

NMAC

Transmittal Form



Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renumber (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Please find the Record of Finding for rule-making adoption attached hereto.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Kristen Thomson

Check if authority has been delegated

Title:

Director, Cannabis Control Division

Signature: (BLACK ink only OR Digital Signature)

Kristen Thomson Digitally signed by Kristen Thomson
Date: 2022.01.13 14:34:43 -07'00'

Date signed:

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Specific statutory or other authority authorizing rulemaking:

Authority was given to the Cannabis Control Division via the Cannabis Regulation Act, NMSA 1978, §§ 26-2C-3(A) (2021).

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Digitally signed by Kristen Thomson
Date: 2022.01.13 14:41:38 -07'00'

Date signed:



Thursday, January 13, 2022

IN RE: EMERGENCY RULE AMENDMENT FOR LICENSING RULES 16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS, 16.8.8 NMAC: CANNABIS PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM, AND 16.8.11 NMAC: FEES, PROMULGATED PURSUANT UNDER THE NEW MEXICO CANNABIS REGULATION ACT (CRA), §§ 26-2C-1 THROUGH 26-2C-42 NMSA 1978.

RECORD OF FINDING

1. Statutory Authority for Emergency Rule Promulgation:

Pursuant to §26-2C-3(B) NMSA 1978 of the Cannabis Regulation Act (the "CRA"), the Cannabis Control Division (the "Division") shall adopt and promulgate rules, as provided in the State Rules Act, §14-4-1 NMSA 1978, et seq., that are "necessary for the Division to carry out its duties pursuant to the CRA."

For the purposes of adoption and promulgation of rules under the CRA, pursuant to §9-16-6 NMSA 1978 of the Regulation and Licensing Department (the "Department") Act, the Superintendent of the Department "has every power expressly enumerated in the laws, whether granted to the superintendent or the department or any division of the department."

2. Date of Rule Approval:

The emergency rule was approved by the Director of the Division, Kristen Thomson, on January 11, 2022.

3. Date of Publication of Amended Rule in the New Mexico Register:

The amended rule will be published in Volume XXXIII, Issue 2 of the New Mexico Register on January 25, 2022.

4. Effective Date of Rule:

January 13, 2022

5. Expiration Date of Rule:

July 12, 2022

6. Reasons for Adopting Rule:

The Division, within the Department, hereby files an emergency rule to NMAC Title 16, Chapter 2 ("Licensing and Operational Requirements for Cannabis Establishments"), Chapter 8 ("Cannabis Plant Limits and Process to Address Shortage of Cannabis Supply in the Medical Cannabis Program") and Chapter 11 ("Fees") in accordance with the State Rules Act at § 14- 4-5.6 NMSA 1978.



This emergency rule is adopted to amend 16.8.2 NMAC in order to: 1) ensure the Division's fulfillment of its comprehensive statutory duty under the CRA to administer the Cannabis Regulation Act and the licensing provisions of the Lynn and Erin Compassionate Use Act ("LECUA") and 2) to promulgate rules in accordance with those acts, per §26-2C-3(A) NMSA 1978. The Division finds that the time required to amend 16.8.2 NMAC by non-emergency procedures required by the State Rules Act, § 14-4-5.3 NMSA 1978 would cause an imminent peril to public health, safety or welfare.

The Division has affirmative statutory duties to ensure the protection of the public health of New Mexicans through the administration of the LEUCA, §26-2C-3(A) NMSA 1978, and to safeguard an adequate supply of medical cannabis for qualified patients, primary caregivers, and reciprocal participants, namely §26-2C-6(K,L) NMSA 1978, §26-2C-3(E) NMSA 1978, §26-2C-6(M) NMSA 1978, and §26-2C-7(B)(1-2) NMSA 1978.

In order for the Division to fulfill this overarching duty, the Division has as a primary, necessary, and time-critical duty to promulgate rules governing the qualification and procedures for licensure in anticipation of the start of retail sales of commercial cannabis products to occur no later than April 1, 2022, § 26-2C-6(K) NMSA 1978.

The Division therefore submits emergency amendments to existing licensing requirements found in 16.8.2 NMAC, 16.8.8 NMAC and 16.8.11 NMAC. These emergency amendments are necessary to ensure the a consistent and adequate supply of cannabis for participants in the medical cannabis program, to ensure the continuing immediate availability of life and health-impacting medical products to individual persons in New Mexico, and to protect the public health and safety of all New Mexicans by processing and issuing licenses according to carefully crafted statutory deadlines.

To date, the Division's reliance on application requirements promulgated in rule and not required by statute have resulted in unforeseen delays of licensure by requiring the Division to rely on processes that slow review and approval of licensure. One particular example is verification of premises diagram. Premises diagrams require an applicant to create a diagram for properties that often do not yet exist and allow applicants and licensees to alter the layout of their premises as needed. By changing premise diagram requirements to require that licensees maintain on their licensed premises an accurate diagram, licensees will have up-to-date documentation of their premises as it looks at any one given time, rather than what it is expected to look like at the time of application. More importantly, the division will be able to process and approve applications for licensure quickly to ensure cannabis operations being faster and therefore the market will have a sufficient supply of medical product as adult-use sales begin.

The Division also submits emergency amendments related to 1) plant count limitations for licensees with producer functions and 2) corresponding fees which can be found in 16.8.8 NMAC and 16.8.11, respectively. The Division has considered demand estimates provided by applicants and licensees in the cannabis industry. Projected market demand shows that the demand for regulated cannabis will increase year-to-year as more cannabis consumers move from the illicit market to the regulated market. the supply of medical cannabis will become increasingly threatened without an adequate supply of plants.

In order to protect the supply and availability of medical product as consumers move from the illicit to the regulated market, the Division will double the supply of allowable mature plants by raising plant count limits for producers. Originally, 16.8.8.9(B) listed the following plant count limit levels: level 1 with a maximum of 1,000 plants, level 2 with a maximum of 3,000 plants, level 3 with a maximum of 6,000 plants and level 4 with a maximum of 8,000 plants. The maximum plant count that any producer could grow after requesting additional increases was 10,000 plants as seen in 16.8.8.9(F). The Division's emergency amendments will result in the following changes to 16.8.8.9(B): level 1 with a maximum of 2,000 plants, level 2 with a maximum of 6,000 plants, level 3 with a maximum of 12,000 plants and level 4 with a



maximum of 16,000 plants. The maximum plant count any producer may grow is now 20,000 plants. The Division will also implement a 50% reduction in per plant fees changing the per plant fee to \$5 for adult-use licensees and \$2.50 for exclusively medical licensees.

If amendments to 16.8.2 NMAC, 16.8.8 NMAC and 16.8.11 NMAC were to be promulgated via standard rulemaking, the Division would need to submit notice the amendments, allow for public comment, consider those comments and submit any changes to the register §14-4-1 NMSA 1978, et seq. The time between submitting a notice and its publication in the New Mexico Register is 14 days, while the Division receives public comment for no fewer than 30 days § 14-4-5.2(A) NMSA 1978. After the conclusion of public comment, the Division must hold a rule hearing followed by a period of time where the Division must consider rule changes, make those changes, and respond to public comment. This process may take up to a month depending on the complexity of the rule changes. After the rules are finalized, the Division must then again submit the rules to the Register, which do not become effective until the date of publication, which would occur 14 days after submission.

In total, these requirements would delay implementation of the necessary rule amendments by approximately 60 to 90 days. Adult-use retail sales will allow a greater number of consumers to access cannabis products in New Mexico as compared to the existing market exclusive to qualified patients, primary caregivers, and reciprocal participants. In this case, the Division cannot delay taking action to amend the provisions of 16.8.2 NMAC, 16.8.8 NMAC and 16.8.11 NMAC by the 60 to 90 days that would be required under the permanent rulemaking process as such delay would prohibit additional cannabis products from timely entering the medical cannabis market due to the growth cycle of cannabis plants to reach maturity. To ensure that the Division protects the health and safety of patients who rely on sufficient availability of their medicine in New Mexico, the Division must meet its statutory deadlines to promulgate rules and process licenses. By doing so, new licensees will enter the industry and provide products to meet the market demand of New Mexicans buying adult-use products without affecting patient access to medicine.

Collectively, the amendments to 16.8.2 NMAC, 16.8.8 NMAC and 16.8.11 NMAC will allow the Division to meet its statutorily mandated duties of processing licenses and protecting the supply of medical cannabis for medical cannabis patients within the provisions of the LECUA and the CRA. These changes thereby safeguard the public health of New Mexico by ensuring the adequate supply to qualified patients, primary caregivers, and reciprocal participants is preserved ahead of adult-use sales beginning by April 1, 2022 § 26-2C-7(B)(5) NMSA 1978. Ensuring that the needs of the medical patients are met is essential to protect the health and safety of these individuals who are treating symptoms of various chronic and severe conditions. By promulgating an emergency amendment, the Division will be able to make timely and necessary changes to the existing rule in order to meet its statutory duties of processing licenses and protecting the medical cannabis market. This will thereby ensure an adequate supply of medical cannabis for patients, primary caregivers, and reciprocal participants.

