Instructions for completing the NMAC TRANSMITTAL FORM

NEW MEXICO
State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
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Your agency must complete the following:

Volume, Issue and Publication Date. Example: Volume: XXXII , Issue: 10, Publication date: May 25, 2021.

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document. Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. Example: 123

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. **For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new (replacement) rule.**

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.
Example:

Title 19	Natural Resources and Wildlife
Chapter 30	Wildlife Administration Aquatic
Part 14	Invasive Species

Description of Amendment: (if amending) Example: "Amending three sections".

Amendment's NMAC citation: (if amending) Example: "Sections 9, 10 and 18 of 7.1.13 NMAC".

Are any materials incorporated by reference? Check: Yes or No. If Yes, please list attachments or provide Internet site.

If incorporated, has copyright permission been granted? Check Yes or No or check if document is in the public domain.

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) (when notice of rulemaking was published in Register): Hearing date(s) (if agency has board or commission): Rule adoption date: (see note below) and Rule effective date (date rulemaking becomes effective)

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.
Check with your agency's general counsel office regarding substance of any required findings to be filed.

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink:
Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.

NMAC Transmittal Form

NEW MEXICO State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
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Volume: XXXIII **Issue:** 6 **Publication date:** 03/22/2022 **Number of pages:** 2 **(ALD Use Only) Sequence No.**

Issuing agency name and address: Cannabis Control Division, 1209 Camino Carlos Rey, Santa Fe, NM 87507 **Agency DFA code:**

Contact person's name: Kristen Thomson **Phone number:** (505) 396-1277 **E-mail address:** Kristen.Thomson@state.nm.us

Type of rule action:

New ☐ **Amendment** ☑ **Repeal** ☐ **Emergency** ☑ **Renumber** ☐

(ALD Use) Recent filing date:

Title number: 16 **Title name:** OCCUPATIONAL AND PROFESSIONAL LICENSING

Chapter number: 8 **Chapter name:** CANNABIS CONTROL DIVISION

Part number: 2 **Part name:** LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS

Amendment description (If filing an amendment): Amending one (1) section.

Amendment's NMAC citation (If filing an amendment): Section 26 of 16.8.2 NMAC.

Are there any materials incorporated by reference?

Yes ☐ **No** X

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:

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

Notice date(s):	Hearing date(s):	Rule adoption date:	Rule effective date:
N/A	N/A	03/09/2022	03/09/2022

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

X

Title:

Director, Cannabis Control Division

Signature: **(BLACK ink only OR Digital Signature)**

Kristen Thomson

Date signed:

3/9/22

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Agency DFA code:

Contact person's name: Kristen Thomson

Phone number: (505) 396-1277

E-mail address: Kristen.Thomson@state.nm.us

Type of rule action:

New ☐ Amendment ☑ Repeal ☐ Emergency ☑ Renumber ☐

(ALD Use) Recent filing date:

Title number: 16 **Title name:** OCCUPATIONAL AND PROFESSIONAL LICENSING

Chapter number: 8 **Chapter name:** CANNABIS CONTROL DIVISION

Part number: 7 **Part name:** QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS

Amendment description (If filing an amendment): Amending two (2) sections.

Amendment's NMAC citation (If filing an amendment): Sections 5 and 7 of 16.8.7 NMAC.

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:

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

Notice date(s):	Hearing date(s):	Rule adoption date:	Rule effective date:
N/A	N/A	03/09/2022	03/09/2022

Concise Explanatory Statement For Rulemaking Adoption:

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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

X

Title:

Director, Cannabis Control Division

Signature: **(BLACK ink only OR Digital Signature)**

Kristen Thomson

Date signed:

3/9/22

Wednesday, March 9, 2022

IN RE: EMERGENCY RULE AMENDMENT FOR LICENSING RULES 16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS, 16.8.7 NMAC: QUALITY CONTROL, INSPECTION, AND TESTING OF CANNABIS PRODUCTS, 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 March 9, 2022.

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

   The amended rule will be published in Volume XXXIII, Issue 6 of the New Mexico Register on March 22, 2022.

4. Effective Date of Rule:

   March 9, 2022

5. Expiration Date of Rule:

   September 5, 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") and Chapter 7 ("Quality Control, Inspection, and Testing of Cannabis Products") 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 fulfilment 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 and 16.8.7 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 LECUA, §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 the licensure of various types of cannabis entities 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 launch of adult-use cannabis sales will open up a new market of consumers who will be able to purchase the same cannabis and cannabis products that medical patients can purchase, with small exceptions. Given that both medical patients and adult-use consumers will have access to the same products, it is paramount that the Division ensures the availability of all cannabis products by reducing potential bottleneck in the supply chain.

The Division therefore submits emergency amendments to existing rules found in 16.8.2 NMAC and 16.8.7 NMAC. These emergency amendments are necessary to ensure 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.

The Cannabis Regulation Act requires various tests to be conducted to determine the amount of cannabidiol ("CBD") and delta-9-tetrahydrocannabinol ("THC") present in the plant to ensure consumers know how much of these chemical compounds they are ingesting. From a public health perspective, additional tests are required to determine the presence of microbials, pesticides and other contaminants. The presence of these contaminants can result in injury to the public and particularly medical patients who may have weakened immune systems.

The Division adopted rules in regards to testing that were set to become effective March 1, 2022. Present in these rules was the ability of the Division to stagger implementation of tests not yet widely available in the medical market as well as a new sample collection method. In particular, pesticide and microbial testing are new to the existing medical program. The sample collection method outlined in rule is a stark deviation from the existing way samples are collected from producers and transported to testing facilities. Ultimately, testing laboratories will be collecting samples from producers, rather than producers collecting the samples themselves and sending them to laboratories for testing. The deployment of this rule creates a large burden on the two testing facilities that will have to collect samples across one of the largest geographical states in the union.

Taking into account the capacity of the existing laboratories both in terms of equipment needed to run these tests, along with the increased labor required to collect these samples, the Division has decided to delay implementation of some of these requirements in accordance with 16.8.7.7(B) NMAC. This delay will: 1) allow the laboratories to acquire necessary testing equipment, 2) ensure that testing equipment is properly functioning and 3) allow their business models to adapt to the added responsibility of sample collection. Therefore, the division is delaying implementation of pesticide and microbial testing to July 1, 2022 and sample collection to March 1, 2023.

These staggered dates of implementation will ensure that the current supply chain of cannabis developed under the Medical Cannabis Program will not be disrupted. This is particularly important ahead of the opening of the adult-use market where the available pool of consumers will dramatically increase. By minimizing disruptions to the existing supply chain, the Division is ensuring that cannabis and cannabis product will not be held up in bottlenecks. By avoiding these bottlenecks, the Division will ensure that the flow of cannabis from grow-sites to shelves will not be disrupted and medical cannabis patients will have an adequate supply of their medicine.

If amendments to 16.8.2 NMAC and 16.8.7 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. By this point, the adult-use market will have opened up and testing bottle necks would have been in place for months. Taking this into consideration, the Division cannot delay taking action to amend the provisions of 16.8.2 NMAC and 16.8.7 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 protect medical patients.

Collectively, the amendments to 16.8.2 NMAC and 16.8.7 NMAC will allow the Division to meet its statutorily mandated duties of 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 protecting the medical cannabis market. This will thereby ensure an adequate supply of medical cannabis for patients, primary caregivers, and reciprocal participants.