

**This is an emergency amendment to 16.8.2 NMAC amending sections 22, 24, 25, 30, 32, 36, 38, 44 and 46.**

**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)** legible and accurate diagram 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 produce cannabis in a portable document format (.pdf), and if requested by the division, digital photographic photos;]~~
  - ~~**(4)**~~**(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.
  - ~~**(5)**~~**(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;
  - ~~**(6)**~~**(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;
  - ~~**(7)**~~**(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;
  - ~~**(8)**~~**(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;
  - ~~**(9)**~~**(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;
  - ~~**(10)**~~**(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;

~~[(14)]~~**(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;

~~[(12)]~~**(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;

~~[(13)]~~**(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;

~~[(14)]~~**(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;

~~[(15)]~~**(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;

~~[(16)]~~**(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;

~~[(17)]~~**(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;

~~[(18)]~~**(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 containing information required by 16.8.2.24 NMAC 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 which shall be made immediately available upon request by the division;

**(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, 01/13/2022]

#### **16.8.2.24 PRODUCER PREMISES DIAGRAM:**

**A.** An applicant must ~~[submit to the division, with the application,]~~ maintain on its licensed premise at all times, 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, or 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 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]

#### **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 ~~[from the premises diagram filed with the division].~~

**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 ~~[identified in the last premises diagram provided to the division]~~ 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 new premises diagram that conforms to requirements set forth in 16.8.2.18 NMAC;~~

~~(2)~~(1) a copy of the applicable building permit; and

~~(3)~~(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]

#### **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)~~ 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, in a portable document format (.pdf), and if requested by the division, digital photographic photos;]
  - [ ~~(4)~~(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;
  - [ ~~(5)~~(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;
  - [ ~~(6)~~(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;
  - [ ~~(7)~~(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;
  - [ ~~(8)~~(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;
  - [ ~~(9)~~(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;
  - [ ~~(10)~~(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;
  - [ ~~(11)~~(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;
  - [ ~~(12)~~(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;
  - [ ~~(13)~~(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;
  - [ ~~(14)~~(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;
  - [ ~~(15)~~(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;

~~(16)~~**(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;

~~(17)~~**(16)** certification the applicant is not licensed under the Liquor Control Act.

~~(18)~~**(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;

~~(19)~~**(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:

~~(20)~~**(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, which shall be made immediately available upon request by the division:

**(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 ten 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]

### **16.8.2.32 MANUFACTURER PREMISES DIAGRAM:**

**A.** An applicant must ~~[submit to the division, with the application,]~~ maintain on its licensed premise at all times, 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 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]

### 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)** 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, in a portable document format (.pdf), and if requested by the division, digital photographic photos;~~

~~**(4)**~~**(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;

~~**(5)**~~**(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;

~~**(6)**~~**(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;

~~**(7)**~~**(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;

~~**(8)**~~**(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;

~~**(9)**~~**(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;

~~**(10)**~~**(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;

~~**(11)**~~**(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;

~~[(12)]~~**(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;

~~[(13)]~~**(12)** certification the applicant is not licensed under the Liquor Control Act;

~~[(14)]~~**(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 containing information required by 16.8.2.38 NMAC 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 which shall be made immediately available upon request by the division;

**(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 01/13/20222]

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

**A.** An applicant [~~submit to the division, with the application,~~] maintain on its licensed premise at all times, 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 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]

#### **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) legible and accurate premises diagram containing information required by 16.8.2.46 NMAC, in a portable document format (.pdf), and if requested by the division, digital photographs;~~  
(~~e~~)(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, 01/13/2022; A/E, 01/13/2022]

#### **16.8.2.46 TESTING LABORATORY PREMISES DIAGRAM:**

**A. Detailed diagram required:** An applicant [~~submit to the division, with the application,~~] maintain on its licensed premise at all times, 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. 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, 01/13/2022; A/E, 01/13/2022]

**This is an emergency amendment to 16.8.8 NMAC amending sections 9 and 10.**

**16.8.8.9 CANNABIS PLANT LIMIT TIER LEVELS:**

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

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

~~(3) applicant's facility diagram and canopy size;~~

~~(4)~~(3) if applicable, whether the applicant's reported number of mature cannabis plants harvested in the preceding six months was a minimum of eighty percent of applicant's authorized mature plant count limit;

~~(5)~~(4) if applicable, whether the applicant's total cannabis sales were a minimum of seventy-five percent of applicant's reported production of cannabis during the six months preceding applicant's request; and

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

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

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

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

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

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

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

**16.8.8.10 PLANT INCREASE REQUEST:**

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

- (1) a current inventory of mature cannabis plants and harvested cannabis;
- (2) applicant's demonstration of a legal right to use the quantity of water needed for the level of mature plants to be cultivated based on the applicant's cultivation plan;

~~(3) applicant's facility diagram and canopy size;~~

~~(4)~~(3) applicant's reported number of plants harvested in the preceding three months;

~~(5)~~(4) applicant's medical cannabis and commercial cannabis sales in the preceding three months;

~~(6)~~(5) applicant's total cannabis sales; and

~~(7)~~(6) progress on implementation of applicant's social equity plan, including race, ethnicity, gender, age, and residential status of licensee, controlling persons and employees of applicant and whether the applicant, controlling persons, employees or the locations where the cannabis products are produced are located in an underserved rural community, including tribal, acequia, land grant-merced, or other rural historic communities.

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

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

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

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

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

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

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

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

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

**This is an emergency amendment to 16.8.11 NMAC amending section 11.**

**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 subparagraph A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: ~~[\$10.00]~~ \$5.00 per mature cannabis plant;
- (2) Level 2: ~~[\$10.00]~~ \$5.00 per mature cannabis plant;
- (3) Level 3: ~~[\$10.00]~~ \$5.00 per mature cannabis plant; and
- (4) Level 4 and above: ~~[\$10.00]~~ \$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 subparagraph A in 16.8.8.9 NMAC, as follows:

- (1) Level 1: ~~[\$5.00]~~ \$2.50 per mature cannabis plant;
- (2) Level 2: ~~[\$5.00]~~ \$2.50 per mature cannabis plant;
- (3) Level 3: ~~[\$5.00]~~ \$2.50 per mature cannabis plant; and
- (4) Level 4 and above: ~~[\$5.00]~~ \$2.50 per mature cannabis plant.

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