”.
- D.** The label shall be in English, though it can be in other languages.
- E.** The label shall be unobstructed and conspicuous.
- F.** The label shall not contain any untruthful or misleading statements including, but not limited to, health or benefit claims.
- G.** The principal display panel shall include:
 - (1)** the product identity or common name in bold type, in a size reasonably related to the most prominent printed matter on the principal display panel;
 - (2)** potential potency, as confirmed by a cannabis testing laboratory of the parent cannabis plant; and
 - (3)** a logo designed and provided by the division that is no smaller than 1/2 inch by 1/2 inch.
- H.** For cannabis seeds the display panel shall also include net quantity of seeds.
- I.** Cannabis seed and immature cannabis plant labels shall have an information panel or static quick response (QR) code that links to or contains the following without intervening material:
 - (1)** if applicable, the cannabis manufacturer business or trade name;
 - (2)** if applicable, unless the business or trade name placed on the package is the actual manufacturer, a qualifying phrase which states the firm's relation to the product (e.g., “manufactured for” or “distributed by”);
 - (3)** if applicable, cannabis manufacturer license number;
 - (4)** pesticide used in the product by the cannabis producer;
 - (5)** if applicable, date product was manufactured;
 - (6)** the following warning statement in bold font “For use only by adults 21 and older. Keep out of reach of children.”

[16.8.3.10 NMAC - N, 04/01/2022]

16.8.3.11 CANNABIS FINISHED PRODUCT LABELING IN CANNABIS CONSUMPTION

AREAS: Packaging and labeling exemptions and minimum requirements. A licensed cannabis consumption area may sell cannabis products to a consumer, qualified patient, or reciprocal patient without packaging and labeling under the following conditions:

- A.** the consumer, qualified patient, or reciprocal patient intends to consume cannabis product on the licensed premises of the cannabis consumption area and will store unused product on the premises as required by cannabis consumption area licensing requirements in 16.8.2 NMAC;
- B.** at the time of transfer of the cannabis finished product to a consumer, the licensed cannabis consumption area provides the consumer with a written statement of the potency of the cannabis product's THC or Total THC, and CBD, which shall be expressed as a percentage for inhaled cannabis finished products, and expressed in milligrams for edible cannabis finished products and topical cannabis finished products. If CBD is not detected in the inhaled cannabis finished product, then CBD potency is not required;
- C.** the licensed cannabis consumption area maintains and makes available to the consumer, qualified patient, or reciprocal patient upon request written or electronic documentation reflecting all relevant information required in cannabis consumption area licensing requirements 16.8.2 NMAC; and
- D.** for multiple-serving edible cannabis finished product, the licensed cannabis consumption area at the time of transfer to the consumer, qualified patient, or reciprocal patient shall provide a measurement device necessary for the purchaser to achieve accurate measurements of each serving in increments equal to or less than 10 milligrams of Total THC per serving.

16.8.3.12 CANNABIS FINISHED PRODUCT PACKAGING:

A. Unless otherwise specified, edible or topical cannabis finished products shall meet the following minimum packaging requirements:

- (1) containers used for edible cannabis products or edible cannabis finished products shall be food-grade or GRAS and must not impart any toxic or deleterious substance to the packaged product;
- (2) containers used for topical cannabis products and topical cannabis finished products must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product;
- (3) unless otherwise provided, containers shall be child-resistant. If the product is multiple use, or contains multiple servings, it shall also be packaged in a container that is resealable and continually child-resistant;
- (4) cannabis finished products that contain only cannabis flower must be packaged in resealable containers and are not subject to the child resistant container requirement;
- (5) containers shall be compostable and recyclable, or made from recycled materials;
- (6) edible cannabis finished products packaged for commercial sale shall not exceed 10 milligrams of Total THC per serving, or 100 milligrams of Total THC per container;
- (7) edible cannabis finished products packaged for qualified patients, qualified caregivers and reciprocal participants as defined by the Lynn and Erin Compassionate Use Act shall be identified for medical use only and shall not exceed 50 milligrams of Total THC per serving;
- (8) single serving edible cannabis finished products that are placed into a child resistant container may be bundled into an exit package;
- (9) edible cannabis finished products containing multiple servings in a single container shall:

- (a) when in in solid form, be:
 - (i) easily separable in order to allow an average person 21 years of age or older to physically separate, with minimal effort, individual servings of the product; and
 - (ii) easily and permanently scored to identify individual servings;
- (b) be packaged in a single serving size; and
- (c) be marked, stamped, or otherwise imprinted with a logo designed and provided by the division that notifies a reasonable person that the product contains cannabis that is no smaller than 1/2 inch by 1/2 inch for each single serving contained in a multi-serving package.

(10) Unless as otherwise specified in Paragraph (10) of this subsection, liquid cannabis finished products shall be single-serving only.

(11) Each liquid cannabis finished product that is a multiple-serving edible cannabis finished product shall be:

- (a) packaged in a structure that uses a single mechanism to achieve both child-resistant properties and accurate pouring measurement of each liquid serving in increments; and
- (b) the measurement component is within the child-resistant cap or closure of the bottle and is not a separate component.

(12) A cannabis manufacturer shall maintain a copy of the certificate showing that each child-resistant container into which edible or topical cannabis finished product is placed is child-resistant and complies with the requirements of 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20;

(13) Packaging containers shall not be designed to be appealing to a child and shall not use words that refer to products that are commonly associated with minors or marketed by minors, including use of the word(s) “candy” or “candies” on the label of any container.

(14) Once any remaining cannabis has been removed and destroyed pursuant to these rules, a cannabis establishment may reuse containers subject to the following requirements and restrictions:

- (a) the containers have been sanitized and disinfected either by a cannabis establishment or by a third-party to ensure that they do not contain any harmful residue or contaminants, and
- (b) if child resistant, the containers can be reused with new child resistant packaging that complies with 16 C.F.R. 1700.15 and 16 C.F.R. 1700.20; or if new child resistant packaging is not being used, based on a visual inspection, the existing child-resistant packaging appears to be in good working

order and does not appear to pose a risk of unintended exposure or ingestion of cannabis. The visual inspection must ensure such containers are not brittle or have chips, cracks, or other imperfections that could compromise the child-resistant properties of the container or otherwise pose a threat of harm to a patient or consumer.

(15) Packaging for edible cannabis finished products packaged pursuant to the Lynn and Erin Compassionate Use Act that was purchased prior to January 11, 2022 may be used by a licensee until October 1, 2022.

[16.8.3.12 NMAC - N, 04/01/2022; A, 04/01/2022]

16.8.3.13 EXIT PACKAGING: All finished cannabis products purchased by a customer, qualified patient, or reciprocal patient shall not leave the licensed retailer's premises unless the cannabis products are placed in an opaque exit package.

[16.8.3.13 NMAC - N, 04/01/2022]

16.8.3.14 CANNABIS SEED AND IMMATURE PLANT PACKAGING: Unless otherwise specified, cannabis seeds sold shall meet the following minimum packaging requirements:

A. cannabis seeds and immature cannabis plants shall be placed into a container;
B. containers must be suitable for the intended purpose and must not impart any toxic or deleterious substance to the packaged product; and

C. containers shall be compostable and recyclable, or made from recycled materials.

[16.8.3.14 NMAC - N, 04/01/2022]

16.8.3.15 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.

[16.8.3.15 NMAC - N, 04/01/2022]

History of 16.8.3 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERICAL AND MEDICAL CANNABIS
PART 6 HEALTH AND SAFETY, FOOD AND PRODUCT SAFETY, ENVIRONMENTAL IMPACTS, AND NATURAL RESOURCES

16.8.6.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.6.1 NMAC – N, 10/11/2022]

16.8.6.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.6.2 NMAC - N, 10/11/2022]

16.8.6.3 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.
[16.8.6.3 NMAC - N, 10/11/2022]

16.8.6.4 DURATION: Permanent.
[16.8.6.4 NMAC - N, 10/11/2022]

16.8.6.5 EFFECTIVE DATE: October 11, 2022, unless a later date is cited at the end of a section.
[16.8.6.5 NMAC - N, 10/11/2022]

16.8.6.6 OBJECTIVE: The objective of Part 6 is to set forth standards related to health and safety, food and product safety, environmental impacts, and natural resources to ensure public health, safety, and well-being. Part 6 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.6.6 NMAC - N, 10/11/2022]

16.8.6.7 DEFINITIONS: [RESERVED]

16.8.6.8 PREREQUISITE AND RESPONSIBILITY FOR OPERATION:

A. Except as specified in Subsection F of 16.8.6.7 NMAC, prior to the submission of a license application for a class II, III, or IV cannabis manufacture license, each applicant or licensee engaged in the manufacturing of edible or topical cannabis products or edible or topical cannabis finished products shall provide to NMED a certification that:

(1) the facility where the cannabis manufacturer operates, and the manufacturing equipment used will be constructed and maintained in accordance with the requirements of this part; and

(2) edible and topical cannabis products and edible and topical finished products will be stored, manufactured, packaged, repackaged, labeled, relabeled, tested, reworked, or wasted in accordance with the requirements of this part.

B. A certification shall include information specified in Subparagraphs (a) through (i) of Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

C. Any person signing a certification pursuant to this section shall include the following signed statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

D. NMED shall provide confirmation of receipt to each applicant or licensee that provides a certification.

E. Each applicant or licensee shall provide the NMED confirmation to RLD as specified in Paragraph (1) of Subsection A of 16.8.2.30 NMAC.

F. Certification to NMED, as specified in Subsections A through E of 16.8.6.7 shall no longer be required after December 31, 2022.

G. Class II, III, or IV cannabis manufacturers that were licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing of cannabis edible products or cannabis edible finished products, shall apply for a food permit from NMED or a home rule municipality by January 1, 2023.

H. Except as specified in Subsection F of 16.8.6.7 NMAC, class II, III, or IV cannabis manufacturers that were not licensed by RLD prior to the effective date of 16.8.6 NMAC, and that are also engaged in manufacturing cannabis edible products or cannabis edible finished products, shall provide a certification to NMED as specified in Subsections A through E and apply for a food permit from NMED or a home rule municipality as specified in G of 16.8.6.7 NMAC.

I. Beginning April 1, 2023, Class II, III, or IV cannabis manufacturers that manufacture cannabis edible products or cannabis edible finished products shall not operate without a food permit from NMED or a home rule municipality.
[16.8.6.8 NMAC - N, 10/11/2022]

16.8.6.9 MANAGEMENT AND PERSONNEL:

A. Adoption of food code parts 2-1, 2-3 and 2-4 and section 2-103.11. Except as otherwise provided, parts 2-1, 2-3 and 2-4 and section 2-103.11 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

B. A licensee shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the edible cannabis manufacturing facility. The procedures shall be maintained onsite and address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

C. Except as otherwise provided, the licensee shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the cannabis manufacturer facility during all hours of operation.

D. If edible or topical cannabis products or edible or topical cannabis finished products are manufactured as part of a vertically integrated cannabis establishment or integrated cannabis microbusiness that is the legal responsibility of the same licensee and that are located on the same licensed premises, the licensee may designate a single person in charge who is present on the licensed premises during all hours of operation.

E. The person in charge shall have the education, training, or experience necessary to supervise the production of clean and safe edible or topical cannabis products or edible or topical cannabis finished products and ensure the cannabis manufacturer remains in compliance with this part, division rules, and the act at all times.

F. Personal care items on the premises shall be stored in a manner to protect edible and topical cannabis products, edible and topical cannabis finished products, other ingredients, equipment, and utensils from contamination at all times.

G. A licensee shall:
(1) immediately contact the division to report an illness of an employee or conditional employee as specified under Subsection A of this section;
(2) immediately discontinue operations and notify the division if an imminent health hazard may exist as specified in 16.8.6.13 NMAC;
[16.8.6.9 NMAC - N, 10/11/2022]

16.8.6.10 EDIBLE AND TOPICAL CANNABIS MANUFACTURER REQUIREMENTS:

A. Adoption of 21 CFR 117. Except as otherwise provided, Subpart F and the sections, specified in paragraphs 1-7 of this subsection, of Subparts A and B of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety:

- (1)** 117.3 Definitions;
- (2)** 117.20 Plant and grounds;
- (3)** 117.35 Sanitary operations;

- (4) 117.37 Sanitary facilities and controls;
- (5) 117.40 Equipment and utensils;
- (6) 117.80 Processes and controls; and
- (7) 117.110 Defect action levels and Subpart F.

B. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

- (1) 117.301: All records required by this part are subject to all requirements of this subpart;
- (2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and
- (3) 117.320: All records required by this part must be made promptly available to the division for official review and copying upon oral or written request.

C. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of 21 CFR 117:

- (1) 117.310;
- (2) 117.315(d);
- (3) 117.325;
- (4) 117.335; and
- (5) The following terms are omitted from section 117.3 Definitions:
 - (a) Allergen;
 - (b) Food;
 - (c) Food-contact surfaces;
 - (d) Lot;
 - (e) Manufacturing/processing; and
 - (f) Packing.

D. Adoption of food code parts 4-5, 4-6 and 4-7. Except as otherwise provided, parts 4-5, 4-6, and 4-7 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

E. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of the 2017 United States food and drug administration model food code, 4-603.12 Precleaning:

- (1) Food or cannabis product debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.
- (2) If necessary, for effective cleaning, utensils and equipment shall be pre-flushed, presoaked, or scrubbed with abrasives. Ethyl alcohol (ethanol) or isopropyl alcohol (isopropanol) are acceptable for pre-flushing or presoaking.

F. Omissions. Except as otherwise provided, the following omissions are made to the incorporated subparts of the 2017 United States food and drug administration model food code:

- (1) 4-502.12;
- (2) 4-502.13(B);
- (3) 4-502.14;
- (4) 4-602.11(A)(1);
- (5) 4-602.11(B);
- (6) 4-602.11(D)(3); and
- (7) 4-602.11(E)(2)-(3).

G. Cannabis Product Ingredient Source.

- (1) Ingredients shall be received from sources as specified in 7.6.2 NMAC.
- (2) Cannabis products, ingredients, and edible or topical cannabis finished products intended for human consumption shall be transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of the cannabis products, ingredients, and cannabis finished products, as well as against deterioration of the cannabis products, ingredients, and cannabis finished products and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

H. The current 21 CFR 111 and United States Federal Food, Drug, and Cosmetic Act, Title 21, Chapter 9 and 7.6.2 NMAC are hereby adopted as a technical reference and interpretation guide.
[16.8.6.10 NMAC – N, 10/11/2022]

16.8.6.11 WATER SUPPLY AND SEWAGE:

- A.** Drinking water shall be obtained from an approved source that is:
- (1) a public water system; or
 - (2) a non-public water system that is constructed, maintained, and operated according to law.
- B.** A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.
- C.** Except as specified under Subsection D of this section:
- (1) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and
 - (2) Water from a non-public water system shall meet:
 - (a) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and
 - (b) the drinking water source setback requirements as specified in 20.7.3 NMAC.
- D.** A non-drinking water supply shall be used only if its use is approved and shall be used only for nonculinary purposes such as air conditioning, non-cannabis equipment cooling, and fire protection.
- E.** Except when used as specified in Subsection D of this section, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.
- F.** The most recent sample report for the non-public water system shall be retained on file in the cannabis manufacturer facility or the report shall be maintained as specified by state water quality regulations.
- G.** Water shall be received from the source through the use of:
- (1) an approved public water main; or
 - (2) one or more of the following that shall be constructed, maintained, and operated according to law:
 - (a) Non-public water main, water pumps, pipes, hoses, connections, and other appurtenances;
 - (b) Water transport vehicles; or
 - (c) Water containers.
- H.** Sewage shall be disposed of according to LAW. Liquid waste systems shall meet the requirements of 20.7.3 NMAC.
[16.8.6.11 NMAC - N, 10/11/2022]

16.8.6.12 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING:

- A.** Edible and topical cannabis finished products shall meet the requirements specified in division rules related to testing prior to being transported or transferred from the licensed premises, distributed, sold or otherwise made available to consumers.
- B.** Edible and topical cannabis finished products that do not meet the requirements of Subsection A of this section shall:
- (1) be segregated;
 - (2) reworked, remediated or reconditioned as specified in division rules related to testing; or
 - (3) destroyed, wasted, and disposed of in accordance with the wastage requirements of the division.
- [16.8.6.12 NMAC – N, 10/11/2022]

16.8.6.13 EDIBLE AND TOPICAL CANNABIS FINISHED PRODUCT TESTING

LABORATORIES: Testing required by the division shall be conducted by a division-approved cannabis testing

laboratory that has no direct ownership or financial interest in the facility for which the testing is being conducted.

[16.8.6.13 NMAC - N, 10/11/2022]

16.8.6.14 CEASING OPERATIONS AND REPORTING:

A. Except as specified in Subsections B and C of this section, a licensee shall immediately discontinue operations if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne or cannabis-borne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

B. A licensee need not discontinue operations in an area of a cannabis manufacturer facility that is unaffected by the imminent health hazard.

C. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the division may allow the licensee to continue operations in the event of an extended interruption of electrical or water service if:

- (1) a written emergency operating plan has been approved by the division (NMED);
- (2) immediate corrective action is taken by the licensee to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and
- (3) the division (NMED) is informed upon implementation of the written emergency operating plan.

D. If operations are discontinued as specified in Subsection A of this section or otherwise according to law, the licensee shall obtain approval from the division (NMED) before resuming operations.

[16.8.6.14 NMAC - N, 10/11/2022]

16.8.6.15 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.

[16.8.6.15 NMAC – N, 10/11/2022]

History of 16.8.6 NMAC:

Emergency New Rule, Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources, filed and effective December 2, 2021, expired as a matter of law, June 2, 2022.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 7 QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS

16.8.7.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.7.1 NMAC – N, 3/1/2022]

16.8.7.2 SCOPE: This rule applies to all applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.7.2 NMAC - N, 3/1/2022]

16.8.7.3 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.
[16.8.7.3 NMAC - N, 3/1/2022]

16.8.7.4 DURATION: Permanent.
[16.8.7.4 NMAC - N, 3/1/2022]

16.8.7.5 EFFECTIVE DATE: March 1, 2022, unless a later date is cited at the end of a section.
[16.8.7.5 NMAC - N, 3/1/2022]

16.8.7.6 OBJECTIVE: The objective of Part 7 is to set forth standards related to quality control of inspection, and testing of cannabis and cannabis products to ensure uniformity of cannabis and cannabis products and protect public safety. Part 7 is not applicable to personal use of cannabis pursuant to the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.
[16.8.7.6 NMAC - N, 3/1/2022]

16.8.7.7 DEFINITIONS: [RESERVED]

16.8.7.8 GENERAL TRACKING REQUIREMENTS: In addition to any requirements specific to tracking within each license type, all licensees of cannabis establishments must meet minimum requirements.

A. Tracking immature cannabis plants: licensees must track, using the track and trace system specified by the division, cannabis plants as follows:

(1) each immature plant shall be assigned a plant tag with an individual track and trace number and shall be:

(a) placed contiguous to one another to facilitate identification by the division;
and

(b) be fully separated from mature plants.

(2) Immature plants transferred from one licensee to another shall be labeled with the track and trace number that corresponds to the track and trace number. The receiving licensee shall remove the originating licensee's tag and assign a plant or package tag, as applicable, belonging to the receiving licensee within three calendar days of receiving the immature plants.

B. Tracking mature cannabis plants: mature cannabis plants shall be tagged as follows:

(1) Each mature plant shall be tagged with a plant tag. A plant tag shall be attached to the main stem at the base of the plant, placed in a position so it is visible and within clear view of an individual standing next to the mature plant, and kept free from dirt and debris.

(2) Licensees are prohibited from removing the plant tag from the mature plant to which it was attached and assigned until the plant is harvested, destroyed, or disposed of.

C. Tracking cannabis and cannabis products: licensees must track, using the track and trace system specified by the division, cannabis and cannabis products according to packaging and labeling requirements set forth in 16.8.3 NMAC.

D. Additional recorded information: in addition to any tracking requirements specific to license type or cannabis product type, a licensee must ensure the following data is properly recorded in the tracking system:

(1) a complete inventory of all cannabis and cannabis products in the possession, control or ownership of the licensee;

(2) any changes to the licensee's inventory of any cannabis or cannabis products;

(3) when cannabis material is converted to waste

(4) when cannabis waste is destroyed;

(5) when an authorized transfer of cannabis or cannabis product occurs;

(6) any theft of cannabis or cannabis products;

(7) all sales records of cannabis or cannabis product;

(8) all mandatory cannabis or cannabis product testing results;

(9) the county and municipality, if applicable, where the cannabis or cannabis product was harvested, otherwise cultivated, manufactured, tested, sold to other licensees, sold to consumers and disposed of or destroyed; and

(10) other information required by the tracking system or specified by the division.

(11) cannabis material in segregation while testing occurs.

[16.8.7.8 NMAC – N, 3/1/2022; A/E, 03/10/2022; Rp, 16.8.7.8 NMAC, 07/12/2022]

16.8.7.9 IMPLEMENTATION AND ADMINISTRATION OF TRACKING SYSTEM:

A. Operational account: a licensee must have a track and trace system account activated and functional prior to operating or exercising any privileges of a license. The licensee shall keep and maintain comprehensive records to ensure adequate inventory tracking of any cannabis or cannabis products.

B. System administrator required: each licensee must designate at least one individual as a track and trace system administrator.

C. System training: in order to obtain a track and trace system administrator account, a licensee or its designee must attend and successfully complete all required track and trace system training. A licensee may apply for an account and training once they receive a license from the division.

D. Continuing education: The division may also require additional ongoing, continuing education for the track and trace system administrator to retain their track and trace system administrator account.

E. Responsible for cost: each licensee is responsible for all costs associated with its use of the tracking system and any associated vendor fees.

F. Additional users: a licensee may designate additional individuals as track and trace system users. The licensee shall ensure that all individuals who are granted track and trace system user account access for the purposes of conducting track and trace functions in the system are trained by an track and trace system administrator in the proper and lawful use of the track and trace system.

[16.8.7.9 NMAC – N, 3/1/2022; Rp, 16.8.7.9 NMAC, 07/12/2022]

16.8.7.10 GENERAL TRACK AND TRACE SYSTEM USE:

A. System required: all track and trace activities of a licensee must be tracked through use of the track and trace system. Licensees must reconcile all on-premises and in-transit cannabis or cannabis products each day in the track and trace system by 11:59 p.m. that same day. Track and trace system software must then be synchronized by the licensee prior to closing the session (as applicable).

B. Weights and measures: licensees must utilize a standard of weights and measures that is supported by the track and trace system to track all cannabis or cannabis products. A scale used to weigh product prior to entry into the track and trace system shall be certified to be registered and calibrated in accordance with applicable requirements of the New Mexico department of agriculture

C. System security: licensees shall maintain the security of the track and trace system, as follows:

(1) maintain an accurate and complete list of all track and trace system users for each licensed premise;

(2) update this list when a new track and trace system user is trained or when an existing user is removed;

(3) train and authorize any new track and trace system users before they may access track and trace system or input, modify or delete any information in the track and trace system; and

(4) cancel any track and trace system administrators and track and trace system users from their associated track and trace system accounts once any such individuals are no longer employed by the licensee or at the licensed premises.

D. Responsible for employee actions: licensees are accountable for all actions employees take while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities.

E. Responsible for individual actions: each individual user is also accountable for all of their actions while logged into the track and trace system or otherwise conducting cannabis or cannabis product inventory tracking activities, and shall maintain compliance with all relevant laws and division rules.

F. Use of appropriate account: each individual user shall only log activities in the track and trace system under the user's own unique track and trace system user account.

G. Additional software allowed: licensees may use separate software applications to collect information to be used by the business, including additional inventory tracking or point of sale systems.

[16.8.7.10 NMAC – N, 3/1/2022; Rp, 16.8.7.10 NMAC, 07/12/2022]

16.8.7.11 CONDUCT WHILE USING TRACK AND TRACE SYSTEM:

A. Licensees or designated track and trace administrator(s) and track and trace system user(s) shall enter data into the track and trace system that fully and transparently accounts for all inventory tracking activities and authorized transfers. Both the licensee and the individuals using the track and trace system are responsible for the accuracy of all information entered into the track and trace system.

B. Individuals entering data into the track and trace system shall only use that individual's track and trace system account.

C. If at any point a licensee loses access to the track and trace system for any reason, the licensee or track and trace system administrator shall immediately notify the division and shall keep and maintain comprehensive records detailing all cannabis or cannabis product track and trace activities that occurred during the loss of access. These track and trace activities must be entered into the track and trace system and the division shall be notified that access has been restored. Licensees must document when access to the system was lost, the cause of system loss and when it was restored. Licensee shall not transport or receive any cannabis or cannabis product to or from another cannabis establishment until such time as access is restored and all information is recorded into the track and trace system.

[16.8.7.11 NMAC – Rp, 16.8.7.11 NMAC, 07/12/2022]

16.8.7.12 COMPLIANCE NOTIFICATIONS:

A. Monitor notifications: licensees must monitor all compliance notifications from the track and trace system or the division and must resolve any issue(s) detailed in the compliance notification in a timely fashion. Compliance notifications from the track and trace system shall not be dismissed in the track and trace system until the licensee resolves the compliance issues detailed in the notification.

B. Monitor informational notifications: licensees must take appropriate action in response to informational notifications received through the track and trace system or the division including but not limited to notifications related to enforcement alerts and other pertinent information.

[16.8.7.12 NMAC - N, 07/12/2022]

16.8.7.13 LAWFUL ACTIVITY REQUIRED: Proper use of the track and trace system does not relieve a licensee of its responsibility to maintain compliance with all laws, rules and other requirements at all times.

[16.8.7.13 NMAC - N, 07/12/2022]

16.8.7.14 TRACK AND TRACE SYSTEM PROCEDURES:

A. Conformity of use: licensees must utilize the track and trace system in conformance with division rule and track and trace system procedures.

B. Track and trace procedures include:

(1) properly indicating the creation of a harvest batch or production batch including the assigned harvest batch or production batch number;

(2) accurately identifying the cultivation room or outdoor location where each plant is located on the licensed premises;

(3) accurately identifying when inventory is no longer on the licensed premises;

(4) properly identifying cannabis or cannabis products identified as test batch;

(5) properly indicating test results from a cannabis testing laboratory;

- (6) accurately indicating the track and trace system category for all cannabis or cannabis products;
 - (7) accurately including a note explaining the reason for any destruction of cannabis or cannabis products, and the reason for any adjustment in weight or count to inventory in the track and trace system software; and
 - (8) properly assigning unique identifying tracking numbers to each cannabis plant, cannabis product and any batch, lot, or subplot from such cannabis plant(s) and cannabis product(s).
- [16.8.7.14 NMAC - N, 07/12/2022]

16.8.7.15 REQUIRED TESTING OF CANNABIS PRODUCTS: A cannabis establishment shall segregate a batch of cannabis product and arrange for samples to be collected and tested by a cannabis testing laboratory if required by this section. The batch must pass all required tests prior to the sale or delivery to a qualified patient, primary caregiver or consumer.

A. Required testing: Unless an exception applies:

(1) A cannabis producer, cannabis producer microbusiness, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1, *Required Testing of Cannabis Products*, below, of any cannabis flower and trim that it harvests prior to:

- (a) packaging for retail sale;
- (b) transfer to another cannabis establishment for the purposes of retail sale;
- (c) retail sale; or
- (d) delivery to a patient or consumer.

(2) A cannabis manufacturer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall arrange for and pay for the testing specified in Table 1 of any cannabis product, including but not limited to a concentrate or extract, that it manufactures prior to:

- (a) packaging for retail sale
- (b) transfer to another cannabis establishment for the purposes or retail sale;
- (c) retail sale; or
- (d) delivery to a qualified patient, primary caregiver or consumer.

(3) A cannabis retailer, vertically integrated cannabis establishment, or integrated cannabis microbusiness shall not sell or deliver to a patient or consumer any cannabis product unless the cannabis product has undergone all testing required by this section.

Table 1, Required Testing of Cannabis Products						
Product category	Potency	Homogeneity of Batch	Visual Inspection	Microbiological	Residual Pesticides	Residual Solvents
Flower	X		X	X	X	
Trim	X		X	X	X	
Concentrate (volatile solvent)	X			X	X	X
Kief	X		X	X	X	
Pre-rolls	X			X	X	
Concentrate (non-volatile solvent)	X		X	X	X	
Extract – alcohol	X			X	X	

Extract – other liquid	X			X	X	
Topical	X			X		
Edible	X			X	*	
Other inhalable	X				*	X
Other	X			X	*	X

*Pesticide testing required unless exempted by Subsection E, below.

B. Staggered implementation:

- (1) The division may within its discretion delay implementation of sample collection and testing requirements of this section, in whole or in part.
- (2) In determining the start date of an individual testing requirement, the division shall consider whether a cannabis testing laboratory has validated a method for conducting the test.
- (3) In determining the date on which a cannabis establishment must have its samples collected by an employee or contractor of a cannabis testing laboratory, the division shall consider the capacity of cannabis testing laboratories to collect and transport samples.
- (4) The division may establish different implementation dates for sample collection requirements for:
 - (a) cannabis producer microbusinesses and integrated cannabis microbusinesses located up to 100 miles by automobile from the nearest licensed cannabis testing laboratory location;
 - (b) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located up to 200 miles by automobile from the nearest licensed cannabis testing laboratory location;
 - (c) cannabis producer microbusinesses and integrated cannabis microbusinesses located more than 100 miles by automobile from the nearest licensed cannabis testing laboratory location;
 - (d) cannabis producers, cannabis manufacturers, and vertically integrated cannabis establishments located more than 200 miles by automobile from the nearest licensed cannabis testing laboratory location; and
 - (e) cannabis establishments for which travel to a licensed cannabis testing laboratory location requires passing through a United States border patrol checkpoint.

C. Collection and transportation of samples: A cannabis testing laboratory is responsible for the collection of samples for the performance of any required test, re-test after a failing result, re-test after remediation, or test for the purposes of labeling.

- (1) A cannabis testing laboratory may perform sample collection using:
 - (a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or
 - (b) Contractors who have completed the sampling agent training offered by the U.S. department of agriculture’s domestic hemp production program and sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. The contractor shall obtain necessary training to comply with the cannabis testing laboratory’s protocols, and the cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.
- (2) A cannabis testing laboratory may transport samples using:
 - (a) Laboratory employees with requisite training, as specified in 16.8.2.26 NMAC; or
 - (b) Contractors who sign an affidavit that they have no ownership interest in, and are not employed by, any cannabis establishment that produces or manufactures cannabis. Transporting cannabis for a cannabis establishment on a contractual basis does not preclude a person or entity from transporting samples in secure containers for cannabis testing laboratories.
- (3) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to collect samples from or transport samples on behalf of any cannabis establishment.
- (4) If the division has delayed implementation of the requirement that the cannabis testing laboratory collect the sample from a cannabis establishment, based on its distance from the nearest

cannabis testing laboratory or location beyond a U.S. border patrol checkpoint, then any person collecting or transporting samples for required testing must receive training in sample collection and transportation protocols.

(a) Nothing in these rules shall be interpreted to require a cannabis testing laboratory to accept samples from a cannabis establishment.

(b) The cannabis testing laboratory may reject any sample that it suspects was collected outside of its protocols.

(5) A cannabis establishment may specify reasonable precautions prevent the contamination of batches of cannabis, except that the cannabis establishment must provide access to the entire batch of cannabis product. Precautions may include, but are not limited to:

(a) requiring the use of gloves and other personal protective equipment;

(b) inspecting tools and containers prior to their use;

(c) specifying the location within the cannabis establishment at which the samples will be collected;

(d) specifying locations within the cannabis establishment to which laboratory employees or contractors do not have access; and

(e) the right to refuse entry to any laboratory employee or contractor not in compliance with the precautions

(6) Nothing in these rules shall be interpreted to require routine testing of cannabis products before the cannabis establishment segregates cannabis products into batches and places the batches into containers for storage while awaiting test results.

(7) This Subsection C of 16.8.7.8 NMAC is effective March 1, 2023.

D. Compliance with all rules and applicable laws required: Passage of testing does not relieve an establishment of its obligation to comply with the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, the Pesticide Control Act, division rules, or other local, state, and federal laws not in conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

(1) A cannabis establishment shall waste and dispose of any cannabis product to which a pesticide has been applied in violation of division rules or the Pesticide Control Act or any product manufactured using an unapproved solvent.

(2) Nothing in this rule shall be interpreted as precluding regulatory activities by other state agencies that do not conflict with the Cannabis Regulation Act or the Lynn and Erin Compassionate Use Act.

E. Exceptions to required testing:

(1) A cannabis establishment shall not be required to have tested for pesticide residue any cannabis product made from cannabis concentrate or cannabis extract with verified pesticide residue test results, so long as the establishment can demonstrate that the resulting product will not exceed action levels for that type of cannabis product.

(2) A cannabis establishment shall not be required to have tested a cannabis product acquired from another cannabis establishment if the batch, in present form, was previously determined to have passed the testing requirements of this rule and is accompanied by a *Certificate of Analysis* issued by a licensed cannabis testing laboratory within the previous 90 days.

(3) If additional testing requirements take effect after a cannabis testing laboratory obtains a sample of a cannabis product for required testing, the laboratory is required to perform only those tests required at the time the sample was obtained.

F. Visual inspection: A sample shall pass visual inspection if, under a minimum of 40X magnification, laboratory personnel detect in a one gram sample:

(1) no living or dead insects, hair, eggs, or feces; and

(2) no more than two percent sand, soil, mold, or rocks.

G. Microbiological testing: A sample shall pass microbiological testing if the sample contains concentrations of target microbes not exceeding the action levels set forth in Table 2, *Microbiological Testing Requirements*, below.

(1) The division may require required testing for additional microbes if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence, in a quantity or amount that poses a threat to public health, in a cannabis product produced, manufactured, or sold by any cannabis establishment. The division shall provide written notice to licensees 30 days before requiring required testing for additional pesticide residues, except that such notice is not required when human illness is linked to contaminated cannabis products.

(2) The cannabis testing laboratory may report a collective total of the four *Aspergillus* strains listed without distinguishing individual totals.

(3) The test results shall be reported as “Present,” “Absent,” or in colony forming units (CFU) per one gram sample.

(4) Testing for shiga-toxin producing *E. coli*, *Clostridium botulinum*, and *Pseudomonas aeruginosa* is effective July 1, 2022.

Target Microbe	Action Level
* <i>E. coli</i>	100 CFU/gram
<i>Aspergillus flavus</i> , <i>Aspergillus fumigatus</i> , <i>Aspergillus niger</i> , or <i>Aspergillus terreus</i>	Present in 1 gram
<i>Salmonella</i> spp.	Present in 1 gram
†Shiga-toxin producing <i>E. coli</i>	Present in 1 gram
† <i>Clostridium botulinum</i>	Present in 1 gram
† <i>Pseudomonas aeruginosa</i>	Present in 1 gram
*Cannabis product may be tested for shiga-toxin producing <i>E. coli</i> , rather than generic <i>E. coli</i> . †Testing for shiga-toxin producing <i>E. coli</i> , <i>Clostridium botulinum</i> , and <i>Pseudomonas aeruginosa</i> is required only for edible cannabis products manufactured from fresh cannabis with a water activity of 0.65 or greater.	

H. Residual solvent testing: A sample shall pass residual solvent testing if the sample contains concentrations of residual solvents lower than the action levels set forth in Table 3, *Residual Solvent Testing Requirements*, below. The test results shall be reported as described in the notes to Table 3.

Target Compounds	Common Chemical Name	IUPAC Name	CAS Number	Action Level*
Propane	Propane	Propane	74-98-6	5000
Butanes	<i>n</i> -butane	Butane	106-97-8	5000
	Isobutane	2-methylpropane	75-28-5	5000
Pentane	<i>n</i> -pentane	Pentane	109-66-0	5000
Hexane	<i>n</i> -hexane	Hexane	110-54-3	290
Benzene	Benzene	Benzene	71-43-2	2.0
Toluene	Toluene	Methylbenzene	108-88-3	890
Heptane	<i>n</i> -heptane	Heptane	142-82-5	5000
Ethylbenzene and Xylenes	Ethylbenzene	Ethylbenzene	100-41-4	2170 Total
	<i>ortho</i> -xylene	1,2-dimethylbenzene	95-47-6	

	<i>meta</i> -xylene	1,3-dimethylbenzene	108-38-3	
	<i>para</i> -xylene	1,4-dimethylbenzene	106-42-3	
Ethanol †	ethyl alcohol	Ethanol	64-17-5	5000
Methanol	methyl alcohol	Methanol	67-56-1	3000
Isopropanol	Isopropyl alcohol	2-propanol	67-63-0	5000
Acetone	Acetone	2-propanone	67-64-1	5000

Use two significant digits when reporting residual solvent results.
 Report levels less than the Limit of Quantitation for each solvent according to the following example:
 "Benzene < 2.0 µg/g"
 *Micrograms solvent per gram (µg/g) of sample/parts per million (ppm).
 †Unless exempt from testing.

I. Potency testing: Potency testing requires determining the quantity of tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), cannabidiol (CBD), cannabidiolic acid (CBDA) per gram of sample and the calculation of THC potency and CBD potency, according to Table 4, *Potency Testing Requirements*, below.

Cannabinoid	Abbreviation	CAS Number	Reporting Units
Tetrahydrocannabinolic Acid	THCA	23978-85-0	For solids: mg of analyte/gram of sample and percentage by weight
Tetrahydrocannabinol	THC	1972-08-3	
Cannabidiolic Acid	CBDA	1244-58-2	
Cannabidiol	CBD	13956-29-1	For liquids: mg/ml
Total THC Potency (solids)	THC Potency = (Percent THCA × 0.877) + Percent THC		Percentage by weight
Total CBD Potency (solids)	CBD Potency = (Percent CBDA × 0.877) + Percent CBD		
Total THC Potency (liquids)	THC Potency = (mg/ml THCA × 0.877) + mg/ml THC		mg/ml
Total CBD Potency (liquids)	CBD Potency = (mg/ml CBDA × 0.877) + mg/ml CBD		

J. Pesticide testing: A sample shall pass pesticide testing if concentrations of residues of pesticides are lower than the action levels listed in Table 5, *Pesticide Testing Requirements*, below.

(1) The division may adopt required testing for additional pesticide residues if quality control or inspection testing conducted by cannabis testing laboratories, NMDA, the department of health, or the division identifies their presence in a cannabis product produced or manufactured by any cannabis establishment. The division shall provide written notice to licensees 30 days before implementing required testing for additional pesticide residues.

(2) Nothing in this section shall be interpreted to waive or diminish any requirement of the Pesticide Control Act, Sections 76-4-1 et seq. NMSA 1978. The division, alone or in conjunction with

NMDA, may investigate any suspected use of a pesticide not registered with NMDA for use on cannabis.

(3) This Subsection J of 16.8.7.8 NMAC is effective July 1, 2022.

Table 5. Pesticide Testing Requirements			
Targeted Pesticide	CAS Number	Action Level: Inhalable*	Action Level: Non-Inhalable*
†Abamectin	71751-41-2	0.1	0.15
†Acequinocyl	57960-19-7	2.0	2.0
†Bifenazate	149877-41-8	0.2	0.2
†Bifenthrin	82657-04-3	0.1	0.1
†Etoxazole	153233-91-1	0.1	1.0
†Imazalil	35554-44-0	0.1	0.1
†Imidacloprid	138261-41-3	0.1	3.0
†Myclobutanil	88671-89-0	0.1	0.4
†Paclobutrazol	76738-62-0	0.04	0.04
Piperonyl butoxide	51-03-6	3.0	8.0
†Pyrethrins (cumulative total)	121-21-1 25402-06-6 4466-14-2	0.5	1.0
†Spinosyn A, D (cumulative total)	131929-60-7 131929-63-0	0.1	3.0
†Spiromesifen	283594-90-1	0.1	0.2
†Spirotetramat	203313-25-1	0.1	0.2
†Trifloxystrobin	141517-21-7	0.02	0.02
Other pesticide not registered with NMDA for use on cannabis	Varies	0.02	0.02
<p>*Micrograms of pesticide per gram ($\mu\text{g/g}$) of sample/parts per million (ppm). Report levels less than the Limit of Quantitation for each pesticide residue according to the following example: "Paclobitrazol < 0.4 $\mu\text{g/g}$" †Not registered with NMDA for use on cannabis.</p>			

K. Release of batch after testing: A cannabis establishment may release an entire batch of cannabis product for immediate manufacture, sale, or other use, provided that the sample taken from the batch passes the tests required in this section.

L. Procedures for testing: A cannabis establishment shall adhere to the following procedures:

(1) After collection of samples, a batch of cannabis product shall be segregated in a secure container and stored under controlled environmental conditions (temperature, humidity, light) designed to limit microbial growth or other spoilage until the cannabis establishment receives a certificate of analysis indicating the batch meets the testing requirements of this rule.

(2) The secured container shall be labeled with the identification number used in the track and trace system, the name of the cannabis testing laboratory, the date on which the samples were taken, and, in minimum 12-point font, all capital letters, "AWAITING TEST RESULTS. DO NOT TRANSFER."

(3) The cannabis testing laboratory and the cannabis establishment submitting samples each shall appropriately document in the track and trace system the sampling and testing of cannabis product.

(4) A cannabis establishment shall maintain all results of laboratory tests conducted on cannabis products produced or manufactured by the cannabis establishment for a period of at least two years and shall make those results available to consumers or cannabis retailers upon request.

M. Re-testing: If a sample fails any test, the cannabis establishment may request re-testing by the same cannabis testing laboratory or another cannabis testing laboratory. If the repeated test is within acceptable limits, then the batch may be sold, transferred, or further manufactured.

N. Remediation: Within 120 days of a failed test, a cannabis establishment may remediate and retest the batch according to the procedures described in this subsection. A cannabis establishment shall adopt and maintain on the premises protocols regarding remediation consistent with this rule.

(1) A cannabis establishment may remediate dried cannabis or cannabis concentrates that fail microbiological testing by means of extraction using an approved volatile solvent. Other products that fail microbiological testing may not be remediated.

(2) A cannabis establishment may remediate any cannabis product that fails homogeneity testing through any approved manufacturing process, including extraction, chopping, melting, mixing, infusing, or otherwise combining the batch.

(3) A cannabis establishment may remediate any cannabis product that fails residual solvent testing by evaporating solvent using heat, vacuum pressure, or a combination of methods.

(4) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of mold by means of extraction using an approved volatile solvent.

(5) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of insects, hair, eggs, or feces by removing the contaminants, followed by extraction using an approved volatile solvent.

(6) A cannabis establishment may remediate cannabis that fails visual inspection for the presence of soil or rocks by removing the contaminants.

(7) Cannabis product that has been remediated must undergo any test that was previously failed.

(8) Cannabis product that has been remediated with the use of volatile solvents must additionally undergo residual solvent testing.

O. Notice and destruction: Any cannabis product that fails a test and cannot be remediated, including any remediated cannabis product that fails any test after remediation, is subject to destruction in accordance with the wastage requirements of 16.8.2.15 NMAC. The cannabis establishment shall notify the division within 24 hours and shall confirm the wastage and disposal of the usable cannabis in accordance with this rule. The wasted product shall be removed from inventory, and the removal from inventory shall be noted in the track and trace system.

P. Interpretation of differing results: Results produced by a cannabis testing laboratory are valid only for the sample tested. A differing result produced by quality control or inspection testing of a different sample pursuant to 16.8.2.16 NMAC is not grounds for action against the cannabis testing laboratory that produced the original testing result.

[16.8.7.15 NMAC – N, 07/12/2022; A/E, 11/18/2022]

16.8.7.16 ADDITIONAL TESTING SERVICES OFFERED BY CANNABIS TESTING LABORATORIES:

A cannabis testing laboratory may offer cannabis establishments testing for quality improvement, research and development, or labeling purposes. A cannabis testing laboratory may also offer testing to persons other than cannabis establishments as provided in this section.

A. Research and development testing for cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments any required test or any additional test for the purpose of research and development or for quality-control measures requested by a cannabis establishment.

(1) The cannabis establishment may collect the sample, or an agent of the cannabis testing laboratory may collect the sample.

(2) If a cannabis establishment requests testing for research and development purposes, the results may not be used to satisfy any required testing requirement, even if the sample passes all tests.

(3) The failure of a test for research and development purposes shall not constitute a failed test.

(4) The results of a test conducted for research and development purposes shall not be included on a product label or advertisement.

B. Testing for the purposes of labeling by cannabis establishments: A cannabis testing laboratory may offer to cannabis establishments additional tests not included in required testing for the purposes of product labeling, including quantitation of specific pesticides, microbial contaminants, solvents, mycotoxins, or metals.

(1) An agent of the cannabis testing laboratory shall collect the samples according to the laboratory's protocols.

(2) A label may include a reference to concentrations of compounds not subject to required testing, including terpenes, terpenoids, or additional cannabinoids.

(3) A label may include a reference to the passage of cannabis screenings, including one or more of the following:

(a) naming the contaminants for which screening was performed;

(b) providing a link or QR code to the list of contaminants for which the cannabis product was screened; or

(c) a statement that the product has met third-party screening criteria, such as those established by an industry association, except that no label shall contain claims that a cannabis product is “pesticide free” or “organic” unless such labeling is specifically authorized under U.S. department of agriculture regulations.

C. Reporting of contamination: Nothing in this rule shall be interpreted to require a cannabis testing laboratory to offer testing for analytes not included in required testing. However, a cannabis testing facility shall report to the division, without naming the source of the sample, the detection of any of the following analytes in the course of testing for research and development or labeling purposes:

(1) aflatoxin B1, B2, G1, and G2 and ochratoxin A, at a total concentration of 20 µg/kg (parts per billion) or greater;

(2) arsenic, cadmium, lead, or mercury, at a concentration of 0.4 µg/g (parts per million) or greater;

(3) the residue of any pesticide not required to be tested or not registered in New Mexico for use on cannabis, at any level detectable by the cannabis testing laboratory’s methodology; or

(4) any microorganism not required to be tested at a level that poses a significant threat to human health.

D. Research and development testing in connection with personal use or medical use of Cannabis. A cannabis testing laboratory may perform any test on a sample of cannabis product for any resident of New Mexico who is at least 21 years of age and represents in writing that the cannabis product is for the personal use or medical use of the person submitting the sample or a person for whom the person submitting the sample is acting as a primary caregiver. The cannabis testing laboratory shall provide guidance on sample collection but shall not collect samples onsite.

E. Testing services to entities operated or licensed by a tribal government. A cannabis testing laboratory may perform any test on a sample of cannabis product for any entity located within New Mexico and operated or licensed by a tribal government with which the division has an intergovernmental agreement covering cannabis testing. If the intergovernmental agreement permits such entities to collect and submit samples, the cannabis testing laboratory shall provide guidance on sample collection. Otherwise, an agent of the laboratory shall collect samples.

F. Testing services for the division or other governmental entities: A cannabis testing laboratory may, but is not required to, perform any test on behalf of the division, NMDA, another state agency, or a state or local law enforcement authority acting within its lawful jurisdiction.

[16.8.7.16 NMAC – N, 07/12/2022]

16.8.7.17 PREVENTION OF HEAVY METAL CONTAMINATION: A cannabis establishment shall adhere to the following quality control standards for the production and manufacturing of cannabis:

A. Growing media: The cannabis establishment shall maintain, and make available for division inspection, records of all growing media purchased.

B. Water: If using for irrigation water from a non-municipal source, a cannabis establishment shall maintain quarterly testing data indicating concentrations at or below the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below.

C. Soil: If growing cannabis directly in the ground, the cannabis establishment shall submit at least annually representative soil samples to a laboratory for analysis of arsenic, cadmium, lead, and mercury levels and shall retain a certificate of analysis for inspection by the division. If the concentration of any heavy metal exceeds the action levels in Table 1, *Heavy Metal Testing Requirements for Water and Soil*, below, the cannabis establishment shall remediate the soil and shall not produce additional plants until soil concentrations are below the applicable action levels.

D. Choice of laboratories: The cannabis establishment may submit water or soil samples to any laboratory in the United States offering water or soil analysis for the four required analytes.

Analyte	Symbol	CAS Number	Action Level: Soil*	Action Level: Water†
Arsenic	As	7440-38-2	4.25	10.0
Cadmium	Cd	7440-43-9	7.05	5.0
Lead	Pb	7439-92-1	400	15.0
Mercury	Hg	7439-97-6	2.38	2.0

*Reported in micrograms per gram (µg/g) of sample/parts per million (ppm). Based on New Mexico Environment Department's *Risk Assessment Guidance for Site Investigations and Remediation*.
†Reported in micrograms per liter (µg/L) of sample. Based on U.S. Environmental Protection Agency's maximum contaminant levels.

[16.8.7.17 NMAC – N, 07/12/2022]

16.8.7.18 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.

[16.8.7.18 NMAC – N, 3/1/2022; Rn, 16.8.7.11 NMAC, 07/12/2022]

History of 16.8.7 NMAC: [RESERVED]

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 manufactures 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]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 10 CANNABIS SERVERS LICENSING AND TRAINING PROGRAM

16.8.10.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.10.1 NMAC – N, 07/12/2022]

16.8.10.2 SCOPE: This rule applies to applicants for cannabis server permit education provider and a cannabis server permit pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act or division rules, and where applicable, the general public.
[16.8.10.2 NMAC - N, 07/12/2022]

16.8.10.3 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.
[16.8.10.3 NMAC - N, 07/12/2022]

16.8.10.4 DURATION: Permanent.
[16.8.10.4 NMAC - N, 07/12/2022]

16.8.10.5 EFFECTIVE DATE: July 12, 2022, unless an earlier date is cited at the end of a section.
[16.8.10.5 NMAC - N, 07/12/2022]

16.8.10.6 OBJECTIVE: The objective of Part 10 is to set forth the provisions that apply to cannabis server permit education and server permits.
[16.8.10.6 NMAC - N, 07/12/2022]

16.8.10.7 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.
[16.8.10.7 NMAC - N, 07/12/2022]

16.8.10.8 CANNABIS SERVER PERMITS: ISSUANCE, DISTRIBUTION, REPLACEMENT:

A. Cannabis server permit required. A licensee approved to operate a cannabis consumption area and all servers must satisfactorily complete a program every three years to obtain a server permit. No person shall be employed as a server on a licensed cannabis consumption area unless that person obtains a server permit, except that a person not previously certified must obtain a server permit within 30 days of employment.

B. Server permit issuance. Satisfactory completion of a certified program will be determined by the student earning a score of eighty percent or higher on an approved test administered at the end of a classroom program or administered at the end of or after completion of a module for on-line programs. Each student who satisfactorily completes a certified program may be issued a server permit by the division. If the student has a child support hold placed on him or her by the human services department, the division shall not issue a server permit to that student until the child support hold has been lifted.

C. Providers' duty to inform the division of student's satisfactory completion. Within 10 business days of satisfactory completion of any certified program, the provider who administered the program shall submit to the division a server permit application for each student who satisfactorily completed the program, including their name, personal identifier, address, date of birth, and any other information required by the division on forms prescribed by the division and in accordance with methods prescribed by the division, including electronic submission. Server permits will be numbered sequentially to provide a unique number for each student who satisfactorily completes a program. Any application received by the division more than 10 business days after the date the course was completed will subject the provider to a late fee of five dollars (\$5) per application. Any incomplete application received by the division shall be returned to the provider for completion.

D. Division will distribute permits. The division will prepare and distribute the server permits to the student within 90 days of satisfactory completion of a certified program. Providers are required to store original server permit applications in a secured manner for six months from the date of satisfactory completion of the certified program. After six months from the date of satisfactory completion, providers may destroy the original server permit applications through shredding or another method that ensures the information cannot be stolen or otherwise re-used.

E. Temporary Server Permits. Providers who administer a classroom program may issue temporary server permits by recording the test grade on the server permit application and issuing a designated copy of the application to the student. Providers who administer on-line programs may issue temporary server permits by allowing the student to print out a computer generated document, containing information as required by the division, upon satisfactory completion of the program by student. Temporary server permits are valid for 90 days from the date the exam is successfully completed. Photocopies of the designated copy of the application or computer print-out are not valid temporary server permits. If the server loses the temporary server permit, it is the responsibility of the provider to supply a replacement temporary server permit. Providers are required to inform all students that it will take up to 120 days from the date the exam is successfully completed for the server to receive a permanent permit from the division and that if the server needs a replacement temporary server permit the server may obtain one from the provider.

F. Replacement server permits. Requests for replacement server permits must be submitted in writing to the division. Requests must be made by the server, must be submitted on forms prescribed by the division and must be accompanied by a ten dollar (\$10.00) replacement fee in the form approved by the division. If the request is made in person, the server must present a valid, government issued identification card. If the request is made by mail, the server must enclose a photocopy of a valid, government issued identification card. A request to change the name of the server may, in lieu of a valid, government issued identification card, include a copy of a marriage certificate, divorce decree, or court order.
[16.8.10.8 NMAC - N, 07/12/2022]

16.8.10.9 PROVIDER, INSTRUCTOR AND PROGRAM CERTIFICATION; RENEWAL:

A. Certification required: Any person seeking certification as a provider, instructor or program must submit an application to the division for approval in accordance with this section. An on-line program and a classroom program cannot be combined into one application.

B. Applications for providers and programs:
(1) Providers and instructors:
(a) the name and qualifications of the provider or the name and qualifications of the instructor(s), including a resume, references and the name of the certified program that applicant intends to administer;

(b) for on-line providers, the name and address of all entities owning, profiting, or both from the administration of the on-line course;

(c) fees that will be charged to take the program; and

(d) any other relevant information as may be required by the director.

(2) Programs:

(a) a description of program content that meets the minimum requirements contained in the Cannabis Regulation Act, specifically Section 26-2C-11, NMSA 1978, including a copy of the classroom program's handbook or a copy of the on-line program's quick reference materials to be distributed to and retained by students after satisfactory completion of the program. All programs should include real life examples and should be administered, at least in part, in an interactive way;

(b) all proposed programs must include a minimum of four and one-half classroom hours or the equivalent for on-line programs;

(c) for on-line programs:

(i) a description of the procedure for electronic transmission of the student's full name, address, personal identifier, driver's license or other government-issued identification number and state of issuance, date of birth, phone number, e-mail address, sex, height, weight, hair color, eye color, test score and test completion date within 10 days of a student's successful completion of the program, including a description of the security measures that will be taken to ensure that the information is stored and transmitted in a secure manner. The electronic transmission of the student's information should meet the data

security standards prescribed by the payment card industry security council or the equivalent as determined by the division, and in a format approved by the division;

(ii) a description of any and all security measures taken to ensure that the person who is taking the course is the same person who will receive credit for taking the course and who will submit to the proctored exam at the end of the course;

(iii) proof to the satisfaction of the division that the average user will take at least four clock hours or the equivalent to complete course;

(iv) proof to the satisfaction of the division that students cannot fast-forward or skip through the course materials.

(d) any other reasonably relevant information as may be required by the division;

C. Completeness check: When the division receives an application for certification as a provider, instructor or program, the division will check the application for completeness.

(1) if the application is incomplete, the division will contact the applicant for additional information;

(2) if the application is complete, the division shall review the application.

D. Standards for licensure: An application for licensure may be granted if the standards identified in this section are met.

(1) Providers and instructors: In reviewing applications for licensure as a provider or instructor the division shall consider:

(a) whether all the information required by these rules has been submitted and is accurate and valid;

(b) the qualifications and references of the applicant, including whether the applicant has 3 or more years of experience related to the sale or service of cannabis and cannabis products;

(c) whether applicant is 21 years of age or older;

(d) whether applicant has ever been found guilty of or admitted guilt to a violation of the Cannabis Regulation Act;

(e) whether applicant intends to teach a program approved by the division in accordance with these rules;

(f) any other reliable and relevant information, as determined by the division.

(2) Programs: In reviewing applications for licensure as a program the division shall consider:

(a) whether the information required by these rules has been submitted and is accurate and valid;

(b) whether the program includes all content required by law, currently contained in

Section 26-2C-11 NMSA 1978;

(c) whether the program includes comprehensive training on how to detect obvious signs of intoxication, focusing both on the sale of cannabis and cannabis products for off-premise and on-premise consumption;

(d) whether the program includes an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue and training on how to detect a fake or fabricated identification card;

(e) whether the program includes management-specific training, including strategies for management to support servers working under their supervision;

(f) whether the program is reviewed and revised annually to ensure current comprehensive training;

(g) whether the program is interactive and includes real life instructional examples;

(h) for on-line programs whether it is easy to navigate and user-friendly; and

(i) any other reliable and relevant information, as determined by the division.

(3) In addition to the other standards listed above, all providers and instructors shall hold current server permits at all times when providing instruction.

E. Expiration of licensure: Provider, instructor and program licensure expire on December 31 each year.

F. Renewal: Renewal applications for provider, instructor and program licensure must be submitted no later than November 30 of each year.

(1) Renewal applications for providers and instructors must include names and qualifications of the provider or instructors and proof that the provider is covered by a surety bond in the amount of five thousand dollars (\$5,000) of a surety company authorized to transact business in New Mexico;

(2) Renewal applications for programs shall include a summary of all proposed changes to program content from the prior year and any updates that have been made or will be made to the program, including where those changes can be found in the program materials. At a minimum, programs must be updated annually to reflect changes to the law, updated statistical information and an up-to-date sample photo of a driver's license issued to a minor by the New Mexico motor vehicle division of the New Mexico department of taxation and revenue if applicable.

G. Transferability: Provider, instructor and program licensure are non-transferrable.

H. Cancellation: A provider or instructor certification shall automatically be cancelled if the provider or instructor ceases to offer classes for 60 days or more, or upon written notice from the provider. [16.8.10.9 NMAC - N, 07/12/2022]

16.8.10.10 ADMINISTRATION OF SERVER PERMIT TRAINING PROGRAM:

A. Providers' responsibility in administering program: It is the responsibility of providers to ensure that they and any instructors employed by them are teaching an approved program.

B. Course materials: Providers shall ensure that each student is provided complete course materials at the beginning of each program. Providers who administer an on-line program shall ensure that each student either has electronic access to course materials or is able to print out course materials for quick reference after satisfactory completion of the program. All course materials shall be presented by instructors in a manner that does not indicate which material is selected for the proctored test.

C. Prior approval required: Providers must obtain prior approval from the division before changing the required content of an approved program.

D. Proctored tests: Proctored tests must be administered in person immediately after completion of a classroom program. Students may not have access to course materials during administration of the proctored test. Exam questions must be rotated on a regular basis to ensure exam validity and security. Providers may allow an applicant who fails the test to re-take it at another time in the presence of an instructor. Proctored tests must be graded by a certified instructor and cannot be graded by a student.

E. On-line tests: On-line tests must be available to be administered immediately after students complete the course or complete a particular module of the course. Exam questions must be rotated on a regular basis to ensure exam validity and security. Students may not have access to course materials during administration of the on-line test. Providers administering on-line tests shall provide the necessary security measures to the satisfaction of the division to combat the potential for cheating. Examples of security measures include, but are not limited to, shuffling exam questions each time a new exam begins, prohibit students from stopping and resuming the exam session, implement a reasonable time limit on the exam, present security questions at random throughout the exam. The results of the on-line test must be given to the student after completion of the on-line test, and providers shall provide a score report indicating wrong answers by referencing course content section.

F. ADA compliance: Providers and instructors are required to comply with the Americans with Disabilities Act (ADA) and ensure that students with disabilities are provided with reasonable accommodation for instructional and learning purposes to the extent required by law.

G. Administration of on-line programs: Providers who administer an on-line program without the presence of a live instructor must ensure the following:

- (1) a secure login process is in place to confirm the identity of the person taking the course;
- (2) students may not be allowed to fast-forward through the instruction portion of the course;
- (3) students must have adequate access to a help desk or customer service to resolve technical problems without delaying the flow of instruction, as well as access to a person who can answer substantive questions that may arise in the course of the training within 72 hours of the student asking the question;
- (4) no advertisements appear during course instruction; and
- (5) students either have electronic access to course materials or are able to print out course materials for quick reference after satisfactory completion of the on-line program as required by these rules.

[16.8.10.10 NMAC - N, 07/12/2022]

16.8.10.12 VIOLATION OF PROVIDER AND PROGRAM REQUIREMENTS: The division may take disciplinary action against any program, or refuse to renew licensure, when the division determines that:

- A. a provider, instructor or an agent, knowingly provided false information to the division with regard to completion of a program by any person;
- B. a provider, instructor or an agent, failed to conduct the program as approved by the division;
- C. any person filing an application with the division for licensure of a provider, instructor or program knowingly submitted false information to the division;
- D. a provider failed to provide to the division complete, timely reports of applicants who satisfactorily completed the program; or
- E. a provider or instructor otherwise failed to comply with the alcohol server education article or these rules.

[16.8.10.12 NMAC - N, 07/12/2022]

16.8.10.13 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.

[16.8.10.13 NMAC - N, 07/12/2022]

History of 16.8.10 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 11 FEES

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

16.8.11.2 SCOPE: This rule applies to all applicants and licensees applying for licensure and renewal of licensure under all license types as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
[16.8.11.2 NMAC - N, 08/24/2021]

16.8.11.3 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.
[16.8.11.3 NMAC - N, 08/24/2021]

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

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

16.8.11.6 OBJECTIVE: The objective of Part 11 is to establish a uniform schedule of fees applicable to licenses issued under the Cannabis Regulation Act.
[16.8.11.6 NMAC - N, 08/24/2021]

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

16.8.11.8 GENERAL PROVISIONS FOR FEES: [RESERVED]
[16.8.11.8 NMAC - N, 08/24/2021]

16.8.11.9 ANNUAL LICENSING FEES: Every application for the issuance or renewal of the following licenses shall be accompanied by an annual licensing fee in the following specified amounts:

A. Cannabis courier license:	\$250 annually
Each additional licensed premises of the licensee:	\$100 annually
B. Cannabis testing laboratory license:	\$2,500 annually
Each additional licensed premises of the licensee:	\$1,000 annually
C. Cannabis manufacturer license:	\$2,500 annually
Each additional licensed premises of the licensee:	\$1,000 annually
D. Cannabis producer license:	\$2,500 annually
Each additional licensed premises of the licensee:	\$1,000 annually
E. Cannabis retailer license:	\$2,500 annually
Each additional licensed premises of the licensee:	\$1,000 annually
F. Cannabis research laboratory license:	\$2,500 annually
Each additional licensed premises of the licensee:	\$1,000 annually
G. Vertically integrated cannabis establishment license:	\$7,500 annually
Each additional licensed premises of the licensee:	\$1,000 annually

H. Cannabis producer microbusiness license: License fees for cannabis producer microbusinesses shall be determined by the number of plants growing under each license.

- (1) Licensees growing 100 plants or less: \$500 annually
- (2) Licensees growing 101 to 200 plants: \$1,000 annually

I. Integrated cannabis microbusiness license: License fees for integrated cannabis microbusinesses shall be determined by the number of activities conducted under each license. Activities considered are defined by the Cannabis Regulation Act and entail:

- (1) production of cannabis at a single licensed premises, provided that the person shall not possess more than two hundred total mature cannabis plants at any one time;
- (2) manufacture of cannabis products at a single licensed premises;
- (3) sale and transportation of only cannabis products produced or manufactured by that person;
- (4) operation of only one retail establishment; or
- (5) couriering of cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.

- (a) Two activities: \$1,000 annually
- (b) Three activities: \$1,500 annually
- (c) Four activities: \$2,000 annually
- (d) Five activities: \$2,500 annually

J. Cannabis consumption area: \$2,500 annually
[16.8.11.9 NMAC - N, 08/24/2021]

16.8.11.10 ANNUAL LICENSING FEE PRORATION: Licensees submitting an amended application to add or change a license type shall only be required to pay the difference between the fee for the original license type and the fee for the amended license type, provided that the division will not issue any refunds. The division shall prorate the fee to align with the expiration date of the licensee's original license.

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

16.8.11.11 ANNUAL PER PLANT FEE:

A. Commercial cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating commercial cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fee shall be assessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: \$5.00 per mature cannabis plant;
- (2) Level 2: \$5.00 per mature cannabis plant;
- (3) Level 3: \$5.00 per mature cannabis plant; and
- (4) Level 4 and above: \$5.00 per mature cannabis plant.

B. Medical cannabis plants: Except for cannabis producer microbusinesses and integrated cannabis microbusinesses, a licensee cultivating solely medical cannabis plants shall be assessed an additional annual fee per mature cannabis plant at the time of licensing, incremental increase as set forth in 16.8.8.10 NMAC, and licensure renewal as set forth in 16.8.2.17 NMAC. Plant fees shall be assessed based on the plant limit license designation as set forth in Subsection A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: \$2.50 per mature cannabis plant;
- (2) Level 2: \$2.50 per mature cannabis plant;
- (3) Level 3: \$2.50 per mature cannabis plant; and
- (4) Level 4 and above: \$2.50 per mature cannabis plant.

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

16.8.11.12 FEE LIMITATIONS: Application, license, premises and plant fees, or license renewal, premises renewal and annual plant fees shall not exceed \$125,000 for a vertically integrated cannabis establishment license for both medical cannabis activity and commercial cannabis activity. License fees or

renewal fees for a license that authorizes only medical cannabis activity shall be one-half the fee applicable to a license authorizing both medical cannabis activity and commercial cannabis activity.
[16.8.11.12 NMAC - N, 08/24/2021]

16.8.11.13 PROHIBITED ACTIVITY AND IMPACTS ON FEES: Cannabis producer microbusiness or integrated cannabis microbusinesses entering into a business arrangement with another licensee with the purpose or having the effect of evading the limitations of the licensee's license shall not be eligible for the lower fee prescribed in Subsections H and I of 16.8.11.9 NMAC. Upon entering into such an arrangement, the licensees shall immediately pay the per-plant fee as set forth in 16.8.11.11 NMAC and the applicable fee for a producer license or vertically integrated cannabis establishment license as set forth in 16.8.11.9 NMAC.
[16.8.11.13 NMAC - N, 08/24/2021]

16.8.11.14 FEE PAYMENT TYPES ACCEPTED: The division shall accept payment for annual licensing fees and annual per plant fees from sources including credit cards, debit cards, electronic checks, electronic bank transfers, automated clearing house payments, or cashier's checks. Other forms of payment, including cash, shall not be accepted.
[16.8.11.14 NMAC - N, 08/24/2021]

16.8.11.15 RENEWAL FEE COLLECTION TIMING: The division shall collect all renewal fees, including annual per plant fees, at the time of renewal of a license.
[16.8.11.15 NMAC - N, 08/24/2021]

16.8.11.16 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.
[16.8.11.16 NMAC - N, 08/24/2021]

History of 16.8.11 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 8 COMMERCIAL AND MEDICAL CANNABIS
PART 12 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE; SANCTION, PLAN OF CORRECTION, AND CIVIL MONETARY PENALTY

16.8.12.1 ISSUING AGENCY: New Mexico Regulation and Licensing Department, Cannabis Control Division.
[16.8.12.1 NMAC - N, 07/12/2022]

16.8.12.2 SCOPE: This rule applies to all licensees and applicants for licensure pursuant to the Cannabis Regulation Act, the Lynn and Erin Compassionate Use Act, and division rules.
[16.8.12.2 NMAC - N, 07/12/2022]

16.8.12.3 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.
[16.8.12.3 NMAC - N, 07/12/2022]

16.8.12.4 DURATION: Permanent.
[16.8.12.4 NMAC - N, 07/12/2022]

16.8.12.5 EFFECTIVE DATE: July 12, 2022, unless an earlier date is cited at the end of a section.
[16.8.12.5 NMAC – N, 07/12/2022]

16.8.12.6 OBJECTIVE: The objective of Part 12 is to promote, preserve, and protect the public health and safety by regulating the safe production, testing, wholesale, and consumption of commercial and medical cannabis, as well as the authority to take action against a licensee or applicant for licensure, and to set forth the procedures for filing a complaint against cannabis establishment licensees.
[16.8.12.6 NMAC – N, 07/12/2022]

16.8.12.7 DEFINITIONS: Unless otherwise defined below, terms used in Title 16, Chapter 8, have the same meanings as set forth in the Cannabis Regulation Act and the Lynn and Erin Compassionate Use Act.
[16.8.12.7 NMAC – N, 07/12/2022]

16.8.12.8 GENERAL PROVISIONS:

- A.** A complaint may be initiated in writing by any person.
- B.** Complaints must be legible, either printed in black ink or typed.
- C.** Complaints must contain factual allegations, constituting the alleged violations of any provisions of the Cannabis Regulation Act or division rules.

[16.8.12.8 NMAC - N, 07/12/2022]

16.8.12.9 COMPLAINT PROCEDURES: A complaint may be initiated by any person in writing and delivered via the division website, mail, or by visiting the division office. Only complaints written on the official complaint form will be formally addressed by the division. The forms required for an official complaint can be obtained from the division office, located at 2550 Cerrillos Road, Santa Fe, NM, 87505, or the division website.
[16.8.12.9 NMAC - N, 07/12/2022]

16.8.12.10 PROCEDURES FOR RECEIPT OF A COMPLAINT:

- A.** The division will maintain a written log of all complaints received, which records at a minimum, the date the complaint was received, and name, addresses of the complainant(s) and respondent(s).
- B.** Upon receipt of a complaint, the division will:
 - (1)** log in the date the complaint was received;

(2) determine whether the respondent is licensed or an applicant for licensure with the division;

(3) assign a complaint number and create an individual file;

(4) send the complainant a written acknowledgment of receipt of the complaint; and

(5) at the division's discretion, investigate the allegations contained in the complaint to

determine their veracity and whether the circumstances warrant any action by the division or referral to law enforcement.

[16.8.12.10 NMAC - N, 07/12/2022]

16.8.12.11 DIVISION ACTION:

A. The division may:

(1) assess a civil monetary penalty that shall not exceed ten thousand dollars (\$10,000)

per violation; or

(2) suspend or revoke the license.

B. If the division determines that it lacks jurisdiction or that there is not sufficient evidence or cause to issue a notice of contemplated action, the case shall be closed.

C. The division shall send a letter of the division's decision to both the complainant and respondent stating the division's actions and the reasons for its decision.

D. If the division determines that there is sufficient evidence or cause to proceed with disciplinary action against the licensee, the division shall issue a notice of contemplated action and initiate disciplinary proceedings.

[16.8.12.11 NMAC - N, 07/12/2022]

16.8.12.12 PROCEEDINGS AGAINST APPLICANT OR LICENSEE:

A. All disciplinary proceedings will be conducted in accordance with the Uniform Licensing Act, Section 61-1-1 et seq., NMSA 1978.

B. Licensees who have been found culpable and sanctioned by the division shall be responsible for the payments of all costs of the disciplinary proceedings.

[16.8.12.12 NMAC - N, 07/12/2022]

16.8.12.13 SCHEDULE OF CIVIL MONETARY PENALTIES:

A. Subject to subsection B of this section, the division shall impose penalties as follows:

(1) For the first offense within a 12-month period, a civil monetary penalty ranging from one thousand dollars (\$1,000) to two thousand dollars (\$2,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.

(2) For the second offense within a 12-month period, a civil monetary penalty ranging from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) or possible suspension or revocation of the license if the licensee's discipline history shows a pattern warranting suspension or revocation.

(3) For three or more offenses within a 12-month period, a civil monetary penalty of ten thousand dollars (\$10,000) and revocation of the license.

(4) For any offense involving sale or distribution of cannabis to minors, a fine of ten thousand dollars (\$10,000) and revocation of the license.

B. Any portion of the civil monetary penalties described in this rule may be enhanced or suspended, depending on the particular facts and circumstances of the individual case. When determining whether penalties should be enhanced or suspended, the division shall consider:

(1) the nature of the violation;

(2) the licensee's level of cooperation with the division in investigating the violation;

(3) the violation's threat or potential threat to public health, safety, and welfare;

(4) the licensee's willingness to address and remediate the violation; and

(5) any other fact or circumstance that the division finds relevant.

[16.8.12.13 NMAC - N, 07/12/2022]

16.8.12.14 SETTLEMENT AGREEMENT:

A. Whenever probable cause exists that a licensee has violated a provision of the Cannabis Regulation Act, division rules, or any applicable state or federal law, and a monetary penalty or other disciplinary action may be issued to the licensee for such violation, an informal conference may be held with the licensee to determine whether a compromise of the penalty for the violation would be in the best interests of the state or public health and safety.

B. Final disciplinary action decisions will be mailed to the licensee.

C. A copy of the final decision shall be filed in the division and posted on the division website.

D. The civil monetary penalty imposed shall not exceed those which could be imposed after hearing. [16.8.12.14 NMAC - N, 07/12/2022]

16.8.12.15 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.

[16.8.12.15 NMAC - N, 07/12/2022]

History of 16.8.12 NMAC: [RESERVED]