

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF THE ENVIRONMENT DEPARTMENT**

**IN THE MATTER OF PROPOSED  
NEW RULE - 20.10.2 NMAC**

**No. NMED 19-41(R)**

**Environmental Protection Division,  
Environmental Health Bureau,  
New Mexico Environment Department,**

**Petitioner.**



**AMENDED PETITION FOR ADOPTION OF NEW RULE 20.10.2 NMAC-HEMP POST-HARVEST PROCESSING AND REQUEST FOR A HEARING**

The Environmental Protection Division (“Division”), Environmental Health Bureau (“Bureau”) of the New Mexico Environment Department (“Department”) requests a hearing before the Secretary of the New Mexico Environment Department (“Secretary”) to request that, pursuant to NMSA 1978, Sections 9-7A-6(D) (1991) and 76-24-8(C) (2019), the Secretary adopt the proposed new, permanent rule (“Permanent Rule”), 20.10.2 NMAC regarding hemp extraction, production, transportation, warehousing, and testing. As support for this Petition, a Statement of Reasons is attached hereto as Attachment 1. The proposed Permanent Rule, 20.10.2 NMAC is attached hereto as Attachment 2.

On December 20, 2018, the United States enacted the Agricultural Improvement Act of 2018, Pub. L. 115-334 (2018), which legalized hemp and delegated regulatory authority for hemp to Indian Tribes and states. In response, the New Mexico Legislature enacted the Hemp Manufacturing Act (“Act”), NMSA 1978, Sections 76-24-1 to -10 (2019), delegating rulemaking authority to the Department over the extraction, production, transportation, warehousing, and testing of hemp. The Act took effect on July 1, 2019. To provide for public health and safety, the Department issued emergency hemp regulations, 20.10.2 NMAC (“Emergency Rule”), effective

August 1, 2019, pursuant to the State Rules Act, Section 14-4-5.6 (2017). The Emergency Rule expires on January 28, 2020; therefore, the Permanent Rule is necessary, and time is of the essence.

The proposed Permanent Rule ensures public safety by providing for the regulation of hemp manufacturing facilities, hemp transporters, hemp product labeling, hemp laboratories, and hemp products. In addition, the Permanent Rule provides a regulatory framework for the emerging hemp market through a permitting process.

The Bureau requests that a hearing be scheduled anytime between December 2-4, 2019 in accordance with 20.1.9.12 NMAC. Pursuant to 20.1.9.12.D NMAC, the location of the hearing will be in Santa Fe, NM. The Bureau anticipates that a hearing on this matter will take approximately 3 days.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amended Petition For Adoption of New Rule 20.10.2 NMAC - Hemp Post-Harvest Processing and Request For a Hearing was served by hand delivery on the following on October 4, 2019:

Cody Barnes, Administrator  
Hearing Office Administrator  
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1190 St. Francis Dr.  
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**STATEMENT OF REASONS**

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1. On December 20, 2018, the United States Legislature passed the Agricultural Improvement Act of 2018, Pub. L. 115-334 (2018) (“Farm Bill”). The Farm Bill, among other things, removes hemp from the Federal Controlled Substances Act, 21 U.S.C. §§ 801-971, making it a legal substance under federal law.

2. On July 1, 2019 the Hemp Manufacturing Act (“Hemp Act”) NMSA 1978, Sections 76-24-1 to -10 (2017 as amended through 2019) took effect, delegating regulatory authority to the New Mexico Environment Department (“NMED”) over the extraction, processing, transportation, and testing of post-harvest hemp and hemp-derived products.

3. The Hemp Act authorizes the cultivation, harvest, extraction and post-harvest processing of hemp. Hemp is defined in the Hemp Act as the plant *Cannabis Sativa L.* and any part of that plant, including seeds and all derivatives, with a THC concentration of not more than three-tenths percent (0.3%). THC is defined in the Hemp Act as delta-9-tetrahydrocannabinol as measured using a post-decarboxylation method based on percentage dry weight. *See* § 76-24-4(L).

4. The Hemp Act requires NMED 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 NMED. §76-24-8.

5. In adherence to the Hemp Act, NMED promulgated 20.10.2 NMAC- Hemp Post-Harvest Processing (“Emergency Rule”) on an emergency basis in accordance with Section 14-4-5.6 of the State Rules Act, NMSA 1978, § 14-4-1 to -11 (1967 as amended through 2017). NMED concluded 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 environment, public health, safety or welfare.

6. The Emergency Rule took effect on August 1, 2019 and will remain in effect 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 expires and may not be adopted as an emergency rule. § 14-4-5.6(E).

7. The Emergency Rule expires on January 28, 2020 pursuant to Section 14-4-5.6(E) of the State Rules Act. Therefore, it is imperative that NMED holds a hearing between December 2-4, 2019 so it may promulgate a permanent rule before the Emergency Rule expires.

8. NMED proposes the adoption of new rule 20.10.2 NMAC-Hemp Post-Harvest Processing which provides for the regulation of hemp extraction and manufacturing facilities, hemp transportation, hemp product labeling, hemp testing, and hemp products. The proposed new rule also requires hemp extractors and manufacturers to adhere to standards of sanitation and safe food handling practices and requires that all final hemp products are properly labeled and tested for THC concentration, residual solvents, and CBD content in hemp finished product packages.

9. The NMED Secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of NMED and its divisions, pursuant to NMSA 1978, §9-7A-6.

10. The Hemp Act places several duties on NMED. One duty is the requirement to issue permits to people or facilities that engage in extraction and manufacturing activities regarding hemp, including manufacturing intermediate hemp-derived products and hemp finished products in accordance with Section 76-24-8(A). Another duty is to establish a manifest system to ensure that hemp-derived materials are identifiable during transport, in accordance with Section 76-24-9(C).

11. The Hemp Act requires NMED to adopt regulations that include, permitting procedures for extraction and manufacturing of hemp products that ensure public safety and security; qualifications for permitting post-harvest hemp extractors and manufacturers; proficiency standards and requirements for storage, recordkeeping, and inspections; disposal requirements for hemp-derived material containing THC levels of more than three-tenths percent; and permit fees. §76-24-8(C).

12. NMED expects many hemp extractors and manufacturers to produce intermediate hemp-derived products or hemp-finished products for human consumption. Because these hemp-derived and hemp-finished products are intended for human consumption, the new permanent rules are necessary to protect the environment and public health and safety.

13. If a permanent rule is not in place by the time the Emergency Rule expires, NMED will be unable to issue a hemp permit to hemp extractors and manufacturers or conduct safety inspections as contemplated by the Hemp Act. If a hemp manufacturer does not have a hemp permit issued

by NMED, there is the possibility that unsafe and unsecure hemp products will be sold to the public and outside of the regulated economy.

14. In order for hemp extractors and manufacturers to legally and safely produce intermediate hemp-derived products or hemp-finished products for human consumption, NMED must have a permanent rule in place so it can regulate hemp extractors and manufacturers through a permitting process that will ensure the public's safety and security.

15. NMED proposes the adoption of new rule 20.10.2 NMAC-Hemp Post-Harvest Processing, which creates a regulatory framework for the emerging hemp market through a permitting process. The proposed new rule 20.10.2 NMAC-Hemp Post-Harvest Processing is necessary to protect the environment, public health, safety, and welfare because the Emergency Rule expires on January 28, 2020.

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

5  
6 **20.10.2.1 ISSUING AGENCY:** New Mexico Environment Department, P.O. Box 5469, Santa Fe, New  
7 Mexico 87102, Telephone No. (505) 827-2855.  
8 [20.10.2.1 NMAC - N, X/X/XXXXX]  
9

10 **20.10.2.2 SCOPE:** All individuals, businesses, agencies, institutions, or other entities engaged in the  
11 transportation, extraction, storage, or processing of hemp products in New Mexico.  
12 [20.10.2.2 NMAC - N, X/X/XXXXX]  
13

14 **20.10.2.3 STATUTORY AUTHORITY:** The Hemp Manufacturing Act, Chapter 76, Article 24, Section 1,  
15 et seq., NMSA 1978 Compilation; Department of Environment Act, Sections 9-7A-1 through 9-7A-15 NMSA 1978,  
16 NMSA 1978 Compilation.  
17 [20.10.2.3 NMAC - N, X/X/XXXXX]  
18

19 **20.10.2.4 DURATION:** Permanent.  
20 [20.10.2.5 NMAC - N, X/X/XXXXX]  
21

22 **20.10.2.5 EFFECTIVE DATE:** X/XX/XXXX  
23 [20.10.2.4 NMAC - N, X/X/XXXXX]  
24

25 **20.10.2.6 OBJECTIVE:** To establish uniform standards for the transportation, extraction, processing, and  
26 testing of hemp products for the purpose of ensuring the safe manufacture and accurate presentation of hemp  
27 products for human consumption, absorption, and inhalation.  
28 [20.10.2.6 NMAC - N, X/X/XXXXX]  
29

30 **20.10.2.7 DEFINITIONS:**

- 31 A. "Act" means the Hemp Manufacturing Act, Section 76-24-1, et seq., NMSA 1978.  
32 B. "Adulterated" has the meaning stated in the New Mexico Food Act, Section 25-2-10 NMSA  
33 1978.  
34 C. "Applicant" means a person who has submitted a hemp facility application to the regulatory  
35 authority.  
36 D. "Application" means documents provided by, and submitted to, the regulatory authority by an  
37 applicant as part of the process for obtaining a permit to extract, process, or engage in other manufacturing activities  
38 of hemp or hemp products.  
39 E. "Approved" means acceptable to the regulatory authority based on the regulatory authority's  
40 determination of conformity with principles, practices, and generally recognized standards that protect public health  
41 and compliance with the requirements of this part and the act.  
42 F. "Board" means the environmental improvement board.  
43 G. "Cannabis sativa L." means the plant cannabis sativa L. and any part of the plant, whether  
44 growing or not.  
45 H. "CBD" means cannabidiol and is a cannabinoid and the primary non-psychoactive ingredient  
46 found in hemp.  
47 I. "Certificate of analysis" means an official certificate issued by a hemp laboratory signed by an  
48 authorized official of the hemp laboratory that guarantees the results of the laboratory's testing of a sample.  
49 J. "Conditional employee" means a potential hemp employee to whom a job offer is made,  
50 conditional on responses to subsequent medical questions or examinations designed to identify potential hemp  
51 employees who may be suffering from a disease that may be transmitted through hemp, hemp extract, hemp-derived  
52 material, or hemp finished product and done in compliance with Title 1 of the Americans with Disabilities Act of  
53 1990.  
54 K. "Disposition" means storing, transferring to another person, or disposal.



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

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

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

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

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

12          **Q.**       **“Hemp facility”** means a hemp extraction facility, hemp manufacturing facility, or hemp  
13 warehouse.

14          **R.**       **“Hemp finished product”** means a hemp product that is intended for retail sale and containing  
15 hemp or hemp extracts that includes food, food additives and herbs for human use, including consumption, that has a  
16 THC concentration of not more than three-tenths percent (0.30%).

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

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

22          **U.**       **“Hemp manufacturing facility”** means an operation, other than a hemp extraction facility, that  
23 produces hemp products, other than hemp extract, and provides hemp products for sale or distribution to other  
24 business entities.

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

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

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

31  
32          **Y.**       **“Hemp warehouse”** means a location, other than a hemp extraction facility or hemp  
33 manufacturing facility, where hemp extract is stored.

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

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

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

42               (1)       the number of potential injuries; and

43               (2)       the nature, severity, and duration of the anticipated injury.

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

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

46          **EE.**       **“Misbranded”** has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA  
47 1978.

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

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

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

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

55               (1)       is legally responsible for the operation of the hemp facility such as the owner, the owner's  
56 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 - N, X/X/XXXX]

#### 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.

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

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

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

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

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

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

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

- 16 (a) the construction of a hemp facility;  
17 (b) the conversion of an existing structure for use as a hemp facility;  
18 (c) the remodeling of a hemp facility or a change of type of hemp facility if the  
19 regulatory authority determines that plans and specifications are necessary to ensure compliance with this part; or  
20 (d) opening or changing ownership of an existing hemp facility, if current plans and  
21 specifications are not on file with the regulatory authority.

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

24 **C. Operational Plans.**

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

- 28 (a) Planned source of hemp products.  
29 (b) Names of the ingredient(s);  
30 (c) The final product pH;  
31 (d) The final product water activity (Aw);  
32 (e) Names of preservative(s);  
33 (f) The type of packaging to be used and whether the packaging is integral to  
34 product stability;  
35 (g) The intended distribution and use condition of the product;  
36 (h) If the product is to be distributed at ambient, refrigerated or  
37 frozen temperature;  
38 (i) The expected shelf life during distribution, retail storage, and in the hands of the  
39 consumer;  
40 (j) How the product should be prepared for consumption;  
41 (k) What mishandling of the product might occur in the merchandising channels or  
42 in the hands of the consumer;  
43 (l) A description of the batch/lot ID coding system, as required in this section;  
44 (m) The proposed recall plan;  
45 (n) The complete operational procedure for the intended process, using a flow chart,  
46 and the following, if applicable:

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

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

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

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

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

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

3 (q) Proposed pest control plan.

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

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

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

10 (3) The regulatory authority may require that the hemp facility's processes be reviewed by an  
11 approved process authority to verify all critical factors of public health significance are addressed.

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

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

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

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

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

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

22 (a) Proposed pest control plan;

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

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

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

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

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

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

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

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

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

37 (c) \$1000.00 for a hemp warehouse.

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

40 (3) Permits issued pursuant to Subsection E of 20.10.2.8 NMAC shall expire on the last day  
41 of the anniversary month of the date of original issue.

42 (4) The expiration of permits issued prior to January 28, 2020 shall be extended to the last  
43 day of the anniversary month of the date of original issue.

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

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

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

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

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

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

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

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

56 (a) a properly completed application is submitted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (6) The regulatory authority may issue a permit to a new owner of an existing hemp facility  
46 upon completion of requirements as specified in this subsection.

47 [20.10.2.8 NMAC - N, X/X/XXXX]

48  
49 **20.10.2.9 MANAGEMENT AND PERSONNEL:**

50 **A.** Adoption of food code subparts 2-201, 2-301, and 2-401, and section 2-103.11. Except as  
51 otherwise provided, subpart 2-201, 2-301, and 2-401, and section 2-103.11 of the 2017 United States food and drug  
52 administration model food code is hereby adopted and incorporated in its entirety.

53 **B.** A hemp facility shall have written procedures for employees to follow when responding to  
54 vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the hemp facility.  
55 The procedures shall address the specific actions employees must take to minimize the spread of contamination and  
56 the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

1 C. Except as otherwise provided, the permit holder shall be the person in charge or shall designate a  
2 person in charge and shall ensure that a person in charge is present at the hemp facility during all hours of operation.

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

7 E. Personal care items on the premises shall be stored in a manner to protect hemp products, other  
8 ingredients, equipment, and utensils from contamination at all times.  
9 [20.10.2.9 NMAC - N, X/X/XXXX]

10  
11 **20.10.2.10 HEMP PRODUCT TRANSPORTATION REQUIREMENTS:**

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

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

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

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

28 D. Hemp facilities transporting hemp finished products intended for human consumption or hemp  
29 products that will be utilized as ingredients in hemp finished products intended for human consumption shall  
30 transport such items under conditions that will protect against allergen cross-contact and against biological, chemical  
31 (including radiological), and physical contamination of food, as well as against deterioration of the food and the  
32 container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

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

- 37 (1) Batch/lot ID of the hemp product;  
38 (2) Item(s) description;  
39 (3) Origin and destination; and  
40 (4) Total volume/weight of each hemp product.

41 [20.10.2.10 NMAC - N, X/X/XXXX]

42  
43 **20.10.2.11 HEMP FACILITY REQUIREMENTS:**

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

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

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

- 51 (1) 117.301: All records required by this part are subject to all requirements of this subpart;  
52 (2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and  
53 provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they  
54 are accessible from an onsite location; and  
55 (3) 117.320: All records required by this part must be made promptly available to the  
56 regulatory authority for official review and copying upon oral or written request.

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

- 2 (1) 117.1;
- 3 (2) 117.5;
- 4 (3) 117.7;
- 5 (4) 117.8;
- 6 (5) 117.310;
- 7 (6) 117.315(d);
- 8 (7) 117.325; and
- 9 (8) 117.335.

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

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

14 G. Hemp and Hemp Product Source and Hemp Product Transportation.

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

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

- 19 (a) it is received from an NMDA licensee, an NMED permitted hemp facility, or a  
20 person approved by the regulatory authority;
- 21 (b) it is accompanied by a hemp transportation manifest; and
- 22 (c) hemp finished products intended for human consumption or hemp products that  
23 will be utilized as ingredients in hemp finished products intended for human consumption were transported under  
24 conditions that will protect against allergen cross-contact and against biological, chemical (including radiological),  
25 and physical contamination of food, as well as against deterioration of the food and the container in accordance with  
26 the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

27 H. Records and Traceability.

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

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

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

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

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

40 K. The permit holder shall be responsible to ensure the security of, and limit access to, hemp-derived  
41 material with a THC concentration of greater than three-tenths percent (0.30%).

42 [20.10.2.11 NMAC - N, X/X/XXXX]

43  
44 **20.10.2.12 WATER SUPPLY:**

45 A. Drinking water shall be obtained from an approved source that is:

- 46 (1) a public water system; or
- 47 (2) a non-public water system that is constructed, maintained, and operated according to law.

48 B. A drinking water system shall be flushed and disinfected before being placed in service after  
49 construction, repair, or modification and after an emergency situation, such as a flood, that may introduce  
50 contaminants to the system.

51 C. Except as specified under Subsection D of this section:

52 (1) Water from a public water system shall meet the construction and drinking water quality  
53 standards specified in 20.7.10 NMAC; and

54 (2) Water from a non-public water system shall meet:

55 (a) the construction requirements and drinking water quality standards of a non-  
56 community water system as specified in 20.7.10 NMAC; and

1 (b) the drinking water source setback requirements as specified in 20.7.3 NMAC.  
2 **D.** A non-drinking water supply shall be used only if its use is approved and shall be used only for  
3 nonculinary purposes such as air conditioning, non-hemp equipment cooling, and fire protection.

4 **E.** Except when used as specified in Subsection D of this section, water from a non-public water  
5 system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

6 **F.** The most recent sample report for the non-public water system shall be retained on file in the  
7 hemp facility or the report shall be maintained as specified by state water quality regulations.

8 **G.** Water shall be received from the source through the use of:

9 (1) an approved public water main; or  
10 (2) one or more of the following that shall be constructed, maintained, and operated  
11 according to law:

12 (a) Non-public water main, water pumps, pipes, hoses, connections, and other  
13 appurtenances;

14 (b) Water transport vehicles; or

15 (c) Water containers.

16 [20.10.2.12 NMAC - N, X/X/XXXX]  
17

18 **20.10.2.13 HEMP FINISHED PRODUCT LABELING:**

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

21 (1) human consumption shall meet the applicable labeling requirements of the United States  
22 code of federal regulations, title 21, part 101 and the New Mexico Food Act;

23 (2) absorption by humans shall meet the applicable labeling requirements of the United  
24 States code of federal regulations, title 21, parts 701 and 740; and

25 (3) inhalation by humans shall meet applicable state and federal labeling requirements.

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

28 (1) CBD content in the package and/or container, labeled in milligrams; and

29 (2) Total THC content in the package and/or container, labeled in milligrams.

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

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

35 **E.** Except as specified in Subsection F of this section, product concentration and content stated on a  
36 hemp finished product label shall not deviate by more than ten percent of what is stated on the label.

37 **F.** Total THC concentration in hemp finished product shall not exceed three-tenths percent (0.30%).

38 **G.** Hemp finished products shall not contain medical, health, or benefit claims on the label.

39 [20.10.2.13 NMAC - N, X/X/XXXX]  
40

41 **20.10.2.14 HEMP FINISHED PRODUCT TESTING:**

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

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

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

48 (a) Total THC calculated as  $THC = (0.877 \times THCA) + THC$ ;

49 (b) D9-THC;

50 (c) THCA;

51 (d) CBD; and

52 (e) CBDA;

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

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



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

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

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

6 (1) Total THC concentration shall not exceed more than three-tenths percent (0.30%); and

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

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

12 (1) The batch identification number;

13 (2) The date received;

14 (3) The date of testing completion;

15 (4) The method of analysis for each test conducted; and

16 (5) The signature of an authorized official of the hemp laboratory that guarantees the results  
17 of the laboratory's testing of a sample.

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

19 (1) If shipped to another business entity for retail sale, the certificate of analysis for each  
20 hemp finished product shall be provided to the business entity; or

21 (2) If shipped directly to the consumer, shall be provided to the consumer upon request.

22 H. Hemp finished products that exceed the limits specified in Subsection E of this section, or the  
23 testing results specified in Paragraph 3 of Subsection B of this section do not meet the requirements of Subsection E  
24 of Section 20.10.2.13 NMAC shall not be distributed and shall be:

25 (1) disposed of in an approved manner; or

26 (2) re-worked in an approved manner.

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

30 J. If both initial test and confirming test results exceed the limits specified in Subsection E of this  
31 section, or the testing results specified in Paragraph 3 of Subsection B of this section do not meet the requirements  
32 of Subsection E of 20.10.2.13 NMAC, the permit holder shall report the results to the regulatory authority within 24  
33 hours.

34 [20.10.2.14 NMAC - N, X/X/XXXX]

35  
36 **20.10.2.15 HEMP LABORATORIES:** Testing required in 20.10.2.14 NMAC shall be conducted by an  
37 approved laboratory that has no direct ownership or financial interest in the hemp facility for which the testing is  
38 being conducted.

39 [20.10.2.15 NMAC - N, X/X/XXXX]

40  
41 **20.10.2.16 INSPECTION BY REGULATORY AUTHORITY:**

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

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

47 C. After the regulatory authority presents official credentials and provides notice of the purpose of,  
48 and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the  
49 hemp facility is in compliance with this part and the act by allowing access to the facility to make an inspection,  
50 interview employees, and take photos, and providing information and records requested and to which the regulatory  
51 authority is entitled according to law, during the hemp facility's hours of operation and other reasonable times.

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

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

1 (1) inform the person that:  
2 (a) the permit holder is required to allow access to the regulatory authority as  
3 specified in Subsection F of this section;  
4 (b) access is a condition of the acceptance and retention of a hemp facility permit to  
5 operate as specified in Paragraph 3 of Subsection E of 20.10.2.8 NMAC;  
6 (c) if access is denied, an order issued by the appropriate authority allowing access,  
7 hereinafter referred to as an inspection order, may be obtained according to law; and  
8 (d) refusal to allow access is grounds for immediate permit suspension or  
9 revocation; and

10 (2) make a final request for access.  
11 F. If after the regulatory authority presents credentials and provides notice as specified in Subsection  
12 C of this section, explains the authority upon which access is requested, and makes a final request for access as  
13 specified in Subsection E of this section, the person in charge continues to refuse access, the regulatory authority  
14 shall provide details of the denial of access on an inspection report form.

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

18 H. The regulatory authority shall document on an inspection report form:  
19 (1) Specific factual observations of violative conditions or other deviations from this part that  
20 require correction by the permit holder; and

21 (2) Time frame for correction of the violations observed and documented.  
22 I. The regulatory authority shall request a signed acknowledgment of receipt and provide a copy of  
23 the completed inspection report and the notice to correct violations, as soon as possible after the inspection, to the  
24 permit holder or to the person in charge.

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

27 (1) An acknowledgment of receipt is not an agreement with findings;  
28 (2) Refusal to sign an acknowledgment of receipt will not affect the permit holder's  
29 obligation to correct the violations noted in the inspection report within the time frames specified;  
30 (3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and  
31 conveyed to the regulatory authority's historical record for the hemp facility; and  
32 (4) Make a final request that the person in charge sign an acknowledgment receipt of  
33 inspectional findings.

34 [20.10.2.16 NMAC - N, X/X/XXXX]  
35

#### 36 20.10.2.17 CEASING OPERATIONS AND REPORTING:

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

42 B. A permit holder need not discontinue operations in an area of an establishment that is unaffected  
43 by the imminent health hazard.

44 C. Considering the nature of the potential hazard involved and the complexity of the corrective action  
45 needed, the regulatory authority may allow the permit holder to continue operations in the event of an extended  
46 interruption of electrical or water service if:

47 (1) a written emergency operating plan has been approved;  
48 (2) immediate corrective action is taken to eliminate, prevent, or control any food safety risk  
49 and imminent health hazard associated with the electrical or water service interruption; and  
50 (3) the regulatory authority is informed upon implementation of the written emergency  
51 operating plan.

52 D. If operations are discontinued as specified in Subsection A of this section or otherwise according  
53 to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

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

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

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

5 H. As specified in Subsection F of this section, after receiving notification that the permit holder has  
6 corrected a violation, or at the end of the specified period of time, the regulatory authority shall verify correction of  
7 the violation, document the information on an inspection report, and enter the report in the regulatory authority's  
8 records.

9 [20.10.2.17 NMAC - N, X/X/XXXX]

10  
11 **20.10.2.18 PERMIT SUSPENSION AND REVOCATION:**

12 A. The regulatory authority may immediately suspend a permit, without prior warning, notice of a  
13 hearing, or a hearing, if it determines through inspection, examination of employees, hemp product records, or other  
14 means as specified in this part, if:

15 (1) an imminent health hazard exists; or

16 (2) the permit holder:

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

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

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

23 (d) fails to comply with Subsection C of 20.10.2.20 NMAC;

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

26 (f) fails to comply with a hold order as specified in Subsection A of 20.10.2.21  
27 NMAC;

28 B. The regulatory authority shall provide written notice of the immediate suspension to the permit  
29 holder or person in charge.

30  
31 C. After receiving a written request from the permit holder stating that the conditions cited in the  
32 immediate suspension notice no longer exist, the regulatory authority shall conduct a reinspection of the hemp  
33 facility for which the permit was summarily suspended.

34 D. A permit suspension shall remain in effect until the conditions cited in the immediate suspension  
35 notice no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and  
36 other means as appropriate as described in Subsection D of this section.

37 E. If a permit has been suspended more than one time, the regulatory authority may revoke the  
38 permit.

39 F. If a hemp facility fails to comply with an employee restriction order, an order to hold and not  
40 transport hemp product, or an immediate suspension notice, the regulatory authority may revoke the permit.

41 G. The regulatory authority shall conduct a hearing as specified in 20.10.2.19 NMAC prior to  
42 revoking a permit.

43 H. A permit that has been revoked shall not be considered for reapplication until the permit holder  
44 has demonstrated to the satisfaction of the regulatory authority that the hemp facility will comply with this part.

45 [20.10.2.18 NMAC - N, X/X/XXXX]

46  
47 **20.10.2.19 APPEAL HEARINGS**

48 A. A permit holder may request an appeal hearing to address concerns about the regulatory  
49 authority's denial of an application for permit, suspension or revocation of a permit, or an enforcement action taken  
50 by the regulatory authority. A hearing request does not stay the regulatory authority's immediate suspension as  
51 specified in Subsection A of 20.10.2.18 NMAC.

52 B. The permit holder shall submit a written hearing request to the secretary within 10 calendar days  
53 from the date of receipt of the denial of an application for permit, permit suspension, permit revocation, or  
54 enforcement action.

55 C. The written request for hearing as specified in Subsection B of this section shall contain the  
56 following information:

1 (1) A statement of the issue of fact for which the hearing is requested;  
2 (2) A statement of defense, mitigation, denial, or explanation concerning each allegation of  
3 fact;

- 4 (3) A statement indicating whether witnesses will be utilized during the hearing; and  
5 (4) The name and address of the respondent's or requestor's legal counsel, if any.

6 **D.** If the regulatory authority receives a hearing request within the required timeframe, the regulatory  
7 authority shall issue a notice of hearing. The secretary may designate a person to conduct the hearing and make a  
8 final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will  
9 conduct the hearing and make the final decision.

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

- 11 (1) Time, date and place of the hearing;  
12 (2) Purpose of the hearing;  
13 (3) The rights of the respondent, including the right to be represented by counsel and to  
14 present witnesses and evidence on the respondent's behalf as specified in Subsection M of this section; and  
15 (4) The consequences of failing to appear at the hearing.

16 **F.** In the appeal hearing, the burden of proof is on the person who requested the hearing.

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

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

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

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

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

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

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

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

32 **O.** At the end of the hearing, the secretary shall decide and announce if the hearing record will remain  
33 open and for how long and for what reason it will be left open. Based upon the evidence presented at the hearing,  
34 the secretary shall sustain, modify, or reverse the action of the regulatory authority. The secretary's decision shall  
35 be by written order within 15 working days following the close of the hearing record. The decision shall state the  
36 reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who  
37 requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

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

41 **Q.** Respondents accepting a consent agreement pursuant to Subsection P of this section waive their  
42 right to a hearing on the matter.

43 **R.** Failure by the permit holder to appear at the hearing shall result in the secretary upholding the  
44 regulatory authority's initial decision which led to the permit holder's hearing request.

45 [20.10.2.19 NMAC - N, X/X/XXXX]  
46

47 **20.10.2.20 REMEDIES:** The regulatory authority may seek an administrative or judicial remedy to achieve  
48 compliance with the provisions of this part if a person operating a hemp facility:

49 **A.** fails to have a valid permit to operate a hemp facility as specified in Subsection A of Section  
50 20.10.2.8 NMAC;

51 **B.** fails to comply with an employee restriction or exclusion order, an order to hold and not transport  
52 hemp product, or an immediate suspension notice issued by the regulatory authority as specified in Subsection A of  
53 20.10.2.18 NMAC; or

54 **C.** denies the regulatory authority access to the premises of a hemp facility to:

- 55 (1) make an inspection, including taking photographs;  
56 (2) examine and sample hemp products or other substances found on the premises; or

1 (3) examine and copy the records on the premises relating to hemp products as specified in  
2 Subsection C of 20.10.2.16 NMAC.  
3 [20.10.2.20 NMAC - N, X/X/XXXX]  
4

5 **20.10.2.21 HOLDING, EXAMINATION, AND DESTRUCTION OF HEMP PRODUCTS:**

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

- 8 (1) originated from an unapproved source;
- 9 (2) may be adulterated, misbranded, or otherwise unsafe for human consumption, or not  
10 accurately presented;
- 11 (3) are not labeled according to law;
- 12 (4) have a THC concentration of more than three-tenths percent, in hemp finished product; or
- 13 (5) are otherwise not in compliance with this part.

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

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

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

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

24 F. The hold order notice shall:

- 25 (1) state that hemp products subject to the order may not be used, sold, moved from the hemp  
26 facility, or destroyed without a written release of the order from the regulatory authority;
- 27 (2) state the specific reasons for placing the hemp products under the hold order with  
28 reference to the applicable provisions of this part and the hazard or adverse effect created by the observed condition;
- 29 (3) completely identify the hemp products subject to the hold order by the common name,  
30 the label information, a container description, the quantity, regulatory authority's tag or identification information,  
31 and location;
- 32 (4) state that the permit holder has the right to an appeal hearing and may request a hearing  
33 by submitting a timely request as specified in 20.10.2.19 NMAC;
- 34 (5) state that the regulatory authority may order the destruction of the hemp products if a  
35 timely request for an appeal hearing is not received; and
- 36 (6) provide the name and address of the regulatory authority representative to whom a  
37 request for an appeal hearing may be made.

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

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

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

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

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

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

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

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

3 O. The regulatory authority shall issue a written notice of release from a hold order and shall remove  
4 hold tags, labels, or other identification from the hemp product if the hold order is vacated.  
5 [20.10.2.21 NMAC - N, X/X/XXXXX]  
6

7 **20.10.2.22 SERVICE OF NOTICE:**

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

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

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

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

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

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

22 C. Service is effective at the time of the notice's receipt or if service is made as specified in Paragraph  
23 2 of Subsection B of this section, at the time of the notice's posting.

24 D. Proof of proper service may be made by affidavit of the person making service or by admission of  
25 the receipt signed by the permit holder, the person operating a hemp facility without a permit to operate, or an  
26 authorized agent.

27 [20.10.2.22 NMAC - N, X/X/XXXXX]  
28

29 **20.10.2.23 VARIANCES:**

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

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

35 (1) A statement of the proposed variance;

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

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

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

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

42 (D) If the regulatory authority grants a variance as specified in this section, the permit holder shall:

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

44 (2) when required as a condition of the variance, maintain and provide to the regulatory  
45 authority, upon request, records that demonstrate compliance with the approved variance.

46 [20.10.2.23 NMAC - N, X/X/XXXXX]  
47

48 **HISTORY OF 20.10.2 NMAC: [XXXX]**

