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# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

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## **The New Mexico Register**

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# New Mexico Register

Volume XXX, Issue 15

August 13, 2019

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## Notices of Rulemaking and Proposed Rules

### EDUCATIONAL RETIREMENT BOARD

#### NOTICE OF PUBLIC RULE HEARING

The New Mexico Educational Retirement Board (NMERB) will hold a public board meeting and rule hearing on October 18, 2019 at 9:00 a.m. The rule hearing will be conducted during NMERB's regular public board meeting and will be held at the NMERB office located at 8500 Menaul Blvd. NE, Suite A-319, Albuquerque, NM 87112. The purpose of the rule hearing is to consider proposed amendments to the following rules:

Proposed Rule Amendments:

- 2.82.2.9 NMAC - Regular Members
- 2.82.2.11 NMAC - Employees Excluded from Coverage
- 2.82.3.8 NMAC - Salary Covered; Salary Excluded
- 2.82.3.9 NMAC - Refunds of Contributions
- 2.82.3.10 NMAC - Refunds of Contributions in the Event of Death of Member or Beneficiary
- 2.82.3.12 NMAC - Purchase of Non-Reported Service; Failure to Deduct Member Contributions
- 2.82.4.8 NMAC - Earned Service Credit
- 2.82.4.10 NMAC - Return to Work
- 2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits
- 2.82.5.11 NMAC - Effective Date of Benefit
- 2.82.5.13 NMAC - Options
- 2.82.5.15 NMAC - Return to Work Program
- 2.82.5.16 NMAC - Return to Work .25 FTE or Less

#### **Details for Obtaining a Copy of Proposed Rule Changes and Submitting Oral or Written Comments**

To obtain a copy of the proposed rule changes, please go to the NMERB website at [www.nmerb.org](http://www.nmerb.org) or visit the

NMERB office located at 701 Camino de los Marquez, Santa Fe, NM 87505, or call Amanda Olsen, Paralegal, at (505) 476-6133.

Interested individuals may provide comments at the public hearing and/or submit written comments to Amanda Olsen, Paralegal, via email at [rule.change@state.nm.us](mailto:rule.change@state.nm.us) or by fax, attention Amanda Olsen, at (505) 827-1855, or by regular mail to Amanda Olsen – rule change, NMERB, 701 Camino de los Marquez, Santa Fe, NM 87505. Written comments must be received no later than 5:00 pm October 15, 2019. All written public comments will be posted on the NMERB website at [www.nmerb.org](http://www.nmerb.org).

**Statutory Authority:** Legal authority for this rulemaking can be found in the Educational Retirement Act, NMSA 1978 Sections 22-11-1 through 22-11-55 (Act) which, among other provisions, specifically authorizes the Board of Trustees of the Educational Retirement Board to adopt regulations pursuant to the Act. Section 22-11-6(A)(5) NMSA 1978.

#### **Purpose:**

The purpose of the majority of the proposed rule amendments is to bring the rules into conformity with amendments to the Educational Retirement Act resulting from the passage of House Bill 360 (H.B. 360) and Senate Bill 664 (S.B. 664), 54th Leg., 1st Sess. (N.M. 2019). Other proposed amendments are necessary for purposes of clarity, to correct confusing or ungrammatical language, to make language gender neutral or as described under each rule section below.

#### **Summary of Proposed Changes:**

**2.82.2.9 NMAC - Regular Members**  
H.B. 360 eliminated the \$15,000 earnings limit for retirees working under the NMERB program formerly known as the "return to work exception". Subsections A, B, C and D are amended to delete the phrase "return to work exception"

as it no longer accurately describes retirees who work .25 full time equivalency (FTE) or less. Subsection D is also amended to delete the word "participants" and insert the phrase "retired members working..." because the word "participants" is a defined term under Subsection W of Section 22-11-2 NMSA 1978 that refers to individuals who participate in the Alternative Retirement Plan.

#### **2.82.2.11 NMAC - Employees Excluded from Coverage**

Subsection B is amended to provide that beginning July 1, 2020, retired members working .25 FTE or less full time must make nonrefundable contributions to the fund, pursuant to H.B. 360. Subsection F is a new provision which provides that police officers who receive a pension pursuant to the Public Employees Retirement Act (PERA) and were hired by a local administrative unit (LAU) prior to July 1, 2019, will be grandfathered in and will not have to make contributions to the fund, pursuant to H.B. 360.

#### **2.82.3.8 NMAC - Salary Covered; Salary Excluded**

Subsection A is amended to delete language that excluded salary earned while a retiree is in the return to work program for the purpose of contributions to the fund and computation of benefits. The previous language conflicts with H.B. 360, which requires that retired members working .25 FTE or less must make nonrefundable contributions to the fund beginning July 1, 2020. See also the proposed amendment at Subsection D of 2.82.5.10 NMAC which would exclude from a member's annual salary any salary earned by a retiree working in the return to work program or the return to work .25 FTE or less program. Subsection A is also amended to delete "\$20,000" and insert "\$24,000" in several locations in order to comply with H.B. 360, which increased to \$24,000 the threshold for the higher employee contribution rate of 10.70%.

**2.82.3.9 - Refunds of Contributions**

Subsection B is amended to add language providing that contributions made to the fund after July 1, 2019 by PERA retirees are nonrefundable.

**2.82.3.10 - Refunds of Contributions in the Event of Death of Member or Beneficiary**

Subsection B is amended to add language providing that a surviving spouse or domestic partner will be considered a beneficiary if no beneficiary has been named, in accordance with S.B. 664. Subsection E is a new provision that lists the documents NMERB may accept as proof that a person is the domestic partner of the member.

**2.82.3.12 - Purchase of Non-Reported Service; Failure to Deduct Member Contributions**

Subsection A is amended to delete "\$20,000" and insert "\$24,000" as the salary threshold for the purpose of determining the contribution rate for non-reported service, in accordance with H.B. 360.

**2.82.4.8 NMAC - Earned Service Credit**

Adds a new provision (Subsection J) providing that PERA retirees who are employed by an LAU do not earn service credit unless the retiree has suspended their PERA benefit.

**2.82.4.10 NMAC - Return to Work**

Amends language to provide that service credit cannot be earned, purchased or credited for any time that a retired member is employed by an LAU unless the retired member has suspended their benefit. Deletes the reference to the return to work program and the return to work exception and simplifies the provision by referring to retired members working for an LAU. Also, adds language to provide that while a retired member is employed by an LAU, no service credit can be purchased for service previously earned or withdrawn unless the retired member suspends their benefit.

**2.82.5.10 NMAC - Computation and Commencement of Retirement Benefits**

Subsection D is amended to clarify that salary earned by a retiree who is in the return to work program or a retiree who works .25 FTE or less cannot be used in determining the member's average annual salary. Subsections E and H are amended to gender neutral language.

**2.82.5.11 NMAC - Effective Date of Benefit**

Subsections A and B are amended to gender neutral language.

**2.82.5.13 NMAC - Options**

Subsection F is amended to add language to reflect that NMERB has a new form for designating beneficiaries, known as a "beneficiary designation form" and that NMERB will continue to accept the old form, known as "form 42." Also adds language to Subsection F clarifying that the beneficiary must be a human being to receive Option B coverage. The previous language was unclear because the phrase "if a person is not named" could be interpreted to mean that nobody was named or an entity was named.

**2.82.5.15 NMAC - Return to Work Program**

Subsection A is amended to correct a typographical error so that the rule correctly refers to Subsection F of Section 22-11-25.1 NMSA 1978, rather than Subsection E of Section 22-11-25.1 NMSA 1978. Subsection B is amended to reflect that members who retired on or before January 1, 2001, who subsequently suspend retirement, and who thereafter re-retire need not complete an additional 90 day layout after re-retirement prior to returning to work for an ERB employer. Clarifies language to specify that the member need only complete the 12 month layout after the member's initial retirement, in accordance with H.B. 360. Subsection D is amended to active voice rather than passive voice and also to clarify that a member is not eligible for the return to work program until NMERB

has approved their return to work application. Subsection F is amended to clarify that a retired member who has violated the provisions of the return to work program, and NMERB has suspended their benefit, must re-apply for retirement. Subsection G is amended to clarify that a retired member must receive approval of their return to work application before they are considered approved for the program. Subsection H is amended to correct grammatically incorrect language.

**2.82.5.16 NMAC - Return to Work .25 FTE or Less**

Prior to the enactment of H.B. 360, retirees were allowed to work for an NMERB employer after retirement without qualifying or applying for the return to work program, but their earnings were limited. This was known as the "return to work exception." Under NMERB's return to work exception rule, a retiree could earn the greater of \$15,000 per fiscal year or work .25 FTE. House Bill 360 eliminated the \$15,000 earnings limitation. Under H.B. 360, retired members who have not completed a 12 consecutive month layout may work .25 FTE or less and there is no limitation on their earnings. These statutory changes are effective as of July 1, 2019. Accordingly, several changes must be made in 2.82.5.16 NMAC to comply with H.B. 360. Subsections A, B and C of the "Return to Work Exception" rule are deleted, the name of the rule is changed to "Return to Work .25 FTE or Less, and new Subsections A and B provide as follows:

Subsection A provides that a retired member may return to employment (includes substitution) at .25 FTE or less without affecting the retiree's benefit if the retiree submits a return to work application and is approved by NMERB prior to commencing employment. Subsection B provides that NMERB may suspend a retiree's benefit if the retiree enters into an agreement for employment greater than .25 FTE or actually works greater than .25 FTE without first



completing a 12 consecutive month layout. Also, the retiree must repay any benefits received while ineligible under the .25 FTE or Less provision.

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**NOTICE OF PUBLIC HEARING**

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment to adopt the SNAP and Cash rules. The HSD is amending the rule to be in compliance with the CFR and to align program requirements. The rule will be amended under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282 and 45 CFR Parts 200-299. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). The hearing will be held on Friday September 13, 2019 from 8:00 a.m. to 9:00 a.m. at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505.

The Department is proposing to: create consistency and compliance with the Code of Federal Regulations (CFR) regarding verifications required at Interim Report and Recertification for SNAP and Cash Assistance benefits. Align current regulations, Paragraph (2) of Subsection C of 8.139.110.12 NMAC, with 7 CFR 273.2(f)(8)(i)(A)-(D) when verifications are deemed outdated at recertification of SNAP benefits. Amend SNAP regulations outlined in Subsection F of 8.139.410.14 NMAC to align ABAWD time limit exemption amounts with proposed rule from the

Food and Nutrition Services (FNS) 7 CFR 273.24(g)(1) from fifteen percent to twelve percent as outlined in the Agricultural Improvement Act of 2018. The Department is also proposing to amend Cash Assistance regulations outlined in 8.102.120.9, 8.102.120.11 and 8.106.120.12 NMAC for alignment and consistency between SNAP and Cash Assistance programs for: verifications required at Interim Report and Recertification; clarification of rule; and reporting timeframes.

The Human Services Register Vol. 42 No. 16 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-827-7250 or 505-827-7254.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, September 13, 2019. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of

the agency. Please send comments to:

Human Services Department  
P.O. Box 2348,  
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us)

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**NOTICE OF TERMINATION OF  
PROPOSED RULEMAKING**

The New Mexico Human Services Department (HSD) gives notice that it is terminating rulemaking for Paragraph (2) of Subsection C of 8.139.110.12 NMAC, Subsection F of 8.139.410.14 NMAC, Sections 9 and 11 of 8.102.120 NMAC, and Section 12 of 8.106.120 NMAC, concerning SNAP and Cash programs as published in NM Register, Vol. 42, No. 5, 6/25/2019, pursuant to Subsection C of Section 14-4-5 NMSA 1978.

**REGULATION AND  
LICENSING DEPARTMENT  
ACUPUNCTURE AND ORIENTAL  
MEDICINE, BOARD OF**

**PUBLIC RULE HEARING AND  
REGULAR BOARD MEETING**

The New Mexico Board of Acupuncture and Oriental Medicine will hold a rule hearing on Wednesday, September 18, 2019. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the New Mexico State Capitol, Room 311, at 490 Old Santa Fe Trail, Santa Fe, NM 87501.

The purpose of the rule hearing is to consider proposed amendments to the following rules:



16.2.3 NMAC - Application for Licensure;  
 16.2.4 NMAC - Examinations;  
 16.2.8 NMAC - License Renewal;  
 16.2.9 NMAC - Continuing Education;  
 16.2.17 NMAC - Licensure by Endorsement;  
 16.2.18 NMAC - Educational Courses for Expanded Practice Certification; and  
 16.2.19 NMAC - Expanded Practice Certifications

The changes to Parts 3, 4, 8, 9, 17, 18, and 19 are intended to enhance public safety by adding a requirement for Basic Life Support (“BLS”) and Cardiopulmonary Resuscitation (“CPR”) training from an American Heart Association approved course for licensure. Additional changes address procedural matters such as allowing electronic communications with applicants and licensees, altering deadlines for completing application requirements and payments, and clarifying the duration before examination results expire. Substantive changes to educational requirements include mandating passage of certain national testing before sitting for the clinical skills exam, requiring continuing education be done annually, increasing the number of practical experience hours of education for expanded practice certification, and increasing the organizations from whom certification is accepted for expanded practice. Minor clarifications are also made to wording and citations to other rules. These changes are largely designed to ensure public safety, clarify existing provisions, and provide for greater consistency.

To obtain and review copies of the proposed changes you may go to the Board’s website at: [http://www.rld.state.nm.us/boards/Acupuncture\\_and\\_Oriental\\_Medicine\\_Rules\\_and\\_Laws.aspx](http://www.rld.state.nm.us/boards/Acupuncture_and_Oriental_Medicine_Rules_and_Laws.aspx), or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed

amendments. Please submit written comments on the proposed changes to Lori Sciacca, Board Administrator, via electronic mail at [acuormedboard@state.nm.us](mailto:acuormedboard@state.nm.us) or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Tuesday, September 17, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: [http://www.rld.state.nm.us/boards/Acupuncture\\_and\\_Oriental\\_Medicine\\_Rules\\_and\\_Laws.aspx](http://www.rld.state.nm.us/boards/Acupuncture_and_Oriental_Medicine_Rules_and_Laws.aspx), no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Lori Sciacca, Board Administrator at (505) 476-4622.

**Statutory Authority:** The Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 to -22 NMSA 1978 (1993, as amended through 2017), among other provisions, specifically authorizes the Board to “adopt and file all rules necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Practice Act.”

**Summary of Proposed Changes:** In addition to making minor clarification changes, the proposed rules are summarized as follows:

**16.2.3 NMAC - Application for Licensure**

Amendments to Part 3 consist of a new provision requiring proof of completion of American Heart Association approved BLS and CPR training, and the modification of existing twelve (12) month deadlines for completing exam and licensure requirements to twenty-four (24) month deadlines.

**16.2.4 NMAC - Examinations**

Amendments to Part 4 add a requirement applicants achieve

a passing score on the National Certification Commission for Acupuncture and Oriental Medicine (“NCCAOM”) point location module prior to taking the clinical skills exam; add language allowing electronic communications with applicants; add language imposing time limits for confirmation cards to be provide to applicants; add language clarifying the duration exam results remain valid before applicants must reapply and submit new application fees; and add language reducing the time limits for payments and requests to review clinical examination scores.

**16.2.8 NMAC - License Renewal**

Part 8 is amended to insert a new provision requiring proof of completion of American Heart Association approved BLS and CPR training as part of all licensee’s renewal obligations.

**16.2.9 NMAC - Continuing Education**

Amendments to Part 9 add language expanding the scope of NCCAOM recertifications which satisfy continuing education requirements, and remove language permitting continuing education hours to be completed within four years instead of annually. Language governing continuing education for expanded practice licensees is amended to require certain coursework prior to initial licensing in expanded scope, and every ten (10) years thereafter.

**16.2.17 NMAC - Licensure by Endorsement**

Part 17 is amended to insert a new provision requiring proof of completion of American Heart Association approved BLS and CPR training.

**16.2.18 NMAC - Educational Courses for Expanded Practice Certification**

Part 18 amends the language governing course requirements to increase the number of hours of practical experience required in bioidentical hormone therapy education from twenty-four (24) to forty-eight (48) hours.

**16.2.19 NMAC - Expanded Practice Certifications**

Part 19 is amended by the addition of language accepting certification from the Alliance for Physician Certification & Advancement (“APCA”) for ultrasound credentialing.

**REGULATION AND  
LICENSING DEPARTMENT  
FUNERAL SERVICES,  
BOARD OF**

**PUBLIC RULE HEARING AND  
REGULAR BOARD MEETING**

The New Mexico Board of Funeral Services will hold a rule hearing on Monday, September 23, 2019, at 10:00 a.m. Following the rule hearing, the Board will convene a board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room.

The purpose of the Rule Hearing is to amend the New Mexico Funeral Service Rules to correct and update language, definitions and requirements. The proposed amendments include changed provisions applicable to all types of licensees. The amendments are intended to update continuing education, clarify definitions and provide uniformity in the application of the following rules:

- 16.64.1 NMAC – General Provisions
- 16.64.2 NMAC – Fees
- 16.64.3 NMAC – Requirements for Licensure
- 16.64.4 NMAC – Requirements for Establishment and Crematories
- 16.64.6 NMAC – Continuing Education
- 16.64.8 NMAC – Funeral Service Intern Practices
- 16.64.9 NMAC – Direct Disposition Practices
- 16.64.10 NMAC – Cremation Practices

To obtain and review copies of the proposed changes and public comments, you may go to the Board’s website at: [http://www.rld.state.nm.us/boards/funeral\\_Services\\_rules\\_and\\_laws.aspx](http://www.rld.state.nm.us/boards/funeral_Services_rules_and_laws.aspx), or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Nicholas Karns, Board Administrator, via electronic mail at [funeral.board@state.nm.us](mailto:funeral.board@state.nm.us), or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Friday, September 20, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All public comments received in the board office will be posted on the board’s website at [http://www.rld.state.nm.us/boards/funeral\\_services\\_rules\\_and\\_laws.aspx](http://www.rld.state.nm.us/boards/funeral_services_rules_and_laws.aspx).

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Nicholas Karns, Board Administrator at (505) 476-4622.

**Statutory Authority:** Legal authority for this rulemaking can be found in the Funeral Services Act, Subsection A of Sections 61-32-6 NMSA 1978 (1977, as amended through 2019), which, among other provisions, specifically authorizes the Board to “adopt in accordance with the provisions of the Uniform Licensing Act and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Funeral Service Act.” The Board may “adopt rules implementing continuing education requirements”, “establish reasonable fees to carry out the provisions of the Funeral Services Act” and “conduct criminal background checks on applicants for licensure” as found in Paragraphs 2, 4 and 8 of Subsection A, of Section 61-32-6 NMSA 1978. The Board may also “adopt by rule additional

requirements in the interest of public health, safety and welfare.” as found in Subsection E of Section 61-32-11 NMSA 1978. “The board may adopt by rule the requirements for reapplication or re-inspection.” Subsection B - D of Section 61-32-13 NMSA 1978. The board shall “establish by rule a schedule of reasonable fees and fines for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees” authorized in Section 61-32-23 NMSA 1978.

**Summary of Proposed Changes:**

**16.64.1.7 NMAC, 16.64.9.8 NMAC, 16.64.10.6 NMAC, 16.64.10.7 NMAC and 16.64.10.8 NMAC**

The changes for the above replaced the word “cremains” with “cremated remains”.

**16.64.1 NMAC - General Provisions, 16.64.1.7 Definitions,** New “custody” and “retort” definitions were added for clarification throughout the document. Definitions were added for new license types, “embalmer” and “funeral arranger”. Definitions were added to differentiate the two types of funeral service intern licenses, “funeral service intern – direct” and “funeral service intern – general”.

**16.64.1.10 NMAC - Inspection of Public Records**

All language pertaining to “Inspection of Public Records” has been removed and replaced with language concerning advertising. In *Republican Party v. N.M. Taxation & Revenue Dep’t*, 2012-NMSC-026, 13, 283 P.3d 853, the New Mexico Supreme Court noted that the provision of the Inspection of Public Records Act that allows an agency to withhold public records “as otherwise provided by law” may include “regulatory bars to disclosure.” However, administrative rules only rarely provide an adequate justification to redact or withhold records. As noted in the Office of the New Mexico Attorney General’s Inspective of Public Records Act Guide, at 20 (8th ed. 2015), “In most

cases, a regulation or ordinance, by itself, may not be used to deny access to public records.” Therefore, requests to inspect public records should be handled as provided by statute.

#### **16.64.1.11 - Documents and Contracts**

Amendments were made to allow only funeral service practitioners, arrangers, embalmers, direct disposers and funeral service interns under general supervision to sign official documents and contracts. Also, language was added to include names, dates and times of authorizations to be documented with official authorizations.

#### **16.64.2 NMAC - Fees**

Fees were added to accommodate the new license types, “embalmer” and “funeral arranger”. Renewal fees for funeral service interns under direct supervision were previously documented incorrectly and have been amended to match other license types. Also, the fees for taking the jurisprudence examination have been removed.

#### **16.64.3.8 NMAC - Applications**

Requirements for new license types have been added. Language has been added requiring applicants to submit for a New Mexico background check with the Department of Public Safety. Also, the 5 years of previous licensure requirement has been removed from reciprocal applications.

#### **16.64.4 NMAC – Requirements for Establishments and Crematories**

Language has been added to specify the functions of a “chapel” and to elaborate on current requirements for embalming equipment and supplies. Language has been added to require the time of death on tracking sheets. Also, there have been provisions added for advertising establishments on the internet as well as requiring establishment’s advertisements to include the establishment license number and address.

#### **16.64.6 NMAC – Continuing Education**

Changes to include 2 hours of ethics in the already required 10 hours of CE’s annually.

#### **16.64.8 NMAC – Funeral Service Intern Practices**

Updating language to indicate which titles can be used by funeral service interns.

## **WORKFORCE SOLUTIONS, DEPARTMENT OF**

### **NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street, Suite 103 in Santa Fe, New Mexico, 87505 on September 16, 2019 at 10:00 am.

The purpose of the public hearing will be to obtain input and public comment on the amendments proposed to the following rules:

- 11.3.100 NMAC - General Provisions
- 11.3.300 NMAC - Claims Administration
- 11.3.400 NMAC - Tax Administration

#### **Summary:**

11.3.100 NMAC - removal of “bureau” and associated “bureau” terms; implementing uniform language concerning references to unemployment insurance compensation benefits; removal of definitions that are no longer applicable or relevant in this provision; changing “remuneration” to “compensation”; updating types of medium that may be used to respond to record requests; change “Workforce Investment Act” to “Workforce Innovation Opportunities Act”; and clarification of what information is required to be submitted to the department electronically and

what the timeframes for responses are, including possible applicable penalties or repercussions if responses are not received timely.

11.3.300 NMAC - clarification of what information is required to be submitted to the department electronically and what the timeframes for responses are, including possible applicable penalties or repercussions if responses are not received timely; removal of “bureau” and associated “bureau” terms; implementing uniform language concerning references to unemployment insurance compensation benefits; rephrasing certain provisions to implement clearer language and conforming with regulations that govern rulemaking; updating work search requirements for hiring halls and referral halls; and changing the name of extended benefits program from “Temporary extended unemployment compensation acts” to “any enacted federal extension program”

11.3.400 NMAC – defining “out of state wage” reporting requirements; clarification of what information is required to be submitted to the department electronically and what the timeframes for responses are, including possible applicable penalties or repercussions if responses are not received timely; updating what documents are required for employers to adequately respond to tax audits; updating the audit process to include online reporting, responding to document inquiries, submitting payments, and appealing; clarifying what conditions would require an experience history transfer from one employing unit to another, the process for requesting a history transfer, and when the department will force a transfer; and amending the procedure for requesting an abatement of penalties or interest.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the workforce technology division and the workforce transition services



division. The Department is therefore responsible for the administration of the Unemployment Compensation Law pursuant to Section 51-1-1 et seq., NMSA 1978.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on September 13, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## WORKFORCE SOLUTIONS, DEPARTMENT OF

### NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in conference room of the Human Rights Bureau located at 1596 Pacheco St Suite 103 in Santa Fe, New Mexico, 87505 on September 17, 2019 at 10:00 am. The purpose of the public hearing will be to obtain input and public comment on the amendments to 9.1.1 NMAC

– Human Rights General Provisions  
– Administrative Procedures for the Human Rights Division/Commission.

**Summary:** The rule is being amended to update procedures for filing a complaint with the Human Rights Bureau, to align processes and procedures with EEOC regulations and processes, to clarify terms not currently defined under the regulation and to remove language that is no longer applicable.

Under Sections 28-1-1 to 28-1-14 and 28-23-1 through 28-23-6, NMSA 1978, the Department is the agency responsible for the Human Rights Bureau.

Interested individuals may testify at the public hearing or submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on September 13, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## WORKFORCE SOLUTIONS, DEPARTMENT OF

### NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street, Suite 103 in Santa Fe, New Mexico, 87505 on September 16, 2019 at 1:00 pm. The purpose of the public hearing will be to obtain input and public comment on the amendment of the current 11.3.500 NMAC rule.

**Summary:** The proposed changes update the appeal regulations to reflect the department’s ability to process appeals online, removes provisions that are no longer applicable, and clarifies language that was previously ambiguous about the appeal process. Changes also update conformity with Rulemaking procedures and requirements.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the workforce technology division and the workforce transition services division. The Department is therefore responsible for the administration of the Unemployment Compensation Law pursuant to Section 51-1-1 et seq., NMSA 1978.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on September 13, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling

Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**

**NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on September 17, 2019 from 1:00 pm to 3:00 pm.

The purpose of the public hearing will be to obtain input and public comment on a new rule, 11.2.32 NMAC - Workforce Innovation and Opportunity Act Local Area Designation Procedure.

**Summary:** The new rule outlines the procedures for local area designations in order to meet the requirements of federal regulations.

Under Title I of the Workforce Innovation and Opportunity Act, 29 U.S.C. Chapter 32, Subchapter I, WIOA USDOL Final Rule 20 C.F.R. 683, et al, and Sections 50-14-1 et seq., NMSA 1978, NMDWS is the agency responsible for the Workforce Innovation and Opportunity Act and the Department has legal authority for rule making.

Interested individuals may testify at the public hearing or submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on September 13, 2019. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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**End of Notices of  
Rulemaking and  
Proposed Rules**

## Adopted Rules

### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

### ENVIRONMENT DEPARTMENT

#### TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 10 HEMP POST- HARVEST PROCESSING PART 2 HEMP EXTRACTION, PRODUCTION, TRANSPORTATION, WAREHOUSING AND TESTING

##### 20.10.2.1 ISSUING

**AGENCY:** New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87102, Telephone No. (505) 827-2855.  
[20.10.2.1 NMAC - N/E, 8/1/2019]

**20.10.2.2 SCOPE:** All individuals, businesses, agencies, institutions, or other entities engaged in the transportation, extraction, storage, or processing of hemp products in New Mexico.  
[20.10.2.2 NMAC - N/E, 8/1/2019]

**20.10.2.3 STATUTORY AUTHORITY:** The Hemp Manufacturing Act, Chapter 76, Article 24, Section 1, et seq., NMSA 1978 Compilation; The State Rules Act, Chapter 14, Article 4, Section 5.6, NMSA 1978 Compilation.  
[20.10.2.3 NMAC - N/E, 8/1/2019]

**20.10.2.4 DURATION:** 180 days.  
[20.10.2.5 NMAC - N/E, 8/1/2019]

**20.10.2.5 EFFECTIVE DATE:** August 1, 2019.  
[20.10.2.4 NMAC - N/E, 8/1/2019]

**20.10.2.6 OBJECTIVE:** To establish uniform standards for the transportation, extraction, processing, and testing of hemp products for the purpose of ensuring the safe manufacture and accurate

presentation of hemp products for human consumption, absorption, and inhalation.  
[20.10.2.6 NMAC - N/E, 8/1/2019]

##### 20.10.2.7 DEFINITIONS:

**A. “Act”** means the Hemp Manufacturing Act, Section 76-24-1, et seq., NMSA 1978.

**B. “Adulterated”** has the meaning stated in the New Mexico Food Act, Section 25-2-10 NMSA 1978.

**C. “Applicant”** means a person who has submitted a hemp facility application to the regulatory authority.

**D. “Application”** means documents provided by, and submitted to, the regulatory authority by an applicant as part of the process for obtaining a permit to extract, process, or engage in other manufacturing activities of hemp or hemp products.

**E. “Approved”** means acceptable to the regulatory authority based on the regulatory authority’s determination of conformity with principles, practices, and generally recognized standards that protect public health and compliance with the requirements of this part and the act.

**F. “Board”** means the environmental improvement board.

**G. “Cannabis sativa L.”** means the plant cannabis sativa L. and any part of the plant, whether growing or not.

**H. “CBD”** means cannabidiol and is a cannabinoid and the primary non-psychoactive ingredient found in hemp.

**I. “Certificate of analysis”** means an official certificate issued by a hemp laboratory signed by an authorized official of the hemp laboratory that guarantees the results of the laboratory’s testing of a sample.

**J. “Conditional employee”** means a potential hemp employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential hemp employees who may be suffering from a disease that may be transmitted through hemp, hemp extract, hemp-derived material, or hemp finished product and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

**K. “Disposition”** means storing, transferring to another person, or disposal.

**L. “Drinking water”** means water that meets criteria as specified in 20.7.10 NMAC. Drinking water is traditionally known as “potable water” and includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,” and “non-drinking” water.

**M. “Employee”** means the permit holder, person in charge, hemp employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a hemp facility.

**N. “Hemp employee”** means an individual working with unpackaged hemp products or equipment utensils, or surfaces that contact unpackaged hemp products.

**O. “Hemp extract”** means oil and extracts, including cannabidiol, cannabidiolic acid and other identified and non-identified compounds derived from hemp.

**P. “Hemp extraction facility”** means an operation that produces hemp extract.

**Q. “Hemp facility”** means a hemp extraction facility,



hemp manufacturing facility, or hemp warehouse.

**R. “Hemp finished product”** means a hemp product that is intended for retail sale and containing hemp or hemp extracts that includes food, food additives and herbs for human use, including consumption, that has a THC concentration of not more than three-tenths percent.

**S. “Hemp harvest certificate”** means a document issued by the New Mexico department of agriculture to a person licensed to harvest hemp for distribution or sale certifying that a quantity of hemp meets the THC concentration required pursuant to 21.20.3 NMAC.

**T. “Hemp laboratory”** means an analytical laboratory approved by the regulatory authority to conduct laboratory analysis of hemp products.

**U. “Hemp manufacturing facility”** means an operation, other than a hemp extraction facility, that produces hemp products, other than hemp extract.

**V. “Hemp products”** means hemp, hemp-derived material, hemp extract, and hemp finished product.

**W. “Hemp transportation manifest”** means a form used for identifying the quantity, composition, origin, routing and destination of hemp products during transportation.

**X. “Hemp transportation unit”** means a motor vehicle department-licensed, driven or towed wheeled vehicle utilized to transport hemp products.

**Y. “Hemp warehouse”** means a location, other than a hemp extraction facility or hemp manufacturing facility, where hemp extract is stored.

**Z. “Hemp”** means the plant cannabis sativa L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a THC concentration of not more than three-tenths percent on a dry weight basis.

**AA. “Hemp-derived material”** means any material containing THC in any concentration derived from cannabis sativa L. through any activity authorized pursuant to the act.

**BB. “Imminent health hazard”** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

(1) the number of potential injuries; and  
(2) the nature, severity, and duration of the anticipated injury.

**CC. “Law”** means applicable local, state, and federal statutes, regulations, and ordinances.

**DD. “Licensee”** means a person that possesses a valid license for hemp production issued by NMDA.

**EE. “Misbranded”** has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.

**FF. “NMDA”** means the New Mexico department of agriculture.

**GG. “Operational plan”** means a written plan outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures that will be implemented by a hemp facility when processing hemp products.

**HH. “Permit”** means the document issued by the regulatory authority that authorizes a person to operate a hemp facility.

**II. “Permit holder”** means the entity that:

(1) is legally responsible for the operation of the hemp facility such as the owner, the owner’s agent, or other person; and  
(2) possesses a valid permit to operate a hemp facility.

**JJ. “Person”** means an association, a corporation, individual, partnership, other legal

entity, government, or governmental subdivision or agency.

**KK. “Person in charge”** means the individual present at a hemp facility who is responsible for the operation at the time of inspection.

**LL. “Personal care items”** means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person’s health, hygiene, or appearance, and includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

**MM. “Poisonous or toxic materials”** means substances that are not intended for ingestion and are included in four categories:

(1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(2) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(3) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

**NN. “Premises”** means:

(1) The physical facility, its contents, and the contiguous land or property under the control of the permit hold; or

(2) The physical facility, its contents, and the land or property not described in Paragraph (1) of this definition if its facilities and contents are under the control of the permit holder and may impact hemp facility personnel, facilities, or operations, and a hemp facility is only one component of a larger operation.

**OO. “Process authority”** means an approved

expert in the processes for controlling pathogenic microorganisms in food and/or hemp products, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures and determine if such control measures, when properly implemented, will control pathogens effectively.

**PP. “Public water system”** has the meaning stated in 20.7.10 NMAC.

**QQ. “Recall”** means a return of hemp products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption, to the manufacturer or distributor, or that are disposed of by approved methods.

**RR. “Regulatory authority”** means the New Mexico environment department.

**SS. “RLD / LP Gas Bureau”** means the New Mexico regulation and licensing department, LP gas bureau.

**TT. “Secretary”** means the secretary of New Mexico environment department or a designee.

**UU. “Sewage”** means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**VV. “THC”** means delta-9 tetrahydrocannabinol (CAS number 1972-08-3) as measured using a post-decarboxylation method and based on percentage dry weight.

**WW. “THCA”** means tetrahydrocannabinolic acid (CAS number 23978-85-0).

**XX. “Variance”** means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this part if the regulatory authority determines that no hazard to human health or the environment will result from the modification or waiver.

[20.10.2.7 NMAC - NE, 8/1/2019]

**20.10.2.8 GENERAL PROVISIONS:**

**A. Prerequisite and Responsibility for Operation:**

(1) A person may not operate a hemp facility without a valid permit to operate as issued by the regulatory authority.

(2) When more than a single hemp facility is operated on the premises, each one shall be separately permitted.

(3) When a food processing plant permitted by the regulatory authority also operates as a hemp facility, both operations shall be permitted separately.

(4) Except as otherwise provided, the permit holder shall be responsible for all hemp facility operations conducted on the premises for which a permit is issued.

(5) Permit holders shall not be responsible for hemp facility operations on the premises when another permit holder is operating with a permit.

(6) Each permit holder shall be responsible for shared facilities or equipment on the premises.

(7) The permit holder shall ensure that the hemp facility remains in compliance with this part and the act. A violation of any provision of this part or the act may result in civil or criminal proceedings authorized in law, including but not limited to the assessment of civil penalties, the suspension or revocation of permit(s), destruction of hemp products, or other such actions.

**B. Application, Plans, and Specifications Requirements:**

(1) An applicant shall submit a written application for a permit, on a form provided by the regulatory authority, at least 30 calendar days prior to operating a hemp facility.

(2) An applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval at least 30 calendar days before:

(a) the construction of a hemp facility;

(b) the conversion of an existing structure for use as a hemp facility;

(c) the remodeling of a hemp facility or a change of type of hemp facility if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this part; or

(d) opening or changing ownership of an existing hemp facility, if current plans and specifications are not on file with the regulatory authority.

(3) It is the sole responsibility of the applicant to provide the regulatory authority with a complete permit application. The regulatory authority will not act on incomplete permit applications.

**C. Operational Plans.**

(1) Except as otherwise provided in paragraphs (5) and (6) of this subsection, a hemp facility shall, at the time of application for a permit, submit a written operational plan containing the following information, as applicable, for each product(s) to be extracted, manufactured and transported:

(a) Planned source of hemp products.

(b) Names of the ingredient(s);

(c) The final product pH;

(d) The final product water activity (Aw);

(e) Names of preservative(s);

(f) The type of packaging to be used and whether the packaging is integral to product stability;

(g) The intended distribution and use condition of the product;

(h) If the product is to be distributed at ambient, refrigerated or frozen temperature;

(i) The expected shelf life during distribution, retail storage, and in the hands of the consumer;

(j) How the product should be prepared for consumption;

(k) What mishandling of the product might occur in the merchandising

channels or in the hands of the consumer;

(l) A description of the batch/lot ID coding system, as required in this section;

(m) The proposed recall plan;

(n) The complete operational procedure for the intended process, using a flow chart, and the following, if applicable:

(i) The proposed extraction method, and approval from RLD/LP Gas Bureau if utilizing propane or butane for extraction;

(ii) The proposed process for the removal of all harmful solvents used during the extraction process;

(iii) The intended disposition for all unused hemp product and residual solvents;

(iv) The safety measures proposed to protect the public and employees from dangers associated with extraction methods;

(o) Proposed product labels that comply with all requirements of 20.10.2.13 NMAC;

(p) Proposed record keeping system to assure traceability of hemp products from harvest to hemp finished products; and

(q) Proposed pest control plan.

(2) Prior to adding new hemp products, or changing the stated process for any existing product in the product line, the hemp facility shall provide to the regulatory authority:

(a) For each new hemp product, the same information as specified for the initial application in this section; and

(b) For each existing product for which a change will be made in the manufacturing process, the applicable changes to the information previously submitted pursuant to this section.

(3) The regulatory authority may require

that the hemp facility's processes be reviewed by an approved process authority to verify all critical factors of public health significance are addressed.

(4) Recall procedures shall be prepared for hemp products that may be adulterated, misbranded, or otherwise unsafe for human consumption and shall include:

(a) Plans for identifying products which may be adulterated or misbranded;

(b) Procedures for collecting, warehousing, controlling, reworking, and/or disposal of recalled products;

(c) System for determining the effectiveness of recalls; and

(d) Persons to contact when implementing a recall, including the regulatory authority.

(5) A hemp warehouse is exempt from the requirements of Paragraph (1) of Subsection C of this section, except hemp warehouses shall provide:

(a) Proposed pest control plan;

(b) If the product is to be stored at ambient, refrigerated or frozen temperature;

(c) Proposed record keeping system to assure traceability of hemp products from receipt to release;

(d) Proposed recall plan meeting the requirements specified in Paragraph (4) of this subsection; and

(e) If storing non-hemp products in the same warehouse as hemp products, a complete operational procedure outlining how hemp products will remain clearly identified, segregated from non-hemp products, and unadulterated during storage.

(6) A hemp transporter is exempt from the requirements of Subsection C of this section.

**D. Fees, Penalty Fees, and Expiration Dates:**

(1) Fees are non-refundable and shall be:

(a) \$1000.00 for a hemp extraction facility;

(b) \$1000.00 for a hemp manufacturing facility; and

(c) \$1000.00 for a hemp warehouse.

(2) Fees specified in Subparagraphs (a), (b), and (c) of Paragraph (1) of Subsection D of this section include application, plan review, and permit fees.

(3) Permits issued pursuant to Subsection E of 20.10.2.8 NMAC shall expire on January 31, 2020.

(4) When a re-inspection is scheduled by the regulatory authority a penalty fee of \$250.00 shall be assessed and paid by the permit holder prior to the re-inspection being conducted as specified in Subsection B of Section 20.10.2.16 NMAC.

**E. Permit Issuance, Permit Denial, Permit Renewal, and Change of Ownership:**

(1) To qualify for a permit, an applicant shall:

(a) be an owner of the hemp facility or an official authorized by the owner of a hemp facility;

(b) comply with the requirements of 20.10.2 NMAC and the act;

(c) allow access to the hemp facility by the regulatory authority and to provide requested information; and

(d) pay the required fees as specified in Subsection D of this section.

(2) The regulatory authority shall issue a permit to the applicant after:

(a) a properly completed application is submitted;

(b) the required fee, as specified in Subparagraphs (a), (b), and (c) of Paragraph (1) of Subsection D of this Section 20.10.2.8 NMAC, is submitted;

(c) the requirements specified in Subsections B and C of this section are approved by the regulatory authority;

(d) a preoperational inspection by the regulatory authority is conducted and demonstrates that the hemp facility is built or remodeled in accordance with the approved plans and specifications; and

(e) the hemp facility is in compliance with this part and the act.

(3) Upon acceptance of the permit issued by the regulatory authority, the permit holder, in order to retain the permit, shall:

(a) post the permit in a conspicuous location in the hemp facility;

(b) comply with the provisions of this part, including the approved operational plans;

(c) immediately contact the regulatory authority to report an illness of a hemp employee or conditional employee as specified under Subsection A of 20.10.2.9 NMAC;

(d) immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified in 20.10.2.17 NMAC;

(e) allow representatives of the regulatory authority access to the hemp facility to make inspection, take photographs, and review requested records as specified in 20.10.2.11 and 20.10.2.16 NMAC;

(f) replace existing facilities and equipment that comply with this part if:

(i) the regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

(ii) the regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or

(iii) the facilities and equipment are replaced in the normal course of operation.

(g) comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder’s hemp facility or in response to community emergencies.

(h) accept notices issued and served by the regulatory authority according to law.

(i) be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this part, the act, or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

(j) provide the most recent hemp facility inspection report to consumers upon request.

(4) If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a written notice that includes:

(a) the specific reasons or regulation citations for the permit denial; and

(b) advisement of the applicant’s right of appeal and the process and time frames for appeal that are provided in law.

(5) A permit may not be transferred. This includes a prohibition on transferring a permit from one person to another person, from one location to another location, or from one type of operation to another type of operation.

(6) The regulatory authority may issue a permit to a new owner of an existing hemp facility upon completion of requirements as specified in this subsection.  
[20.10.2.8 NMAC - N/E, 8/1/2019]

**20.10.2.9 MANAGEMENT AND PERSONNEL:**

**A.** Adoption of food code subparts 2-201, 2-301, and 2-401, and section 2-103.11. Except as otherwise provided, subpart 2-201, 2-301, and 2-401, 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 hemp facility 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 hemp facility. The procedures shall 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 permit holder 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 hemp facility during all hours of operation.

**D.** In a hemp facility with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted hemp facility on the premises.

**E.** Personal care items on the premises shall be stored in a manner to protect hemp products, other ingredients, equipment, and utensils from contamination at all times.  
[20.10.2.9 NMAC - N/E, 8/1/2019]



**20.10.2.10 HEMP PRODUCT TRANSPORTATION REQUIREMENTS:**

**A.** Hemp facilities shall only transport hemp product to NMDA licensees, NMED permitted hemp facilities, or persons approved by the regulatory authority.

**B.** Hemp facilities shall create and utilize a hemp transportation manifest meeting the requirements of Subsection C of this section when transporting hemp product.

**C.** A hemp transportation manifest created by a hemp facility shall contain the following information:

- (1) Name, address, phone number, and permit number of the hemp facility;
- (2) Name, address, and phone number of the person transporting the hemp product;
- (3) The hemp transportation unit's:
  - (a) year, make, model, and color (if applicable); and
  - (b) license plate number;
- (4) Batch/lot ID created by the hemp facility;
- (5) Item(s) description/composition of hemp product;
- (6) Quantity of hemp product
- (7) Shipping date; and
- (8) Destination of the hemp product, including the name, address, and phone number of the person receiving the hemp product.

**D.** Hemp facilities transporting hemp finished products intended for human consumption or hemp products that will be utilized as ingredients in hemp finished products intended for human consumption shall transport such items under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of food, as well as against deterioration of the food and the container in accordance

with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

**E.** Hemp facilities transporting small amounts of hemp product to approved laboratories or research facilities in accordance with practices approved under this part and the Act are not required to have a hemp harvest certificate or hemp transportation manifest, but shall identify each hemp product being transported with the following information:

- (1) Batch/lot ID of the hemp product;
- (2) Item(s) description;
- (3) Origin and destination; and
- (4) Total volume/weight of each hemp product. [20.10.2.10 NMAC - N/E, 8/1/2019]

**20.10.2.11 HEMP FACILITY REQUIREMENTS:**

**A.** After the effective date of this part and unless otherwise provided, it is illegal to operate a hemp facility which does not meet the requirements of this section.

**B.** Adoption of 21 CFR 117 Subparts A, B, and F. Except as otherwise provided, Subparts A, B, and F of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety.

**C.** 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 regulatory authority for official review and copying upon oral or written request.

**D.** Omissions. The following provisions are omitted from the incorporated subparts of 21 CFR 117:

- (1) 117.1;
- (2) 117.5;
- (3) 117.7;
- (4) 117.8;
- (5) 117.310;
- (6) 117.315(d);
- (7) 117.325;
- (8) 117.335.

**E.** Hemp facilities manufacturing dietary supplements shall meet the requirements of the United States code of federal regulations, title 21, part 111.

**F.** Hemp facilities manufacturing products for inhalation purposes shall meet the requirements of the United States federal food, drug, and cosmetic act, title 21, chapter 9.

**G.** Hemp and Hemp Product Source and Hemp Product Transportation.

(1) Hemp facilities shall not receive hemp without a hemp harvest certificate issued by NMDA or a person approved by the regulatory authority verifying the hemp being transported has a THC concentration of not more than three-tenths percent on a dry weight basis.

(2) Hemp facilities shall not receive hemp product unless:

- (a) it is received from an NMDA licensee, NMED permitted hemp facility, or a person approved by the regulatory authority;

- (b) it is accompanied by a hemp transportation manifest; and

- (c) hemp finished products intended for human consumption or hemp products that will be utilized as ingredients in hemp finished products intended for human consumption were transported under conditions that will protect against allergen cross-contact

and against biological, chemical (including radiological), and physical contamination of food, as well as against deterioration of the food and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

**H.** Records and Traceability.

(1) Hemp facilities shall implement the approved record keeping system at all times and shall maintain traceability records for a period of three years.

(2) Hemp facilities shall maintain all shipping records and records of receipt for all hemp products for a period of three years, including but not limited to:

- (a) Hemp harvest certificate;
- (b) Hemp transportation manifest;
- (c) Date of receipt; and
- (d) Certificate of analysis, if hemp finished product.

**I.** Hemp facilities shall maintain the operational plans and recall plan, accepted by the regulatory authority, onsite during all hours of operation and shall make them available for review by the regulatory authority.

**J.** The final disposition of all unused hemp product and residual solvents shall be done as approved by the regulatory authority in Subsection C of 20.10.2.8 NMAC.

**K.** The permit holder shall be responsible to ensure the security of, and limit access to, hemp-derived material with a THC concentration of greater than three-tenths percent.

[20.10.2.11 NMAC - N/E, 8/1/2019]

**20.10.2.12 WATER SUPPLY:**

**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-hemp 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 hemp 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.  
[20.10.2.12 NMAC - N/E, 8/1/2019]

**20.10.2.13 HEMP FINISHED PRODUCT LABELING:**

**A.** After the effective date of this part and unless otherwise provided, hemp finished products produced for:

- (1) human consumption shall meet the applicable labeling requirements of the United States code of federal regulations, title 21, part 101 and the New Mexico Food Act;
- (2) absorption by humans shall meet the applicable labeling requirements of the United States code of federal regulations, title 21, parts 701 and 740; and
- (3) inhalation by humans shall meet applicable state and federal labeling requirements.

**B.** In addition to the labeling requirements specified in Subsection A of 20.21.4.13 NMAC, hemp finished products shall clearly identify on the principle display panel of the label:

- (1) CBD content in the package and/or container, labeled in milligrams; and
- (2) Total THC content in the package and/or container, labeled in milligrams.

**C.** Unless otherwise approved, statements representing or inferring a hemp finished product contains no THC are prohibited.

**D.** Hemp facilities shall design, maintain and use a coding system that will identify the date and place of manufacture of each hemp product and shall be clearly visible on the product label or securely affixed to the body of the container.

**E.** Except as specified in Subsection F of this section, product concentration and content stated on hemp finished product label shall not:

- (1) deviate by more than ten percent stated on the label; or



(2) if the hemp finished product consists of the flower of the hemp plant only, deviate by more than thirty percent.

**F.** Total THC concentration in hemp finished product shall not exceed three-tenths percent.

**G.** Hemp finished products shall not contain medical, health, or benefit claims on the label. [20.10.2.13 NMAC - N/E, 8/1/2019]

**20.10.2.14 HEMP FINISHED PRODUCT TESTING:**

**A.** After the effective date of this part and unless otherwise provided, hemp finished products that will be used for human consumption, absorption, or inhalation shall be tested by an approved laboratory and meet the requirements of this section before they leave the hemp facility and are transported, distributed, sold or otherwise made available to consumers.

**B.** Except as otherwise provided, each batch/lot of hemp finished product shall be tested as follows:

(1) cannabinoid profile, including at a minimum the concentration of the following:

- (a) Total THC calculated as  $THC = (0.877 \times THCA) + THC$ ;
- (b) D9-THC;
- (c) THCA;
- (d) CBD; and
- (e) CBDA;

(2) solvents (volatile organic compounds) utilized throughout the processing of the hemp product; and

(3) content of CBD, total THC, and other compounds derived from hemp stated on the label of the hemp finished product.

**C.** In addition to the testing requirements of Subsection B of this section, each batch/lot of dried, usable hemp finished product shall be tested for water content.

**D.** Water content for dried, usable hemp finished products shall be less than fifteen percent by weight.

**E.** Testing limits for hemp finished product shall be as follows:

(1) Total THC concentration shall not exceed more than three-tenths percent; and

(2) Solvents (volatile organic compounds) utilized throughout the processing of the hemp finished product shall not exceed the current United States Pharmacopeia recommended limits for residual solvents.

**F.** Hemp facilities shall obtain a certificate of analysis for each hemp finished product batch/lot from the approved laboratory. The certificate of analysis shall include the results of the required testing required in Subsections B, C, and D of this section and shall include the following information:

- (1) The batch identification number;
- (2) The date received;
- (3) The date of testing completion;
- (4) The method of analysis for each test conducted; and
- (5) The signature of an authorized official of the hemp laboratory that guarantees the results of the laboratory's testing of a sample.

**G.** Hemp facilities shall provide the certificate of analysis with hemp finished products as follows:

- (1) If shipped to another business entity for retail sale, the certificate of analysis for each hemp finished product shall be provided to the business entity; or
- (2) If shipped directly to the consumer, shall be provided to the consumer upon request.

**H.** Hemp finished products that exceed the limits specified in Subsection E of this section, or the testing results specified in Paragraph (3) of Subsection B of this section do not meet the

requirements of Subsection E of Section 20.10.2.13 NMAC shall not be distributed and shall be:

- (1) disposed of in an approved manner; or
- (2) re-worked in an approved manner.

**I.** Hemp finished product that is re-worked as specified in Paragraph (2) of Subsection H of this section shall meet requirements of this section before they are transported, distributed, sold or otherwise made available to consumers.

**J.** If both initial test and confirming test results exceed the limits specified in Subsection E of this section, or the testing results specified in Paragraph (3) of Subsection B of this section do not meet the requirements of Subsection E of 20.10.2.13 NMAC, the permit holder shall report the results to the regulatory authority within 24 hours. [20.10.2.14 NMAC - N/E, 8/1/2019]

**20.10.2.15 HEMP LABORATORIES:** Testing required in 20.10.2.14 NMAC shall be conducted by an approved laboratory that has no direct ownership or financial interest in the hemp facility for which the testing is being conducted. [20.10.2.15 NMAC - N/E, 8/1/2019]

**20.10.2.16 INSPECTION BY REGULATORY AUTHORITY:**

**A.** The regulatory authority shall conduct inspections of hemp facilities to determine compliance with the act, Food Service Sanitation Act, the New Mexico Food Act, and this part.

**B.** When an inspection conducted by the regulatory authority reveals a violation or repeat violation of this part, and a re-inspection is scheduled by the regulatory authority, a re-inspection penalty fee shall be assessed by the regulatory authority and paid by the operator as specified in Paragraph (4) of Subsection D of 20.10.2.8 NMAC.

**C.** After the regulatory authority presents official credentials and provides notice of the purpose

of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the hemp facility is in compliance with this part and the act by allowing access to the facility to make inspection and take photos, and providing information and records requested and to which the regulatory authority is entitled according to law, during the hemp facility's hours of operation and other reasonable times.

**D.** The regulatory authority shall be allowed to copy any records pertaining to the manufacture, processing, packing, distribution, receipt, holding, or importation of hemp product maintained by or on behalf of a hemp facility in any format, including paper and electronic formats, and at any location. Proprietary documents shall be protected by the regulatory authority according to law.

**E.** If a person in charge denies access to the regulatory authority, the regulatory authority shall:

(1) inform the person that:

(a) the permit holder is required to allow access to the regulatory authority as specified in Subsection F of this section;

(b) access is a condition of the acceptance and retention of a hemp facility permit to operate as specified in Paragraph 3 of Subsection E of 20.10.2.8 NMAC;

(c) if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

(d) refusal to allow access is grounds for immediate permit suspension or revocation; and

(2) make a final request for access.

**F.** If after the regulatory authority presents credentials and provides notice as specified in Subsection C of this section, explains the authority upon which access is requested, and makes

a final request for access as specified in Subsection E of this section, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

**G.** If denied access to a hemp facility for an authorized purpose and after complying with Subsection E of this section, the regulatory authority may issue, or apply for the issuance of, an inspection order to gain access as provided in law.

**H.** The regulatory authority shall document on an inspection report form:

(1) Specific factual observations of violative conditions or other deviations from this part that require correction by the permit holder; and

(2) Time frame for correction of the violations observed and documented.

**I.** The regulatory authority shall request a signed acknowledgment of receipt and provide a copy of the completed inspection report and the notice to correct violations, as soon as possible after the inspection, to the permit holder or to the person in charge.

**J.** The regulatory authority shall inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in Subsection I of this section that:

(1) An acknowledgment of receipt is not an agreement with findings;

(2) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified;

(3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the hemp facility; and

(4) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

[20.10.2.16 NMAC - N/E, 8/1/2019]

**20.10.2.17 CEASING OPERATIONS AND REPORTING:**

**A.** Except as specified in Subsections B and C of this section, a permit holder shall immediately discontinue operations and notify the regulatory authority 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 hempborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

**B.** A permit holder need not discontinue operations in an area of an establishment 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 regulatory authority may allow the permit holder 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;

(2) immediate corrective action is taken to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and

(3) the regulatory authority 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 permit holder shall obtain approval from the regulatory authority before resuming operations.

**E.** Except as otherwise provided, a permit holder shall at the time of inspection correct violations of this part.

**F.** Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame.

**G.** After observing at the time of inspection a correction of a violation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

**H.** As specified in Subsection F of this section, after receiving notification that the permit holder has corrected a violation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records. [20.10.2.17 NMAC - N/E, 8/1/2019]

**20.10.2.18 PERMIT SUSPENSION AND HEARING ADMINISTRATION:**

**A.** The regulatory authority may immediately suspend a permit if it determines through inspection, or examination of employee, hemp product records, or other means as specified in this part if:

- (1) an imminent health hazard exists; or
- (2) the permit holder allows:

(a) serious or repeated violations of the Food Service Sanitation Act, the New Mexico Food Act, the Act, or this part;

(b) violations of this part to remain uncorrected beyond time frames for correction approved, directed, or ordered by the regulatory authority;

(c) violates any term or condition of a permit as specified under Paragraph 3 of Subsection E of 20.10.2.8 NMAC;

(d) fails to comply with a regulatory authority order issued concerning an employee or conditional employee suspected of having a disease transmissible through hemp products by infected persons; or

(e) fails to comply with a hold order as specified in Subsection A of 20.10.2.20 NMAC;

**B.** The regulatory authority may immediately suspend a person's permit as specified in Subsection A of this section by providing written notice as specified in Subsection A of 20.10.2.21 NMAC of the immediate suspension to the permit holder or person in charge, without prior warning, notice of a hearing, or a hearing.

**C.** An immediate suspension notice shall state:

- (1) the hemp facility permit is immediately suspended and that all hemp facility operations shall immediately cease;
- (2) the reasons for the immediate suspension with reference to the provisions of this part that are in violation;
- (3) the name and address of the regulatory authority representative to whom a written request for re-inspection may be made and who may certify that reasons for the suspension are eliminated; and
- (4) the permit holder may request an appeal hearing by submitting a timely request as specified in Subsection G and H of this section.

**D.** After receiving a written request from the permit holder stating that the conditions cited in the summary suspension order no longer exist, the regulatory authority shall conduct a reinspection of the hemp facility for which the permit was summarily suspended.

**E.** A permit suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate.

**F.** A permit holder may request a hearing to address concerns about the regulatory authority's denial of an application for permit or enforcement action taken, except that a hearing request does

not stay the regulatory authority's restriction or exclusion of employees as specified in Subsection A of 20.10.2.18 NMAC.

**G.** A person desiring a hearing in response to the regulatory authority's denial of an application for permit or enforcement action taken shall submit a hearing request to the regulatory authority within 10 calendar days of the date of the denial or enforcement action.

**H.** A request for hearing as specified in Subsection G of this section shall be in written form and contain the following information:

(1) If a request for hearing:

(a) A statement of the issue of fact for which the hearing is requested; and

(b) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(2) If either a response to notice of hearing or a request for a hearing:

(a) A statement indicating whether the presence of witnesses for the regulatory authority is required; and

(b) The name and address of the respondent's or requestor's legal counsel, if any.

**I.** A notice of hearing shall contain the following information:

(1) Time, date and place of the hearing;

(2) Purpose of the hearing;

(3) The rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in Subsection M of this section; and

(4) The consequences of failing to appear at the hearing.

**J.** A complete digital recording of a hearing shall be made and maintained as part of the regulatory authority's records.

**K.** The rules of civil procedure and the rules of evidence shall not apply, but a hearing shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented.

**L.** Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

**M.** The regulatory authority shall present at the hearing its evidence, orders, directives, and reports related to the proposed or appealed administrative remedy.

**N.** Evidence shall be excluded that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege.

**O.** Testimony of parties and witnesses shall be made under oath or affirmation administered by a duly authorized official.

**P.** Written evidence may be received if it will expedite the hearing without substantial prejudice to a party's interests.

**Q.** Documentary evidence may be received in the form of a copy or excerpt.

**R.** The regulatory authority may settle a case after a notice of hearing is served by providing a respondent with an opportunity to request a settlement before a hearing commences on the matter and by entering into a consent agreement with the respondent.

**S.** Respondents accepting a consent agreement waive their right to a hearing on the matter. [20.10.2.18 NMAC - N/E, 8/1/2019]

**20.10.2.19 REMEDIES:**

**A.** The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of this part if a person operating a hemp facility:

(1) fails to have a valid permit to operate a hemp facility as specified in Subsection A of Section 20.10.2.8 NMAC;

(2) fails to comply with an immediate suspension

order issued by the regulatory authority as specified in Subsection A of 20.10.2.18 NMAC or Subsection B of 20.10.2.21 NMAC; or

(3) denies admission by the regulatory authority to the premises of a hemp facility to:

(a) make an inspection, including taking photographs;

(b) examine and sample hemp products or other substances found on the premises; or

(c) examine and copy the records on the premises relating to hemp products as specified in Subsection C of 20.10.2.16 NMAC.

**B.** The regulatory authority may revoke a permit for reasons specified in Subsection A of 20.10.2.18 NMAC or Subsection A of this section.

**C.** The regulatory authority shall conduct a hearing as specified in 20.10.2.18 NMAC prior to revoking a permit.

**D.** The permit holder shall be notified of the hearing as specified in 20.10.2.18 NMAC.

**E.** Failure by the permit holder to appear shall result in immediate revocation of the permit.

**F.** A permit shall only be revoked if a permit has previously been suspended.

**G.** A permit that has been revoked shall not be considered for reapplication until the permit holder has demonstrated to the satisfaction of the regulatory authority that the hemp facility will comply with this part. [20.10.2.19 NMAC - N/E, 8/1/2019]

**20.10.2.20 HOLDING, EXAMINATION, AND DESTRUCTION OF HEMP PRODUCTS:**

**A.** The regulatory authority may place a hold order on hemp products in a permitted hemp facility that:

(1) originated from an unapproved source;

(2) may be adulterated, misbranded, or otherwise

unsafe for human consumption, or not honestly presented;

(3) are not labeled according to law;

(4) have a THC concentration of more than three-tenths percent, in hemp finished product; or

(5) are otherwise not in compliance with this part.

**B.** If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the hemp products that are subject to the order to a place of safekeeping.

**C.** The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the hemp products, as specified in Subsection A of this section, without prior warning, notice of a hearing, or a hearing on the hold order.

**D.** If the suspected hemp products have been transported, the permit holder shall be given the opportunity to recall the hemp products voluntarily at the permit holder's expense.

**E.** If the permit holder refuses to recall the suspected hemp products, the regulatory authority may order a mandatory recall of the suspected hemp products at the permit holder's expense.

**F.** The hold order notice shall:

(1) state that hemp products subject to the order may not be used, sold, moved from the hemp facility, or destroyed without a written release of the order from the regulatory authority;

(2) state the specific reasons for placing the hemp products under the hold order with reference to the applicable provisions of this part and the hazard or adverse effect created by the observed condition;

(3) completely identify the hemp products subject to the hold order by the common name, the label information, a container



description, the quantity, regulatory authority's tag or identification information, and location;

(4) state that the permit holder has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in Subsections G and H of 20.10.2.18 NMAC;

(5) state that the regulatory authority may order the destruction of the hemp products if a timely request for an appeal hearing is not received; and

(6) provide the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

**G.** The regulatory authority shall securely place an official tag or label on the hemp products or containers or otherwise conspicuously identify hemp products subject to the hold order.

**H.** The tag or other method used to identify a hemp product that is the subject of a hold order shall include a summary of the provisions specified in Subsection F of this section and shall be signed and dated by the regulatory authority.

**I.** Except as otherwise provided, hemp products placed under a hold order may not be used, sold, served, or moved from the establishment by any person.

**J.** The regulatory authority may allow the permit holder the opportunity to store the hemp products in an area of the hemp facility if the hemp products are protected from subsequent deterioration and the storage does not restrict operations of the establishment.

**K.** Only the regulatory authority may remove hold order tags, labels, or other identification from hemp products subject to a hold order.

**L.** The regulatory authority may examine, sample, and test the hemp products in order to determine its compliance with the Food Service Sanitation Act, the New Mexico Food Act, the act, and this part.

**M.** When hemp products are found to be adulterated, misbranded, or otherwise unsafe for human consumption, or not honestly presented; or found in any room, building, vehicle of transportation or other structure, any hemp products which are unsound or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the procedures outlined in 25-2-6 NMSA 1978 shall be followed.

**N.** When any product is found, by examination or laboratory analysis, to be in violation with this part, the regulatory authority may order condemnation and disposal of the product lot, at the expense of the permit holder.

**O.** The regulatory authority shall issue a written notice of release from a hold order and shall remove hold tags, labels, or other identification from the hemp product if the hold order is vacated.  
[20.10.2.20 NMAC - N/E, 8/1/2019]

**20.10.2.21 SERVICE OF NOTICE:**

**A.** A notice issued in accordance with this part shall be considered to be properly served if it is served by one of the following methods:

(1) The notice is personally served by the regulatory authority, a law enforcement officer, or a person authorized to serve a civil process to the permit holder, the person in charge, or person operating a hemp facility without a permit; or

(2) The notice is sent by the regulatory authority to the last known address of the permit holder or the person operating a hemp facility without a permit, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired.

**B.** An employee restriction or exclusion order, an order to hold and not transport hemp product, or an immediate suspension order shall be:

(1) served as specified in Paragraph (1) of Subsection A of this section; or

(2) clearly posted by the regulatory authority at a public entrance to the hemp facility and a copy of the notice sent by first class mail to the permit holder or to the owner or custodian of the hemp product, as appropriate.

**C.** Service is effective at the time of the notice's receipt or if service is made as specified in Paragraph (2) of Subsection B of this section, at the time of the notice's posting.

**D.** Proof of proper service may be made by affidavit of the person making service or by admission of the receipt signed by the permit holder, the person operating a hemp facility without a permit to operate, or an authorized agent.  
[20.10.2.21 NMAC - N/E, 8/1/2019]

**20.10.2.22 VARIANCES:**

**A.** The regulatory authority may grant a variance by modifying or waiving the requirements of this part if the regulatory authority determines that no hazard to human health or the environment will result from the modification or waiver.

**B.** The person requesting a variance shall submit a written application on a form provided by the regulatory authority. The following information shall be provided by the person requesting the variance:

(1) A statement of the proposed variance;

(2) The applicable code citations from which the variance is requested;

(3) A detailed rationale for how the potential hazards to human health or the environment addressed by the applicable code citations will be alternatively addressed by the proposal; and

(4) If applicable, documentation supporting the rationale provided.

**C.** The regulatory shall grant the variance, grant the variance subject to conditions, or deny the variance within 15 working days following the receipt of the variance request.

**D.** If the regulatory authority grants a variance as specified in this section, the permit holder shall:

(1) comply with the procedures that were approved; and

(2) when required as a condition of the variance, maintain and provide to the regulatory authority, upon request, records that demonstrate compliance with the approved variance.  
[20.10.2.22 NMAC - N/E, 8/1/2019]

**HISTORY OF 20.10.2 NMAC:**  
[RESERVED]

**HIGHER EDUCATION DEPARTMENT**

**TITLE 5 POST-SECONDARY EDUCATION  
CHAPTER 7 TUITION AND FINANCIAL AID  
PART 35 GROW YOUR OWN TEACHERS SCHOLARSHIP PROGRAM**

**5.7.35.1 ISSUING AGENCY:** New Mexico Higher Education Department.  
[5.7.35.1 NMAC - N, 8/13/2019]

**5.7.35.2 SCOPE:** Provisions of 5.7.35 NMAC apply to all public schools, public post-secondary institutions and tribal colleges in the state of New Mexico.  
[5.7.35.2 NMAC - N, 8/13/2019]

**5.7.35.3 STATUTORY AUTHORITY:** Section 9-25-1 et seq. NMSA 1978 and Chapter 230, Laws of 2019.  
[5.7.35.3 NMAC - N, 8/13/2019]

**5.7.35.4 DURATION:** Permanent.  
[5.7.35.4 NMAC - N, 8/13/2019]

**5.7.35.5 EFFECTIVE DATE:** August 13, 2019, unless a later date is cited at the end of a section.  
[5.7.35.5 NMAC - N, 8/13/2019]

**5.7.35.6 OBJECTIVE:** The objective of 5.7.35 NMAC is to provide a guideline for implementing the grow your own teachers program created by the Grow Your Own Teachers Act (the Act). The purpose of the program is to encourage educational assistants employed at public schools in New Mexico to complete a public education department approved teacher preparation program at a New Mexico public post-secondary educational institution or a tribal college. The program provides for professional leave and scholarship awards to qualified educational assistants. The scholarship is intended to help defray the educational expenses charged by the institution including tuition, fees, books and course supplies.  
[5.7.35.6 NMAC - N, 8/13/2019]

**5.7.35.7 DEFINITIONS:**

**A. "Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

**B. "Award recipient"** means an educational assistant awarded a scholarship.

**C. "Department"** means the New Mexico higher education department.

**D. "Educational assistant"** means a United States citizen and resident of New Mexico who has worked as an educational assistant in a public school for at least two years and is in good standing with the public school and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico.

**E. "FAFSA"** means the free application for federal student aid.

**F. "Half-time"** means a student is meeting the institution's criteria of half-time enrollment in its teacher preparation program. The institution's determination may take into account the student's average enrollment for the academic year and the completion of the public education department's licensure requirements.

**G. "Institution"** means a regionally accredited New Mexico public post-secondary institution or regionally accredited tribal college.

**H. "Public post-secondary educational institution"** means a research or comprehensive institution, as defined in Article XII, Section 11 of the Constitution of the State of New Mexico, and branch community colleges or community college or technical and vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

**I. "Public school"** means a school operating under Article XII of the Constitution of the State of New Mexico and includes constitutional special schools, state institutions and state, federal, or tribal agencies that educate children and employ educational assistants.

**J. "Satisfactory academic progress"** means maintaining the required academic progress toward program completion as determined by the institution.

**K. "Scholarship"** means a grow your own teachers program award.

**L. "Teacher preparation program"** means a program that has been formally approved as meeting the requirements of the public education department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**M. "Tribal college"** means a tribally, federally or congressionally chartered post-secondary educational institution with a physical campus in New Mexico that is accredited by the higher learning commission.  
[5.7.35.7 NMAC - N, 8/13/2019]

**5.7.35.8 STUDENT ELIGIBILITY AND AWARD PROCESS:**

**A.** A scholarship may be granted to an educational assistant who:



(1) is a U.S. citizen and resident of New Mexico as defined in 5.7.18.9 NMAC;

(2) is accepted into an accredited public education department approved teacher preparation program at an eligible institution;

(3) has not earned appropriate educational credentials to be licensed as a teacher by the public education department;

(4) has demonstrated financial need as determined by the institution and the student's FAFSA; and

(5) is in good standing with the public school.

**B.** The teacher preparation program at the institution shall make awards to students who meet the provisions of Subsection A of 5.7.35.8 NMAC, based on the recommendations of a committee appointed for that purpose. The committee shall prioritize awards to educational assistants that:

(1) are closest to overall completion of the teacher preparation program;

(2) serve in a bilingual education setting;

(3) serve in an early childhood education setting;

(4) serve in a special education setting; or

(5) serve in a high-need teacher position as defined by the public education department.

**C.** Award recipients may shall petition the public school in which they are employed to grant paid professional leave for college classes, examinations and practice teaching as needed. The form to petition paid professional leave shall be promulgated by the department and made available at the institution. It is the award recipient's responsibility to ensure the petition form is submitted and approved by the public school. [5.7.35.8 NMAC - N, 8/13/2019]

#### **5.7.35.9 AMOUNT OF SCHOLARSHIP AND DURATION:**

**A.** Institutions shall make awards to qualifying

educational assistants based on financial need. The following provisions shall also apply to the scholarship:

(1) each scholarship award is for a period of one semester;

(2) the scholarship may apply to educational expenses including tuition, fees, books and course supplies; and

(3) awards shall not exceed six thousand dollars (\$6,000) per academic year.

**B.** An award recipient may not receive more than five academic years of the scholarship. A scholarship may be renewed as long as the student continues to meet the conditions of eligibility in Subsection A of 5.7.35.8 NMAC and maintains satisfactory academic progress or until the student graduates from an eligible institution.

[5.7.35.9 NMAC - N, 8/13/2019]

#### **5.7.35.10 ADMINISTRATION OF THE PROGRAM:**

**A.** Institutions shall:

(1) determine initial and continuing student eligibility for the scholarship based on the provisions in Section 8 and Section 9 of 5.7.35 NMAC;

(2) distribute awards to qualifying eligible students; and

(3) provide information to the department on an annual basis to be used by the department for calculation of the allocation to the institution. Required information shall include:

(a) income reported on the FAFSA; and

(b) the number of students enrolled in a public education department approved teacher preparation program at the public post-secondary institution or tribal college.

(4) annually report the number of students awarded a scholarship who meet the provisions of Subsection B of 5.7.35.8 NMAC.

**B.** The department shall allocate money to public post-

secondary educational institutions or tribal colleges based on a student need formula calculated according to:

(1) income reported on the FAFSA; and

(2) the number of students enrolled in a public education department approved teacher preparation program at the institution.

**C.** The public school shall:

(1) grant paid professional leave if the educational assistant is a recipient of a scholarship pursuant to the Act and requires release time to complete teacher preparation program requirements; and

(2) allow the educational assistant to use the distance education resources of the school district to take classes if an educational assistant who is accepted into or enrolled in a teacher preparation program offered by an eligible institution does not live within a reasonable distance of the institution's campus.

[5.7.35.10 NMAC - N, 8/13/2019]

**5.7.35.11 TERMINATION OF SCHOLARSHIP:** A scholarship is terminated upon occurrence of one or more of the following by the award recipient:

**A.** withdrawal from the institution or from the teacher preparation program;

**B.** failure to maintain at least half-time enrollment;

**C.** failure to achieve satisfactory academic progress; or

**D.** substantial noncompliance with the Act or the provisions of 5.7.35 NMAC.

[5.7.35.11 NMAC - N, 8/13/2019]

#### **HISTORY OF 5.7.35 NMAC: [RESERVED]**

**PUBLIC EDUCATION DEPARTMENT**

The New Mexico Public Education Department approved at its 7/26/2019 hearing, to repeal its rule 6.60.7 NMAC, Educator Licensure Application Fee (filed 10/13/2000) and replace it with 6.60.7 NMAC, Educator Licensure Application Fee (adopted on 7/31/2019), and effective 8/13/2019.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS  
PART 7 EDUCATOR LICENSURE APPLICATION FEE**

**6.60.7.1 ISSUING**

**AGENCY:** Public Education Department, hereinafter the department.  
[6.60.7.1 NMAC - Rp, 6.60.7.1 NMAC, 8/13/2019]

**6.60.7.2 SCOPE:** Any and all applicants and applications for obtaining a department license, renewing or advancing a license, certification, and/or license endorsement.

[6.60.7.2 NMAC - Rp, 6.60.7.2 NMAC, 8/13/2019]

**6.60.7.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, 22-8-44, and 22-10A-3 NMSA 1978.

[6.60.7.3 NMAC - Rp, 6.60.7.3 NMAC, 8/13/2019]

**6.60.7.4 DURATION:** Permanent.

[6.60.7.4 NMAC - Rp, 6.60.7.4 NMAC, 8/13/2019]

**6.60.7.5 EFFECTIVE**

**DATE:** August 13, 2019, unless a later date is specified in rule or a later date is cited in the history note at the end of the section.

[6.60.7.5 NMAC - Rp, 6.60.7.5 NMAC, 8/13/2019]

**6.60.7.6 OBJECTIVE:**

This rule establishes fees for applicants and applications.  
[6.60.7.6 NMAC - Rp, 6.60.7.6 NMAC, 8/13/2019]

**6.60.7.7 DEFINITIONS:**

**A. "Applicant"**  
means a person who has submitted an application or who intends to submit an application to the department.

**B. "Application"**  
means a formal written request, on a department-approved form, to the department for issuance of a department license, license renewal, license continuation, license advancement, certification, or license endorsement.

**C. "Application fee"**  
means all fees, monies, remittances, or charges owed for the processing of a department application but does not include any additional fees, monies, or charges owed for the processing of a background check.

**D. "Indigence"**  
means the financial inability to pay or afford, without extreme hardship, an application fee.

**E. "PDD"** means the professional development dossier defined in 6.69.4.11 NMAC for advancing from a level one to level two license or from a level two to level three license.

**F. "PDD strand"**  
means one of three categories used to measure evidence of teacher competency on the professional development dossier. Submission of any of the following strands will incur fees:

- (1) the instruction strand;
- (2) the student learning strand; and
- (3) the professional learning strand.

[6.60.7.7 NMAC - Rp, 6.60.7.7 NMAC, 8/13/2019]

**6.60.7.8 APPLICATION FEES:**

**A.** An applicant shall remit an application fee to the

department for each application submitted unless multiple licensure applications are submitted simultaneously.

**B.** Should multiple licensure applications be submitted simultaneously, the following shall apply:

- (1) only a single application fee shall be incurred; and
- (2) the highest application fee shall apply.

**C.** Application fees must be remitted to the department by money order, certified check, or other forms of payment acceptable to the department.

**D.** Payment, in all forms, must be made to the "New Mexico public education department".

**E.** Unless there has been a determination of indigence, all application fees once submitted, are non-refundable, and shall not be returned to an applicant.

**F.** The department shall deposit all received application fees in the department educator licensure fund.

[6.60.7.8 NMAC - Rp, 6.60.7.8 NMAC, 8/13/2019]

**6.60.7.9 FEE SCHEDULE:**

**A.** Initial licensure applications. Applicants for initial licensure shall pay an application fee of one hundred fifty dollars (\$150) unless another application fee is specified below:

- (1) applicants for initial licensure as an educational assistant shall pay an application fee of fifty dollars (\$50);
- (2) applicants for initial licensure as a school health assistant shall pay an application fee of fifty dollars (\$50);
- (3) applicants for initial licensure as a substitute teacher shall pay an application fee of fifty dollars (\$50);
- (4) applicants for initial licensure as an athletic coach shall pay an application fee of thirty-five dollars (\$35); and
- (5) applicants for initial licensure for Native

American language and culture certification shall pay a fee of fifty dollars (\$50).

**B. Renewal**

applications of an existing educator license. Applicants for renewal of an existing educator license shall pay an application fee of one hundred twenty dollars (\$120) unless another application fee is specified below:

(1) applicants for renewal of an existing educator license as an administrator shall pay an application fee of one hundred thirty dollars (\$130);

(2) applicants for renewal of an existing educator license as an educational assistant shall pay an application fee of fifty dollars (\$50);

(3) applicants for renewal of an existing educator license as a school health assistant shall pay an application fee of fifty dollars (\$50); and

(4) applicants for renewal of an existing educator license as a substitute teacher shall pay an application fee of fifty dollars (\$50).

**C. Renewal** applications of an existing certification.

(1) Applicants for renewal of an existing educator certification shall pay a renewal application fee of one hundred twenty dollars (\$120).

(2) Applicants for renewal of Native American language and culture certification shall pay a fee of fifty dollars (\$50).

**D. Advancement** applications.

(1) Applicants who have not previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay three hundred twenty dollars (\$320).

(2) Applicants who have previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay:

(a) one hundred ten dollars (\$110) for an application that includes one PDD strand;

(b) two hundred twenty dollars (\$220) for an application that includes two PDD strands; or

(c) three hundred twenty dollars (\$320) for an application that includes three PDD strands.

(3) Applicants who concurrently submit a renewal of existing educator license application and an advancement application shall pay no renewal of existing application fee.

(4) In order to concurrently submit a renewal of existing educator license application and an advancement application the following must occur:

(a) the advancement application must be submitted on the same date or before the renewal of an existing educator license application;

(b) the advancement application fees must be received upon the date of the advancement application submission; and

(c) the renewal of existing educator license application must be received by the department within five business days of the advancement application.

**E. Endorsement** applications. Applicants seeking to add an endorsement to an existing license shall pay a fee of one hundred twenty dollars (\$120).

[6.60.7.9 NMAC - Rp, 6.60.7.9 NMAC, 8/13/2019]

**6.60.7.10 LICENSURE APPLICATION FEE**

**EXEMPTIONS:**

**A.** An application fee shall not be charged for any of the following applications:

(1) application for name change;

(2) application for address change;

(3) application for replacing lost or misplaced licenses; and

(4) applicants with an alternative license who meet the requirements to transition their

license to a standard level one license.

**B.** An application fee shall not be charged to an individual who qualifies as indigent.

**C.** An application fee charged to an individual who qualifies as indigent may be returned.

[6.60.7.10 NMAC - Rp, 6.60.7.10 NMAC, 8/13/2019]

**6.60.7.11 STANDARD OF INDIGENCE:**

**A.** An indigence determination shall be made according to the following process:

(1) The request for indigence:

(a) shall be made on a form approved by the department;

(b) shall include any supporting documentation and be submitted to the department within five business days of any application submission; and

(c) a request for indigence shall include a signed statement, certifying that the licensee is indigent.

(2) The department's review:

(a) the department shall review and make a determination of indigence within 30 days;

(b) the determination shall not consider any potential loss or gain of income associated with a department license, renewal, license continuation, license advancement, license, certification, or license endorsement;

(c) the determination of indigence shall be solely within the discretion of the department; and

(d) the determination of indigence shall be final and not subject to review.

**B.** An applicant is presumed indigent if the applicant is a current recipient of one or more of the following:

(1) medicaid;

(2) supplemental security income (SSI);

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(3) public assisted housing;

(4) department of health case management services (DHMS); or

(5) temporary assistance for needy families (TANF).  
[6.60.7.11 NMAC - N, 6.60.7.11 NMAC, 8/13/2019]

**HISTORY OF 6.60.7 NMAC:  
[RESERVED]**

6.60.7 NMAC, Educator Licensure Application Fee, filed 10/13/2000, was repealed and replaced by 6.60.7 NMAC, Educator Licensure Application Fee, effective 8/13/2019.

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**End of Adopted Rules**

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## Other Material Related to Administrative Law

### ENVIRONMENT DEPARTMENT

#### NEW MEXICO ENVIRONMENT DEPARTMENT NOTICE OF THE ISSUANCE OF 20.10.2 NMAC ON AN EMERGENCY BASIS

The New Mexico Legislature enacted the Hemp Manufacturing Act, NMSA 1978, Sections 76-24-1 to -10 (2019), that delegated rulemaking authority to the New Mexico Environment Department (“Department”) over the extraction, processing, transportation, and testing of post-harvest hemp and hemp-derived products. The Hemp Manufacturing Act became effective July 1, 2019. Therefore, the Secretary of the Department has invoked the emergency rulemaking procedures to adopt and promulgate 20.10.2 NMAC in accordance with Section 14-4-5.6 NMSA 1978. This emergency rule will take effect August 1, 2019, and remain in place until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within 180 days from the effective date of the emergency rule, the emergency rule shall expire.

#### CONCISE EXPLANATORY STATEMENT

This rulemaking is undertaken in response to changes in federal and New Mexico law. On December 20, 2018, the United States enacted the Agricultural Improvement Act of 2018, Pub. L. 115-334 (2018), that legalized hemp and delegated regulatory authority over hemp to Indian Tribes and states. In March 2019, the New Mexico Legislature enacted the Hemp Manufacturing Act (“Hemp Act”), NMSA 1978, Sections 76-24-1 to -10 (2019), delegating rulemaking authority to the Department over the extraction, processing, transportation, and testing of hemp. The Hemp Act became effective July 1, 2019. In response, the Department has issued emergency hemp regulations (“Emergency

Rules”), effective August 1, 2019, pursuant to the State Rules Act, Section 14-4-5.6, NMSA 1978 (2017). The Department finds that, in these circumstances, the time required to comply with and complete the procedures of the State Rules Act would cause an imminent peril to the public health, safety or welfare.

The Hemp Act authorizes the cultivation, harvest, and extraction of cannabidiol oils from hemp, defined as the plant *Cannabis Sativa L.* and any part of that plant, including seeds and all derivatives, with a tetra-hydrocannabinol (THC) concentration of not more than three-tenths percent (0.3%). The Act requires the Department to adopt rules to regulate the extraction, processing, or other manufacturing activities regarding hemp, including manufacturing intermediate hemp-derived products and hemp finished products, and makes it illegal to engage in these activities without a permit issued by the Department. *See* Subsection C of Section 76-24-8, NMSA 1978.

The State Rules Act, Paragraph (1) of Subsection A of Section 14-4-5.6 NMSA 1978 requires that the Department comply with the rulemaking procedures of the State Rules Act unless the time required to complete rulemaking procedures would cause an imminent peril to the public health, safety, or welfare. Under the Hemp Act, Subsection C of Section 76-24-8, the Department is authorized to adopt regulations to protect the “health, sanitation, safety and security” of the public with regard to post-harvest hemp and hemp derived products, and that manufacturers of hemp-derived products intended for human consumption comply with the provisions of the Food Service Sanitation Act, NMSA 1978, Sections 25-1-1 to -5 (1977 as amended through 2013).

Individuals and companies have been issued licenses to cultivate hemp,

and are engaged in the cultivation of hemp, pursuant to 21.20.3 NMAC (Hemp Cultivation). The Department anticipates that the first hemp harvest will occur beginning in August 2019. The Department anticipates that soon after harvest, individuals and companies will begin post-harvest processing, extraction of cannabidiol, and manufacturing of food products and dietary supplements from plant material grown in New Mexico. The Department is aware of many individuals and businesses planning to utilize cannabidiol in the manufacturing of food as soon as this year’s crop is harvested.

The purpose of the Emergency Rule is to establish uniform standards for the transportation, extraction, processing, testing, and other manufacturing activities of hemp and hemp-derived products, and to ensure the safe manufacture and honest presentation of hemp-based products for human consumption, absorption, and inhalation.

The Emergency Rule establishes a permitting process for the construction and operation of hemp-manufacturing facilities, along with associated fees and penalties. The Rule requires facilities that manufacture hemp-derived products for human consumption adhere to relevant portions of the New Mexico food code 7.6.2 NMAC (2018), and the United States Food and Drug Administration’s model food code. The Rule regulates the transportation of post-harvest hemp and hemp products. Additionally, the Emergency Rule establishes guidelines for hemp product labeling and hemp product testing that do not comply with the regulations. Under the Emergency Rule, the Department has the authority to inspect post-harvest hemp, hemp-derived products, hemp facilities and hemp transporters, and to hold and store hemp and hemp-derived products that are not in compliance with the Rule.



## STATEMENT OF NON-DISCRIMINATION

If any person requires assistance, an interpreter or auxiliary aid to access documents, please contact 505.222.9515 (Relay users please access the number via the New Mexico Relay Network) or hemp.program@state.nm.us.

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> to learn how and where to file a complaint of discrimination.

## AVISO DEL DEPARTAMENTO DE MEDIO AMBIENTE DE NUEVO MÉXICO DE LA EMISIÓN DE 20.10.2 NMAC EN CASO DE EMERGENCIA

La Legislatura de Nuevo México promulgó la Ley de Fabricación

de Hemp, NMSA 1978, Secciones 76-24-1 a -10 (2019), que delegó la autoridad de reglamentación al Departamento de Medio Ambiente de Nuevo México ("Departamento") sobre la extracción, procesamiento, transporte y pruebas del hemp posterior a la cosecha y los productos derivados del hemp. La Ley de Fabricación de Hemp entró en vigencia el 1 de julio de 2019. Por lo tanto, el secretario del Departamento ha invocado los procedimientos de reglamentación de emergencia para adoptar y promulgar 20.10.2 NMAC de acuerdo con Sección 14-4-5.6 NMSA 1978. Esta norma de emergencia entrará en vigencia el 1 de agosto de 2019 y permanecerá vigente hasta que una norma permanente entre en vigencia bajo el proceso normal de reglamentación. Si no se adopta una norma permanente dentro de los 180 días a partir de la fecha de entrada en vigor de la norma de emergencia, la norma de emergencia caducará.

## DECLARACIÓN CONCISA EXPLICATIVA

Esta reglamentación se lleva a cabo en respuesta a los cambios en las leyes federales y de Nuevo México. El 20 de diciembre de 2018, los Estados Unidos promulgó la Ley de Mejoramiento Agrícola de 2018, Pub. L. 115-334 (2018), que legalizó el hemp y delegó la autoridad de reglamentación sobre el hemp a las tribus indias y a los estados. En marzo de 2019, la Legislatura de Nuevo México promulgó la Ley de Fabricación de Hemp ("Ley de Hemp"), NMSA 1978, Secciones 76-24-1 a -10 (2019), delegando la autoridad de reglamentación al Departamento sobre la extracción, procesamiento, transporte, y pruebas de hemp. La Ley de Hemp entró en vigencia el 1 de julio de 2019. En respuesta, el Departamento emitió reglamentos de emergencia sobre hemp ("Normas de Emergencia"), vigentes desde el 1 de agosto de 2019, de conformidad con la Ley de Nomas del Estado, Sección 14-4-5.6 (2017). El Departamento considera que, en estas circunstancias, el tiempo requerido para cumplir

y completar los procedimientos de la Ley de Nomas del Estado podría causar un peligro inminente para la salud pública, la seguridad o el bienestar.

La Ley del Hemp autoriza el cultivo, la cosecha y la extracción de aceites de cannabidiol del hemp, definida como planta Cannabis Sativa L. y cualquier parte de esa planta, incluidas las semillas y todos los derivados, con una concentración de tetrahidrocannabinol (THC) de no más de tres décimas por ciento (0.3%). La Ley exige que el Departamento adopte normas para regular la extracción, el procesamiento u otras actividades de fabricación relacionadas con el hemp, incluida la fabricación de productos intermedios derivados del hemp y productos terminados de hemp, y hace ilegal participar en estas actividades sin un permiso emitido por el Departamento. Véase NMSA 1978, Sección 76-24-8 (C).

La Ley de Normas del Estado, NMSA 1978, Sección 14-4-5.6 (A) (1), exige que el Departamento cumpla con los procedimientos de reglamentación de la Ley de Nomas del Estado a menos que el tiempo requerido para completar los procedimientos de reglamentación cause un peligro inminente para la salud pública, la seguridad o el bienestar. De conformidad con la Ley del Hemp, Sección 76-24-8 (C), el Departamento está autorizado a adoptar reglamentos para proteger "la salud, el saneamiento, la seguridad y la protección" del público con respecto al hemp posterior a la cosecha y los productos derivados del hemp, y que los fabricantes de productos derivados del hemp destinados al consumo humano cumplan con las disposiciones de la Ley de Saneamiento de Servicio de Alimentos, NMSA 1978, Secciones 25-1-1 a -5 (1977 enmendada hasta 2013).

Individuos y empresas han recibido licencias para cultivar hemp y se dedican al cultivo de hemp, de

conformidad con 21.20.3 NMAC (Cultivo de Hemp). El Departamento anticipa que la primera cosecha de hemp ocurrirá a partir de agosto de 2019. El Departamento anticipa que poco después de la cosecha, los individuos y las empresas comenzarán el procesamiento de la cosecha, la extracción de cannabidiol y la fabricación de productos alimenticios y suplementos dietéticos a partir de los materiales de las plantas cultivadas en Nuevo México. El Departamento es consciente de que muchas personas y empresas planean utilizar el cannabidiol en la fabricación de alimentos tan pronto como se recolecte la cosecha de este año.

El propósito de la Norma de Emergencia es establecer estándares uniformes para el transporte, extracción, procesamiento, pruebas y otras actividades de fabricación del hemp y productos derivados del hemp, y para garantizar la fabricación segura y la presentación honesta de productos basados en hemp para absorción, inhalación y consumo humano.

La Norma de Emergencia establece un proceso de permiso para la construcción y operación de instalaciones de fabricación de hemp, junto con tarifas y sanciones asociadas. La Norma requiere que las instalaciones que fabrican productos derivados del hemp para el consumo humano se adhieran a las partes pertinentes del código de alimentos de Nuevo México 7.6.2 NMAC (2018) y al código modelo de alimentos de la Administración de Alimentos y Medicamentos de los Estados Unidos. La Norma regula el transporte de hemp y productos de hemp posterior a la cosecha. Además, la Norma de Emergencia establece pautas para el etiquetado de productos de hemp y las pruebas de productos de hemp que no cumplan con los reglamentos. Bajo la Norma de Emergencia, el Departamento tiene la autoridad para inspeccionar el hemp posterior a la cosecha, los productos derivados del hemp, las instalaciones de hemp y

los transportadores de hemp, y para retener y almacenar el hemp y los productos derivados del hemp que no cumplan con la Norma.

#### **DECLARACIÓN DE NO DISCRIMINACIÓN**

Si alguna persona necesita asistencia, un intérprete o un dispositivo auxiliar para acceder a los documentos, comuníquese por correo electrónico [hemp.program@state.nm.us](mailto:hemp.program@state.nm.us) o llamando al 505.222.9515 (los usuarios de retransmisión deben acceder al número a través de New Mexico Relay Network).

NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y regulaciones aplicables. NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o alguno de los programas, políticas o procedimientos de no discriminación de NMED o si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con: Kristine Yurdin, coordinadora de no discriminación, NMED, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, teléfono (505) 827-2855, correo electrónico [nd.coordinator@state.nm.us](mailto:nd.coordinator@state.nm.us). También puede visitar nuestro sitio web en <https://www.env.nm.gov/non-employee-discrimination-complaint-page/> para saber cómo y dónde presentar una queja de discriminación.

### **End of Other Material Related to Administrative Law**

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## Submittal Deadlines and Publication Dates

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Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
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Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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