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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

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James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

July 30, 2019

Matthew Ortiz, Director
Administrative Law Division
State Records and Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Re: Temporary Emergency Rule 20.10.2 NMAC to Regulate the Extraction, Production, Transportation, Warehousing, and Testing of Post-Harvest Hemp and Hemp-Derived Products

Dear Mr. Ortiz:

The New Mexico Environment Department (Department) hereby submits the attached Temporary Emergency Rule 20.10.2 NMAC, Hemp Extraction, Production, Transportation, Warehousing and Testing, for filing pursuant to NMSA 1978, § 14-4-5.6. An emergency rule is necessary because the Department finds that in these particular 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. In support of this position the Department states as follows:

1. The New Mexico Legislature passed the Hemp Manufacturing Act (the Act) in March 2019. NMSA 1978, § 76-24-8.
2. The Act authorizes the cultivation, harvest, and extraction of cannabidiol oils (CBD) from hemp, defined as the plant *Cannabis Sativa L.* and any part of that plant, including seeds and all derivatives, with a delta-9-tetrahydrocannabinol (THC) concentration of not more than three-tenths percent (0.3%).
3. The Act became effective on July 1, 2019.
4. The Act requires the Department to adopt rules to regulate the extraction, processing, or other manufacturing activities regarding New Mexico derived 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. NMSA 1978, § 76-24-8.
5. Thus, any individual or business engaged in manufacturing activities using New Mexico derived hemp, including manufacturing intermediate hemp-derived products and hemp

finished products, is illegally engaging in these activities until the Department issues a permit to that individual or business.

6. The New Mexico Department of Agriculture (NMDA) informed the Department that it already issued hemp cultivation licenses to over 300 individuals and businesses pursuant to NMDA's Hemp Cultivation Rule, 21.20.3 NMAC.

7. Upon information and belief, the Department concluded that once these crops are harvested, beginning in August 2019, individuals and businesses will begin post-harvest processing, extraction, and manufacturing of hemp finished products from plant material grown in New Mexico, regardless of whether rules are in place.

8. The Act requires that raw hemp must have a THC concentration not greater than 0.3%, although experience and laboratory results show that the THC concentration can rise significantly during the processing and extraction of hemp.

9. States that legalized recreational use of cannabis limited consumption to individuals over 18 years of age. However, the Act places no such restriction on the use or consumption of New Mexico hemp-derived products. These products may be sold to and consumed by both children and adults.

10. The Department is very concerned about the exposure of minor children to New Mexico hemp-derived products that contain a greater concentration of THC than is authorized by the Act.

11. Manufacturers in New Mexico will use CBD oil and other New Mexico hemp-derived products in the production of many different foods pursuant to the Act, including such items as gummy bears and chocolate.

12. The Department is aware of many individuals and businesses that plan to utilize CBD oil in the manufacture of food as soon as they harvest their crops for this year.

13. The Act provides that New Mexico hemp manufacturers that produce intermediate hemp-derived products or hemp finished products for human consumption are subject to the provisions of the Food Service Sanitation Act and the New Mexico Food Act, NMSA 1978, § 25-1-1 *et seq.* and § 25-2-1 *et seq.*

14. Without regulations from the Department in place, there will not be a mechanism for the permitting of New Mexico hemp-derived products intended for human consumption, so the Department will be unable to enforce any standards of sanitation or safe food handling practices.

15. Without regulations from the Department in place, the Department cannot require manufacturers of New Mexico hemp-derived products intended for human consumption to test

their final products for heavy metals, solvents, or THC concentration.

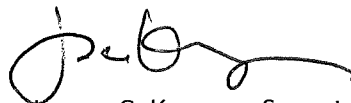
16. Without regulations from the Department in place, the Department cannot require manufacturers to label their New Mexico hemp finished products.

17. Without regulations from the Department in place, the Department cannot enforce inspection requirements or standards for hemp manufacturing facilities.

18. The absence of regulations greatly increases the chances that consumers of New Mexico hemp-derived products, including children, will be exposed to food-borne pathogens or excessive concentrations of THC from defective or adulterated products, or products produced or stored or transported in unsanitary or otherwise unsafe conditions.

WHEREFORE, the Department finds that the unpermitted manufacture of New Mexico hemp-derived products intended for human consumption poses an imminent threat to the public health, safety, or welfare, which necessitates the promulgation and adoption of temporary emergency rules to permit, inspect, and otherwise regulate the extraction, production, transportation, warehousing and testing of post-harvest hemp and hemp-derived products.

Sincerely,

A handwritten signature in black ink, appearing to read 'James C. Kenney', with a long horizontal flourish extending to the right.

James C. Kenney, Secretary
New Mexico Environment Department