NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
November 29, 2018 at 1:30pm

Regents Room of the Educational Services Building
NMSU Las Cruces Campus, 1780 East University Avenue
Las Cruces, New Mexico

Regents of New Mexico State University
Chair Debra Hicks, Vice Chair Kari Mitchell, Secretary/Treasurer Jerean Hutchinson, Chris Saucedo, Margie Vela

Non-Voting Advisory Members - Faculty Senate Chair Becky Corran, Employee Council Chair Monica Dunivan, ASNMSU President Emerson Morrow

University Officials - Chancellor Dan E. Arvizu, Ph.D., John Floros, Ph.D., Senior Vice President Andrew Burke, Ed.D., General Counsel Lizbeth Ellis, J.D.

AGENDA
The Board of Regents meeting is available by webcast through the link at http://panopto.nmsu.edu/bor/

A. Call to Order, Chair Debra Hicks
   1. Introductions
      Introduction of the Media, Associate Vice President Justin Bannister
   2. Confirmation of Quorum, Chair Debra Hicks
   3. Approval of the Agenda, Chair Debra Hicks
   4. Public Comment, Associate Vice President Justin Bannister

B. Approval of the Minutes, Chair Debra Hicks
   1. Special Meeting (Work Session) on October 3, 2018
   2. Regular Meeting on October 3, 2018
   3. Special Meeting (Work Session) on November 19, 2018
   4. Confirmation of Prior Closed Executive Session regarding contract addenda, performance evaluations, and performance incentive compensation for Chancellor Dan Arvizu and President John Floros on November 19, 2018 at 1:00pm

C. Consent Items, Chair Debra Hicks
   1. New Rule for Industrial Hemp Cultivation, Cabinet Secretary & Director Jeff Witte
   2. Repeal of NMAC 21.9.2 Agriculture and Ranching Soil and Water Conservation Districts Conducting a Referendum and NMAC 21.9.3 Agriculture and Ranching Soil and Water Conservation Districts Conducting an Election of District Supervisors, Cabinet Secretary & Director Jeff Witte
   3. Approval of Employment Contract Addenda for Chancellor Dan Arvizu and President John Floros, Chair Debra Hicks

D. Action Items, Chair Debra Hicks
   1. None.

E. Comments and Announcements, Chair
1. “Gun’s Up” – Good News for NMSU!

2. Upcoming Board of Regents Meetings
   December 7, 2018

F. Adjournment, Chair
Minutes

In attendance: Debra Hicks, Christopher Saucedo, Kari Mitchell, Margi Vela, Jerean Hutchinson, Algernon D’Ammassa (Las Cruces Sun News), Phyllis Dillard (DACC retiree and former NMSU employee), Filipe Loza (NMSU Student), Elva Garay, Maria Flores, Ray Jaramillo, Daniel Estupiñan, Monic Torres (Interim DACC President), Lenny Martinez (Chancellor Arvizu’s Chief of Staff), NMSU Chancellor Dan Arvizu, Stephen Lopez (NMSU Chief of Police), NMSU President John Floros, Adam Cavotta (Interim Chief of Staff, NMSU Board of Regents).

A. Call to Order, Chair Debra Hicks

Meeting called to order at 10:40 AM by Chair Hicks.

1. Introductions

Chair Hicks welcomed all that were in attendance. All of those in attendance introduced themselves.

2. Confirmation of Quorum, Chair Debra Hicks

Quorum of the NMSU Board of Regents confirmed as all members were seated in the room.

3. Approval of the Agenda, Chair Debra Hicks

Motion to have additional informational item from Chancellor Arvizu to discuss his vision of DACC and thoughts on presidency entered by Regent Mitchell with a second by Regent Saucedo. Motion passed unanimously.

B. Opening Comments and Discussion

1. NMSU Board or Regents Opening Comments, Chair Debra Hicks

New MOU with DACC is consistent with MOU with other community colleges. According to the MOU meetings
are held at request of the NMSU Board of Regents which is why we are here today. The DACC Advisory Committee acts as an advisory council to the NMSU Board of Regents. Chair Hicks Appreciates the attendance and participation of the DACC Advisory board and this is intended to be a two-way discussion.

2. **DACC Advisory Board Opening Comments, President Maria Flores**

President Flores thanked everyone for attending the meeting and is looking forward to hearing from Chancellor Arvizu about vision for DACC and presidential position. President Flores spoke to the commitment to serve students in the region in how DACC and NMSU can serve them. Dual credit is important toward that end.

Ms. Elva Garay spoke concerning her educational experiences in the region and noted how she can relate to the students that DACC and NMSU serves. Further, Ms. Garay spoke of the importance of collaboration with the teachers and schools. 1,400 students in the district in Hatch that she serves.

Mr. Ray Jaramillo spoke concerning his professional experience as an early childhood educator and how he is “living the transition from high school to college” with his children and the challenges involved in keeping students in the region to attend college.

Secretary Daniel Estupiñan spoke concerning his passion about serving lower income Hispanic students. NMSU does a good job of recruiting students, but not as good of a job at retaining the students.

Regent Hutchinson asked a question regarding how to inspire/empower students to achieve academically and compel prospective students to recognize the value of NMSU?

During the conversation, it was noted that:

- Some prospective students simply want to move away from home and explore.
- NMSU has not directly outreached to the prospective students whose parents were in attendance and live in local communities.
- Mr. Filipe Loza noted that while being a fan of UTEP he was sold by faculty on the value of program by well-known anchor (Robert Holguin), who is an NMSU alumnus, was key influencer. Public schools working with notable alumni to speak to the value of higher education is important. Mr. Loza spoke in support of Downtown Aggies as a good engagement event.
- In the past, this group has identified partnerships, but we need to meet more frequently. Should be able to see progress on one or two items that both bodies have identified is a good way to partner.
- Aggie Pathway is something that has been of shared interest in the past and the kind of project that we need to reach out to students. Free tickets to basketball games for students was a good experience for the students. Different types of interactions that K -12 students have on campus for field trips and other events were generally deemed to be an important experience for demonstrating value and attainability of higher education.
- Discussed the trend to incorporate high school students into university lab environment and how to prepare high school students to work in a lab in safe way with skills required for scientific inquiry. It was noted that perhaps the Excel program would be a good place to start.
- It was noted that there is a concentration on Las Cruces and not as much on the regions surrounding Las Cruces. It was also noted that NMSU see a lot of students coming from Santa Teresa, despite the distance from Las Cruces and proximity to UTEP. It was noted that there is perception of an
expectation that the Gadsden School District is to graduate students and push them to NMSU. There are students that have started at NMSU, but they seem to leave and go elsewhere. It was noted that a phone call survey conducted, but more can be done to understand why students are leaving NMSU. Predictive analytics was noted as an important tool in recognizing students at risk of leaving. A proposed action was to collaborate with the advisory board to study retention further.

- Four barriers were identified, including: transportation, needs to support family at home, sense of belonging, and connection.
- Improving access, such as online learning, was identified as a possible solution to some of these barriers.
- The importance of being service oriented and changing the culture of institution to move away from a focus on compliance and a focus on service was discussed.
- Transforming the educational system is part of the responsibility of what NMSU needs to address to improve outcomes.
- DACC initiative of pre-health program was cited as a good example to meet student needs so that they don’t disenroll entirely from the university if they don’t get into a highly competitive nursing program. This was a ground up effort.
- Regarding capacity building in programs for pre-health, moving to a trimester schedule and there are assessments for additional opportunities underway
- Students that return to college have different learning needs and making connections with faculty is an important way to understand what opportunities are available for non-traditional students that meet their needs
- President Floros noted that there are plans to make follow-up calls for students that have dropped out and students that have been successful. In both cases, feedback is used to determine what we have done well and what we can change.
- Seeing yourself in the advertisement and outreach from individuals in the school is important for non-traditional students.

C. **Informational Items, Chair Debra Hicks**

1. **Discussion of Vision for DACC and DACC Presidency in NMSU System, Chancellor Dan Arvizu**

President Floros spoke about his experience at other institutions and commitment to making NMSU a success.

Chancellor Arvizu talked about mission of NMSU as being land grant university where there is an obligation to serve the communities in which we reside. Vision 2020 was discussed in respect to the plans for strategic development and changes to the metrics that will be presented in a board meeting later in the day. The goals and implementing the strategies are key to meeting mission objectives. A new vision statement (statement of purpose) is being introduced that focuses on 1) alignment with careers of the future, 2) vibrant learning environment supported by research (not just classroom instruction, but focus on problem solving, critical thinking, collaboration to meet life-long learning needs, and 3) culture of service to enrich the lives of our diverse communities. Chancellor Arvizu discussed the global grand challenges of fortifying the P – 16 educational system, modernizing critical infrastructure, and developing healthy borders.

The three primary objectives were discussed, which include improving student success, elevate research and creativity, and amplify outreach and economic development.
President Floros stated that we already started changing organizational structure, noting that we need a good team to move forward and student success is the most important component, but we are a comprehensive public research university is also important to maintain these efforts. The research university focus makes us different than many other educational institutions, providing hands-on experience in research, and share research and provide service that both benefits our communities and benefits student success. All these efforts help to drive economic development at local, state, and national levels. A priority is to elevate compensation to retain the faculty and staff that serve in service and teaching roles.

Chancellor Arvizu noted the university must operate as a system to be successful to meet these challenges.

It was noted that working on border issues and critical thinking are key concerns for the boards, but how does the NMSU system align with the public education system when it relates to incorporating critical thinking into the outcomes.

It was noted that over the years there is a perception that there are less students on campus and a desire exists to see NMSU be a vibrant learning environment again.

2. Discussion/Review of the Future Working Relationship of NMSU and DACC, President Maria Flores

Much of the discussion regarding the future of the working relationship was discussed during introductions in agenda item B-2 and due to an upcoming board meeting, the chair moved forward with the next agenda item to discuss the DACC Presidential search.

3. Discussion of DACC Presidential Search, Chair Debra Hicks, President Maria Flores

There is precedent to include community members in the search committee for a search of this nature. A preliminary meeting with NMSU Human Resources has been held and Dr. Gena Jones will be the person in charge of the search process in HR.

Opinions regarding future leaders were discussed, including the desire to have someone that is from the region and knowledgeable about DACC and how DACC fits into the university system. It was noted that the DACC president must not be afraid to speak up to elevate DACC as an important part of the NMSU system. A commitment to dual credit is important and the new leader should help to build trust with the communities it serves.

The desired composition of the search committee was discussed, and industry was mentioned as a stakeholder group, including businesses in medical fields. Also, student involvement was important to consider.

A preliminary timeline was discussed with a target of having a new DACC president by June 2019. The job descriptions are being developed with an anticipated date for screening candidates in November 2018. During public sessions to collect input, there was recommendation to include some sessions in Spanish.

Chair Hicks will discuss with Dr. Jones and follow-up with President Flores regarding the composition of the selection committee. It was requested that the DACC Advisory board consider recommendations for the selection committee in advance.

D. Comments and Announcements, Chair Debra Hicks
No additional comments or announcements were provided.

E. **Adjournment, Chair Debra Hicks**

Meeting adjourned at 12:48 PM.
NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
REGULAR MEETING
October 3, 2018 at 1:00pm

Regents Room of the Educational Services Building
NMSU Las Cruces Campus, 1780 East University Avenue
Las Cruces, New Mexico

Regents of New Mexico State University
Chair Debra Hicks, Vice Chair Kari Mitchell, Secretary/Treasurer Jerean Hutchinson, Chris Saucedo, Margie Vela

Non-Voting Advisory Members - Faculty Senate Chair Becky Corran, Employee Council Chair Monica Dunivan, ASNMSU President Emerson Morrow

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DRAFT MINUTES ***NOT OFFICIAL – SUBJECT TO APPROVAL BY THE BOARD OF REGENTS***

MINUTES
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A. Call to Order, Chair Debra Hicks 1:13
All NMSU Regents, Non-Voting Advisory Members and University Officials listed above were present in the chamber when the meeting was called to order.

1. Introductions
   Introduction of the Media, Associate Vice President Justin Bannister
   Algernon D’Ammassa and Josh Bachman from Las Cruces Sun News were present.

2. Confirmation of Quorum, Chair Debra Hicks
   All members of the board were present.

3. Approval of the Agenda, Chair Debra Hicks
   Motion entered by Regent Mitchell to move Action items 1 – 5 to consent agenda with a second by Regent Hutchinson. Motion passed unanimously.

4. Public Comment, Associate Vice President Justin Bannister
   There were no sign-ups for public comment.

B. Approval of the Minutes, Chair Debra Hicks
1. Special Meeting of September 5, 2018
   Motion to approve the minutes by Regent Saucedo with a second by Regent Mitchell. Motion passed unanimously.

2. Special Work Session Meeting of September 5, 2018
   Motion to approve the minutes by Regent Vela with a second by Regent Hutchinson. Motion passed unanimously.
3. **Confirmation of Prior Executive Session regarding performance evaluation of senior leadership on September 5, 2018 at 9:30am**

   Confirmation of prior executive session was certified by roll call vote with all regents responding yes to confirm.

C. **Committee Reports**

1. **Audit and Risk Committee Report, Chair Debra Hicks**

   The Audit and Risk Committee met on May 23rd for the Entrance Conference for the FY 18 External Audit by KPMG. This includes audits for NMSU, NMSU Foundation, Arrowhead Center, and KRWG TV and Radio.

   The next meeting will be on Oct. 29th which is the exit conference where the audit plan will be presented and current audits will be reviewed. Some audit staff have changed and they are seeking to fill positions.

2. **Real Estate Committee Report, Chair Debra Hicks**

   The last meeting was on Thursday where NMDOT and other campus projects were discussed which are before the board on the consent agenda. NMSU branding for the underpass was mentioned as a key development discussed in the meeting.

3. **Financial Strategies, Performance and Budget Committee Report, Chair Kari Mitchell**

   Committee last met during a joint meeting of the RFSPBC and Student Success Committee on March 28th. A review of final budget recommendations was done by email before the May approval. The intent is to allow new leadership to develop strategic priorities and for the committee to align with those priorities and the budget cycle.

4. **Student Success Committee Report, Chair Jerean Hutchinson**

   Last met during a joint meeting with RFSPBC. Next week or so the committee will begin planning the next meetings to support the strategic priorities of the leadership.

D. **Recurring Reports**

1. **NMSU Faculty Senate Report, Chair Becky Corran**

   General Education Reform is the most substantial topic being discussed right now and faculty senate is debating it this month and coming into state compliance, resulting in an overall decrease in general education credits. Within next two years, general education courses will go through recertification process.

2. **Associated Students of NMSU Report, President Emerson Morrow**

   President Morrow and the executive team have planned an ambitious goals for the year, highlighting the hiring of a diverse staff that are reflective of the student body in both graduate and undergraduate students from all colleges. Partnered with every diversity program for events and programming. Record number of applications for Roadrunner Intern program was reported (125 applicants for 25 available spots). Voting initiative has been a primary focus, working with the County Clerk’s office to have Corbett Center be an early voting location. For National Voter Registration Day, ASNMSU partnered with on and off campus groups and registered over 100 Aggies to vote. Good attendance at welcome back events, tailgates, and monthly meet and greet events. Candidates have come to campus to talk with students. Keep State Great had over 1,600 registrants signed up to help take care of the campus and make it look great for homecoming. President Morrow noted the Keep State Great organizer, Ryan May, who was in attendance at the meeting and received a round of applause. President Morrow also reported record student attendance at the Domenici Public Policy Conference and a poll is going out to students to determine student needs, contribute to naming the new residents hall, as well as policy matters that affect students. ASNMSU met with UNM and UTEP and NMSU has
enviable access to senior leadership on campus. Updated contracts, including free roundtrip airport shuttle for students. Funding for hurricane Maria recovery effort (to rebuild suspension bridge) was recently passed.

3. **NMSU Employee Council Report, Chair Monica Dunivan**
   Chair Dunivan introduced Chair-elect, Sonia White, who has worked at Doña Community College for 16 years in the Virtual Learning and Instructional Technology Department. Chair-elect White recently presented at the Community College Roundup as a way to involve community colleges in Employee Council. Employee Council now participates in New Employee Orientation to recruit members. The annual Employee Appreciation Picnic will be on Oct. 19th from 11 AM – 1 PM at Preciado Park, behind O’Donnell Hall on the NMSU Las Cruces campus.

4. **Aggie Development Inc. Report, President & CEO Scott Eschenbrenner**
   Bill Sheriff has stepped down from the board after serving for 6 years and a new appointment is being considered in consultation with administration. Mr. Sheriff has agreed to continue to advise the board to help move significant projects forward, such as Aggie Uptown. At the August 7th meeting of the ADI board, Regent Chair Debra Hicks and College of Business Dean James Hoffman were reappointed to the board for a three-year term. Working with Dekker, Perish, Sabatini and Bohannon Huston Engineering on Aggie Uptown and the final infrastructure plans have been submitted to City of Las Cruces. Infrastructure improvements include water, sewer, gas, and electric work. Work will be done on Telshor and University intersection, Terrace Court, and a multiuse trail and extensive landscaping work along University Avenue. President Eschenbrenner thanked the city for a good working relationship on this project. Should have plans back in about two weeks and have permit ready to go out to bid. Pre-qualified contractors will be invited to bid and best price will determine award. The construction period is estimated at three months. Start anticipated mid-November and completed by sometime in February. Talks ongoing with two community healthcare developers. Business plan presented in August 7th meeting, will be presented to Board of Regents as it develops. Working with NMSU Foundation on a build to suit lease, which the Regents took action on in March.

5. **NMSU Foundation Report, Interim Vice President Tina Byford, Ph.D.**
   Vice President Byford provided a presentation slide regarding giving rates (in the electronic binder for this meeting). This year was flat as graduating classes increase and the denominator grows, affecting the giving percentage. Some analysis is underway, peer data is expected and an evaluation will reveal what measures need to be taken to get better results. Endowment performance was presented in a chart, noting 2009 low and the largest amount ever in current endowment pool. Also waiting on peer date on this, which will be available in January. Scholarship impact was discussed, with 3.1 million in support for students in the 2017-2018 aid year. 1.1 million was from current use fund and this is an increase and a part of the goal of a taskforce that was formed last year by Deputy Provost Fant. 3,803 scholarships awarded, which is about a 6% increase from last year. Campaign report summary provided. The campaign will close December 2019 and as of September 25 we have reached 81% of our goal. November 27th is Giving Tuesday and matching money is an important element of this event.

Regent Mitchell asked about Alumni giving rate and why there has been such a long period of with flat results. VP Byford said staffing is an important consideration. Call center performed poorly last year and the contract has been cancelled and downsized to allow funds for other uses. While the number of potential alumni donors has increased, recent alumni are not as likely to give. Student Foundation, started last year, has about 50 members and crowd funding will continue. Regent Mitchell followed up to ask about pipeline development plans. VP Byford explained that eleven programs have been started with different segmentations, Aggie Welcome and Orientation and partnerships with ASNMSU were discussed. Overall, a change in culture to
instill an expectation in students to give back, whether it be financially or in some other way, such as writing thank you cards for donors. Types of recognition for student giving were discussed, such as shirts and meals, and ASNMSU spoke to the continuing relationship with Foundation to promote activities.

Regent Hutchinson asks about peer institution comparisons. NMSU has adopted best practices from other institutions and evaluates them for fit based on resources and results. Programs that start the first day students arrive on campus are seen to be the most successful. Freshman Academy course (e.g. University 150 course) that has been discussed by the Regents Student Success Committee was discussed. Learning the Fight Song and teaching students about what it means to be part of NMSU should be part of future student success initiatives.

6. Arrowhead Center Inc. Report, Director & CEO Kathryn Hansen
   Startup sprints program discussed. Funding by New Mexico Gas industry. Diverse set of entrepreneurs. GreenAI received $20,000 investment. NM FAST program received an award for the fourth year. It is a State and Federal program for innovation-based R&D to lead to commercialization. Intended to serve underserved populations. K-12 Innoventure, which is a long-standing program adapted to find students where they are. Building a product that would help your community was the theme of the most recent competition. Winners were from Aton Chico Middle School who developed an irrigation system. LAUNCH program, which is an IP accelerated program developed in collaboration with VPR, is accepting applications. Applications open in November. The Hunt Center for Entrepreneurship provided funding to support a $20,000 project that focused on getting technology ready for licensing and five participants are eligible to compete. The 2018 winning team developed a prosthetic sleeve liner including co-inventors Reza Foudazi, an NMSU Assistant Professor in the College of Engineering, and Robyn Marks from the Burrell College of Osteopathic Medicine. Studio G was discussed and is Arrowhead’s business incubator and is in 14 sites throughout the state. Aggie Shark Tank, patterned after the popular TV program, will be held tomorrow with local ‘sharks’ Lou Sisbarro, Royal Jones, Beto Pallares, and Todd Bisio who will be joining for the first time this year.

7. New Mexico Department of Agriculture, Cabinet Secretary & Director Jeff Witte
   Dam inundation mapping program discussed. Last year the legislature appropriated 1 million dollars to NMDA to do a dam inundation mapping study. Estimates were that 7 – 10 sites could be completed based on funding, but 24 sites were done including 13 incident action plans, in part due to attracting additional funding. NMDA received the Western Region Award of Merit nominated by the Dam Safety Bureau. Secretary Witte recognized Julie Maitland for her leadership in helping to bring this positive attention to NMDA. New Chef Ambassador program announced with John Hartley from ACES and Rocky Durham being named Chef Ambassadors to promote and integrate New Mexico ingredients into everyday cooking by touring the state and nation to share their knowledge. Veterinary diagnostic lab received accreditation (ISO-17025) for the first time and this is a major accomplish as this standard is the “cream of the crop”. On Oct 20th Ag Day will be held ahead of football game with over 50 booths that highlight agriculture and fun activities. The Hemp rule hearings are scheduled starting next week in Las Cruces, Espanola, Albuquerque, Portales, and Carlsbad. Lots of interest in this rule and stakeholder outreach has already begun. Potential challenge in relation to Farm Bill, which may change and the rule needs to be administered under both. Repeal water conversation district election rules which are now covered under the election act and there is no longer a need to administer those rules in NMDA. 2018 homegrown activity event scheduled for November (near black Friday) at New Mexico Farm and Ranch Museum. Oct 24th is the presentation of the Rounders Award in Santa Fe for recipients Robert “Shoefly” Shufelt and Irvin Trujillo. The award is given to those that exemplify the Western way of life. Secretary Witte was named President of the National Association of State Department of Agriculture. Will lead U.S. delegation to Mexico in coming weeks as part of this role.
Regent Mitchell thanked Secretary Witte for the report and congratulated him for the appointment to the National Association of State Department of Agriculture. Regent Mitchell asked Secretary Witte to share his itinerary with the Chancellor and President to take advantage of windows of opportunity that may arise from shared interests. Regent Mitchell also requested that the board to be briefed on Hemp rule in advance of the meeting where action will be taken, cautioning that enforcement, and costs related to it, are also considered.

Regent Saucedo asked about the oversight of hemp and medical marijuana. Secretary Witte responded that the Department of Health and Department of Agriculture oversee different aspects of medical use of Marijuana and industrial Hemp cultivation respectively. Secretary Witte also mentioned that changes to Federal legislation that have been introduced would change the drug classification schedule of hemp would have a ripple effect on state laws across the nation concerning hemp. Percentage of THC less than .3% would be under NMDA prevue as industrial Hemp. Regulating essential oil is different and more challenging to regulate.

E. **Consent Items**, Chair Debra Hicks

Per previous motion items F-1 – F-5 were moved to the consent agenda from action items. Regent Saucedo entered a motion to approve the consent items as amended and Regent Mitchell seconded the motion. Motion passed unanimously.

1. **Approval of doctoral program in School Psychology**, President John D. Floros, Ph.D.
2. **Warranty Deed for Property Transfer on Triviz Drive**, President & CEO Scott Eschenbrenner
3. **Approval to name room 236 in Devasthali Hall as the Serafino Student Collaboration Room**, Interim Vice President Tina Byford, Ph.D.
4. **Disposition/Deletion of Property**, Senior Vice President Andrew Burke, Ed.D.
5. **Temporary Investments Report for the Quarter ended 06/30/2018**, Senior VP Andrew Burke, Ed.D.

F. **Action Items**, Chair Debra Hicks

1. **NMSU Las Cruces: Central Utility Plant Air Compressor Replacement**, AVP Haubold, Architect Watenpaugh
   MOVED TO CONSENT AGENDA BY MOTION OF THE BOARD

   MOVED TO CONSENT AGENDA BY MOTION OF THE BOARD

   MOVED TO CONSENT AGENDA BY MOTION OF THE BOARD

4. **NMSU Las Cruces: Campus-wide Tunnel System Repairs Phase V**, AVP Haubold, Architect Watenpaugh
   MOVED TO CONSENT AGENDA BY MOTION OF THE BOARD

   MOVED TO CONSENT AGENDA BY MOTION OF THE BOARD
6. **Athletics FY20 RPSP Request, Athletics Director Mario Moccia**

Director Moccia provided an overview noting the count of all NMSU sports and student athletes. Moccia continued by touting the academic accolades of student athletes involved in the athletic programs.

Moccia explained that athletics is here today to request an increase to the previous Research and Public Service Project (RPSP) request for athletics to be used to increase the health, safety, and student athlete experience and to help meet basic operational needs. The requested funding would be used to improve the safety and quality of travel provided to the teams and to help offset a portion of the current deficit reduction plan. This would also result in being able to reinvest funds into operations which would enhance the student athlete experience for all teams.

Director Moccia explained logistical challenges with transportation as it currently exists. Bus transportation would be safer than vans and would give the coaching staff and students more time during travel to work and study.

Allegiant air is seen as a lower cost and lower quality provider, noting several safety and logistical issues that the NMSU teams have faced in the past using this carrier. Fundraising was needed just to cover travel expenses and parents funded meals for athletes for away games. It was noted that there seemed to be some support for this request from legislators with whom the director spoke.

Chancellor Arvizu indicated that athletics is important and it’s time to pay more attention to the program, emphasizing the academic role is primary and athletics is a strategic asset for enrollment and retention. Athletics has done more with less, but there are realities that push the envelope of risk and we can use the additional resources in a prudent and constructive way. President Floros added that we need to do right by our student athletes and dedicate resources to enhance the safety of our team members. President Floros touted student athletes as an example of good academic performers, including some sports with 100% graduation rate.

Regent Hutchinson noted the debt repayment extension and asked if the yearly debt payment of approximately 489 thousand represents that extended debt repayment schedule, which Director Moccia confirmed. Regent Hutchinson thanked the department for balancing their budget eight out of nine years. An endowment for athletics was proposed. Perhaps look to the state for matching endowment funds.

Regent Vela expressed her broader concern about travel and asked the institution to consider a corporate Travel card system and asked if the Regents’ Financial Strategies Performance and Budget Committee could examine this issue. Regent Mitchell asked Vice President Burke to add it to agenda.

Regent Saucedo asked what changed in the last month that the request would need to be resubmitted? Director Moccia indicated that the department, based on past practice, wasn’t sure what they could ask for in the request process. In the past, the amount they could request was told to them, rather than being asked about their priorities.

Regent Mitchell asked why we were remiss in requesting the funds the first time, also noting that the approved debt restricting was to result in some funds to reinvest in athletics to address needs and the board is still waiting on information about how those funds have been used. Regent Mitchell expressed concerns that the additional RPSP request was not part of a more broad-based strategy to coordinate all university requests for academics and athletics.
Is this partly due to UNM requests? What about the academic side of the house in making additional requests?

Moccia responded that the UNM ask did play a role in making a new request. Regarding the debt restructure, there were six items that were identified for investment including two assistant football coach’s salaries and fringe, football staff retention, men’s basketball head coach and staff retention, and football recruiting enhancement money. Two issues haven’t been acted on, one was the new development officer and there is an agreement on how to move forward. The other is a new ticket system which is currently being negotiated. New departmental charge back expenses weren’t anticipating which ate up some savings from debt restructurung.

Chancellor Arvizu noted that these are the asks for things that we need. The timing is important and it is in line with our priorities.

Regent Mitchell asked if reinstating programs, such as equestrian, was considered. Director Moccia briefly recounted the decision process regarding the equestrian program, noting that athletics would get double the cuts to address budget reduction priorities that would result in the loss of a sport.

Regent Hutchinson asked for clarification regarding the additional funding for the development officer. Director Moccia indicated that the funding is there, but development is centralized with Advancement and they are looking for an athletics development officers, which was originally more difficult to negotiate. Discussions currently underway with Advancement are going well.

President Floros commented that we are not putting academic before athletics and athletics is being discussed in the state and this is an opportunity. When asked about the needs, it was determined that the needs were fundamental.

Chair Hicks stated that NMSU has 391 student athletes compared to 440 at UNM and when compared dollar to dollar, UNM spends $94,000 per student athlete and NMSU spends about $74,000 per student athlete.

Motion to approve the department of athletics FY 2020 RPSP request submitted by Regent Mitchell with a second by Regent Saucedo. Motion passed unanimously.

7. Performance Management - Objective Statement, Chancellor Dan E. Arvizu, Ph.D., President John Floros, Ph.D.

Chancellor Arvizu discussed new tagline, “BE BOLD. Shape the Future.” and talked about foundation of the plan being in the Vision 2020 strategic plan and this proposal describes how we are going to achieve the goals of the plan. We are not on a trajectory now that is going to change unless we do something different.

Discussion of the mission and purpose noting the mission is not going to change. The difference is the purpose statement, which will be the precursor of the new vision. Discussed strategic objectives and how they align with the mission and purpose.

President Floros noted that performance metrics intended to improve financial stability, rankings and value proposition. President Floros explained performance metrics overview, noting that placement rates don’t have reliable measurements at this point and this is something that will be worked on over time. Diversity and
Inclusion metrics will also be brought before the board at a later time. The Leadership and Organizational Effectiveness measures and Board Relations measure are qualitative in nature.

An Enrollment Projection graph was discussed which used multiple models to predict enrollment. Enrollment expected to continue to decline, no matter what model was used.

A chart of twelve performance metrics was displayed and discussed that outlined current, projected, and target metrics.

A table showing the performance metrics and potential lead indicators was displayed and discussed. There needs to be engagement within the university to help identify lead indicators.

Performance metrics for community colleges were displayed and discussed. There is less data regarding community college metrics and there will be a similar process followed with the community colleges to collect input.

A timeline for strategic direction and performance management implementation was displayed and discussed.

Chancellor Arvizu closed noting that the approval being requested today is for the overall strategic direction, conceptual design, and performance targets in the table presented. In reference to contract language, there is a requirement to present to the board the metrics used for personal evaluations. Arvizu noted that where we are today is the baseline, even though the projections suggest that we are going to see continued decreases in revenues, we are not satisfied that there would be credit given for continued declines and what President Floros and Chancellor Arvizu agreed to is that unless there are real, tangible, measurable additional revenues that are a result of our interventions, above where we are today, that we would suggest that would be our threshold for any kind of payout on any kind of award to be paid out. We expect by next year this time we will have stabilized our financial condition and performance while making other changes to position us to grow in the future. There is time needed to engage the rest of the enterprise in achieving the outcomes. By January a more comprehensive plan will be available.

Chair Hicks thanked leadership and staff for the effort in providing the strategy and metrics.

Regent Vela noted slide 13 which displayed a graph of enrollment counts from 2009 projected through Fall 2019 asking why the 2017 to 2018 decline is so large given the past declines. What is driving such a steep decline? President Floros responded indicating that it is what the data shows. All models project a decline. The reasons for decline haven’t moved the retention rate in the right direction. While freshmen have increased, we are also graduating more students. Regent Mitchell noted past enrollment projects were underestimated in the past, which caused some planning issues. Over time, we have been closer on enrollment projections because of what was studied and learned, and we are better off estimating lower enrollment projections than higher enrollment projections. Regent Vela went on to note that her concern relates to the baseline for performance evaluation and that we are using sophisticated tools and methods to calculate the trends and not just Excel. President Floros noted that we may have a similar outcome as UNM regarding enrollment prediction because both institutions have seen an increase in graduation rates.

Regent Hutchinson noted that current enrollment is her understanding of the baseline and the board acted to bring on new leadership to improve the metrics, rather than just stabilization. When will we see the six pillars metrics improve and we should see growth out for several years in the plan rather than just next year? President Floros responded that they are trying to be as aggressive in their projections as possible and actions
have already been taken, but this is not something that can change within a year. Metrics for next ten years have been developed, which can be shared with the board.

Regent Mitchell commented that this process, to establish performance-based incentives, is a direction that has happened at other institutions and something that this board has worked toward. Regent Mitchell commended the administration efforts to get to this point, which is the most significant work done on this matter to date. Regent Mitchell also noted that a low baseline can be a problem for the incentive, but she was reassured by the payout program stipulations whereby rewards are not determined by the baseline, but by headcount growth. The baseline is as sufficient for now. Regent Mitchell asked that the Regents Financial Strategies Performance and Budget Committee and Student Success Committee be part of the conversations and have mid-point reviews before presented again in January. Multi-year growth plan is important to see for investments. Peer comparison should be part of the discussion as well. Regent Mitchell indicated that she is accepting of the conceptual design as laid out on slides 1 – 11 of the presentation and the incentive compensation program generally meets expectations, however more refinement of targets and revenue are desired.

Regent Saucedo commented that the projected baseline is appreciated, and he recognizes the challenges of forecasting. Regent Saucedo proposed a tiered set of metrics, with the first tier being the expectations for bottom line metrics, and other tiers for more significant progress to aspirational goals. The proposed tiered structure would tell us what the metrics look like over the next two to three years.

President Floros stated that there is no expectation to receive incentive compensation unless there is true improvement of the financial situation and results should be due to their efforts, not increased tuition or state funding. Some stretch goals have been developed. We are looking at past performance and we are providing our best guess.

Chair Hicks stated that higher education is going toward performance metrics and that this is a best practice for governing boards around the country which as a way to achieve and measure success to make NMSU once again among the top universities in the country. It is up to the leadership to determine how this will be used throughout the university and there is understanding that this is something that will need to be worked on with the rest of the university. Chair Hicks recommended engaging that the Financial Strategies Performance and Budget Committee and the Student Success Committee in working with administration in Work sessions that will generate some consensus around the proposal and be brought to the board for consideration.

Several different motions were discussed to move forward regarding the action item.

Regent Mitchell moved to approve the conceptual design of the plan as presented on pages 1 – 11 of the presentation. Regent Saucedo seconded the motion. Motion failed 5-0 with all regents voting against the motion.

Regent Mitchell moved to approve the strategic direction conceptual design and performance evaluation elements from pages 1 – 11 of the presentation. Second by Regent Saucedo. Motion passed unanimously.

Additional discussion occurred about another motion that would give the chair latitude to move forward in negotiations with the Chancellor and President.

Regent Mitchell moved to approve the chair to enter into negotiations with the chancellor and the president regarding a reasonable extension of time for fulfillment of contract terms and that the ultimate proposed
terms would come back to the board at the conclusion of the negotiation with negotiations not to extend beyond the end of January. Second by Regent Saucedo. Motion passed unanimously.

Chancellor Arvizu stated President Floros and I will do our very best. It will take time and the Chancellor is optimistic that great things can happen. Chancellor Arvizu requested latitude to make the decisions that are necessary for us to do in order to be successful.

Chair Hicks noted that we are all in this together and the regent’s committees are there to support the Chancellor and President and she expects that they will be involved with the committees in follow-up discussions.

Regent Mitchell noted that today’s vote is a vote of confidence in our leadership.

G. **Informational Items, Chair**

1. **Student Success, Vice President Renay Scott, Ph.D.**

Vice President Scott discussed the complex schematic layout of Student Engagement and discussed the last 30 days and activities and meetings that occurred.

Emerging theme was discussed. Alignment of resources with priorities, the curriculum, with the Catalog, with the Banner system, and the Web site. Branding and value-added messaging refinement is a need. Schedule management that helps students get the courses they need in a timely manner. Ad Astra is an important tool to help make this work. Data silos are with enterprise applications (not people). Procedural delays and rigidity were another theme of what she has learned in the past thirty days.

VP Scott discussed NMSU being a “student ready and student friendly campus” looking at navigation from the students’ perspective.

Completed activities discussed including recruiter assignments to territories. Marketing efforts are being realigned to help generate lead measures. Housing has implemented “residential life curriculum” and lead measures are being identified. Data analysis for recruitment and retention is ongoing.

Recommendation for next 30 days include data strategy with common data sets across entire student journey. Student need and student demand should drive scheduling.

Regent Hutchison asked if we are we evaluating all time blocks? Multiple dimensions of time blocks were discussed. Use of Platinum Analytics was discussed in relation to demand for sections, which are reports sent to deans.

Deploy technology to support student success, such as a CRM that can be used across student life cycle, management curricular process by catalog software, and Banner non-credit module discussed as source of recruitment prospects.

Recommendations for next 60 days includes leadership outcomes through co-curricular, student and residential life offerings. Develop pathway for 4-h and agricultural extension with help from partners in Extension. Chartered enrollment management committee proposed. Workgroup for master’s accelerated program proposed. VP Scott proposed working with UAR to review best practices.

Recommendations for next 90 days included proposal for hiring an international student recruiter, a process and procedure audit, predictive analytics solutions, and mobile device (app) to create on-stop access point for students.
Regent Hutchinson asked if Mobile technology includes degree mapping. VP Scott indicated that it would include degree mapping is part of it, but alignment is part of making sure this will work for students.

Regent Vela asked about the mobile app to support taking attendance? VP Scott wasn’t sure. Check I’m here may be an option and it’s currently being explored to see if it will work for this purpose. Regent Mitchell asked about the impact of holds because it was not mentioned. VP Scott indicated that holds are still an ongoing issue. Regent Mitchell asked about the $300,000 increase in staffing for four recruiters. Four recruiters have been interviewed and hiring is close to completion.

2. **Informational Report Summarizing Revisions to the Administrative Rules and Procedures of NMSU (ARP) for the period 04/11/18 through 08/14/18, General Counsel Lizbeth Ellis, J.D.**

General Counsel Ellis referenced a report of changes made to policies and rules since last reported in a regular meeting. Counsel Ellis noted the support that her department can provide to the Chancellor, President, and VP Scott regarding policy changes to improve student success initiatives discussed previously. Regent Mitchell asks for more clarification regarding the nature of the changes in reference to tailgating. NMSU Police Chief Stephan Lopez indicated that the policy change reflected current practice and changed process for approving tailgate events to stipulate that consensus of the four member committee is needed for approval.

H. **Comments and Announcements, Chair**

Chair Hicks noted that we will be looking for a new ADI board member and also noted the University Ave. and Interstate 25 intersection will include roundabouts and there are plans for a monument at that location.

Chair Hicks noted a previous meeting with LFC Director David Abbey where they discussed performance metrics that will be requested from all higher education institutions. There will be a meeting on October 22nd where this will be presented.

Chair Hicks noted that a joint meeting with the DACC Advisory Board was held earlier today and we had an engaging conversation and some outcomes to work toward that she will report at a future meeting.

ASNMSU President Emmerson Morrow noted that the process for student Regent selection is underway and information will be available on the ASNMSU Web site.

1. **“Gun’s Up” – Good News for NMSU!**

Chair Hicks gave praise to Amy Lanasa, an Academic Department Head in Creative Media, is to participate in a television academy Seminar program.

Regent Vela praised the Raising K-9s guide dog training program and NMSU Dean Enrico Pontelli for being awarded a 20 million dollar grant for a Smart Grid Center and 1.3 million for the INCLUDES program, and another NSF program grant.

ASNMSU President Emmerson Morrow applauded the Chancellor and President for updating their voter registration.

Regent Hutchinson applauded the recent books published by NMSU alumni Jennifer Cervantes, Sylvia Acevedo, and Dr. Kelley Coffeen, who teaches in ACES.

Regent Saucedo gave praise to ASNMSU about the voter registration drive, candidate visits, and early voter
Regent Mitchell congratulated the Chancellor and President on their first 100 days ASNMSU President Morrow on the voting initiatives, and VP Scott on her early progress.

2. Upcoming Board of Regents Meetings

   November 2018 TBD

I. Adjournment, Chair

   Regent Saucedo moved to adjourn and second by Regent Hutchinson. Motion to adjourn passed unanimously at 5:24 PM.

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MINUTES - Aggie Development, Inc. Annual Membership Meeting

1. Call to Order

   Chair Hicks called the meeting to order at 5:25 PM

2. Approval of the Agenda

   Motion to approve the agenda entered by Regent Mitchell with a second by Regent Saucedo. Motion passed unanimously.

3. Reading and Approval of the Minutes

   Chair Hicks read the minutes of the ADI Annual Membership Meeting held on August 1st 2017.

   Motion to approve the minutes as submitted by Regent Saucedo and motion seconded by Regent Mitchell. Motion passed unanimously.

4. Election of Board Members

   As a result of serving in his capacity as Chancellor of NMSU, Chancellor Dan Arvizu will serve as an ADI board member. Also, Dr. James Hoffman and Debra Hicks were nominated for another three-year term.

   Motion to elect ADI board members by acclamation entered by Regent Mitchell with a second by Regent Saucedo. Motion passed unanimously.

5. Adjournment

   Motion to adjourn entered by Regent Saucedo with a second by Regent Mitchell. Motion passed unanimously. Meeting adjourned at 5:28 PM.
A. Call to Order, Chair Debra Hicks

Meeting called to order at 3:37 PM by Chair Hicks.

1. Discussion of proposed Hemp Rules with NMDA, Chair Debra Hicks

Secretary Witte provided introduction –
- Thanked the Regents for taking time to understand this rule.
- The most highly watched rule in some time.
- Hemp Information provided from Hemp Information Document distributed at meeting
- 42 states have some kind of legislation on the books regarding industrial Hemp.
- From fiber to CBD oils. Grown in green houses and in fields. New Mexico business are interested in producing clones, seeds, and CBD extraction. Seed is $1/seed (feminized). Transplants/clones $14-$5/plant. Yield is up to $50,000/acre.
- Previous bill was unworkable and very restrictive.
- Currently operating under research law.
- NMDA didn’t start working on Hemp-related legislation until after veto was overturned by courts. Engaged growers and processors in the process.
- 5 meetings across the state with about 200 overall in attendance. Comments were analyzed. Hearing officer makes recommendation which is reviewed and approved by the secretary.
- Federally, the Farm Bill will likely include Hemp regulations to likely include moving Hemp out of schedule I.
- Overview of Hemp rule being considered.
- Decision to put the specifics of testing into policy is an emerging issue and consistency is important to work with industry and other states.

Arvizu: Is there a research component to the new rule?
Witte: No, it’s absent. Testing of samples is done in private labs as proposed for initial phase.

Hutchinson: Why was the previous legislation vetoed? Witte: overstepped the farm bill.

Hutchinson: How is it tested? What is the sampling? Lewis: There are environmental and genetic factors that determine THC level. Lots of latitude for field agents that are doing the testing based on conditions. Testing the bud and flower and there is a possibility of retesting.

Hutchinson: Can you tell the difference visually between Hemp and illicit cannabis? Lewis: No.

Lopez: Discussed basics of law enforcement testing procedures for controlled substances. Litmus test but percentage of THC not known (sensitivity).

Hicks: Who certifies the laboratories? Lewis: labs submit their procedures. ISO certified reference laboratory to validate that testing from labs to approve. NMDA approves labs ultimately.

Arvizu: What extent can the system be gamed and how accurate are the tests? Witte: Regarding sensitivity, the law says one significant figure, but many tests can go to the millionth place.

Secretary Witte briefly discussed licensing option, fee structure, and budget:
- Yearly license option: Two different licenses in a year may be possible with 90-day growing cycle.
- Continuous license option – Such as greenhouses
- Fee Structure - $900 cap for one-time fee (plus $6/acre).
- Budget – based on fee and projected acreage, this is not sustainable. State support will be needed.
- Hemp advisory group – Will go to legislature and support NMDA for the funding request.

Q: What about reversing the fee structure to reduce yearly fee and increase per acre fee? A: Potential that high number of crops will be destroyed because THC above threshold. This would add costs and frustrate growers.

Q: What support do we offer for the growers? Witte: This should be easier than organic. Industry consultant recommended.

Hicks: Small farmers are commenting about the fees being too high. Witte: Parcels that are close to each other and are cared for in a similar way are being considered as an optional to license as one parcel. This should address some concerns for family farms.

Mitchell: What happens if cannabis is legalized for recreational use? Witte: No matter what, it will still be regulated. It is yet to be determined how other cannabis production will be regulated.

Mitchell: Regarding rulemaking and announcement of rulemaking. What can we use to capitalize on new rules (for NMSU)? A: Press conference to include legislators and industry. Academic, research, and extension should prepare for
announcement.

Q: What is the opportunity for seeds (genetics) and production?
A: Industry is not likely to jump in. Grants are a good way to go forward. Public/private partnerships are better enabled once the Farm Bill (2018) is passed.
Training for inspectors is in the works for proposals. Training for law enforcement recommended.

Mitchell: What are the downsides?
A: Border Patrol Checkpoints – education is the key. Not a panacea. Water is limited if the Farm Bill doesn’t pass (Federal water like EBID can’t be used for Schedule I drugs).

Vela: What % of farm land will convert to Hemp?
A: Perhaps up to 5000 acres (9000 acres is what we farm in chile currently, for a standard of comparison).

Vela: How water intensive is Hemp?
Lewis: Will likely plant into plastic mulch bed (which manages water better) 3.5/acre/feet. But, 90 day crop so it might be less in typical situation.

Q: How are the smaller farmers going to benefit?
Witte: This is an opportunity for small farmers.

Regent Mitchell asked others in the room to comment from their perspective in summary:
- Lopez: Not a law enforcement concern for growing. Concerns about CBD are more relevant.
- Ellis: General Counsel/NMSU is under state obligation to act and approach seems reasonable.
- Arvizu: Good opportunity for NMSU. Given regulation – high risk investment. Gives us time to get our research effort in place. Not a rush for Center of Excellence.
- Floros: not seeing support from federal or state government. We have the research capability, but the money is not evident. We cannot count on industry for interest/funding for hemp.
- Mitchell: called for bold and innovative ask from legislature and formation of NMSU Center of Excellence in Hemp research.
- Floros: Possibility of other Higher Education Institutions being partners.
- Witte: Ag Extension is a big part of the roll out.

Questions to be sent to Adam.

Mitchell: What is the need for public comment?
A: Experts will be there for press conference.

Hicks: 11/29 meeting at 1:30 PM and plan on 3 PM press conference to follow. Changes between now and then include how to deal with small plots of land (single or multiple plots). NMDA will also investigate check off program for production to see if revenue-based (proportional to sales) funding model can work.

B. Adjournment, Chair Debra Hicks

Meeting adjourned at 5:35 PM.
Item B-4

Confirmation of Prior Executive Session – November 19, 2018

The Board of Regents met in a closed executive session at 1:00 PM on Monday, November 19, 2018 in Hadley Hall, Room 130, 2850 Weddell Street, Las Cruces Campus, Las Cruces, NM to discuss limited personnel matters regarding contract addenda, performance evaluations, and performance incentive compensation for Chancellor Dan Arvizu and President John Floros in accordance NMSA 1978 Section 10-15-1 H(2) of the New Mexico Open Meetings Act.

Those board members who were present please certify that only matters of that nature were discussed.

Regent Hicks _____ Regent Hutchinson _____ Regent Mitchell _____ Regent Saucedo _____ Regent Vela _____
Agenda Item:

**Hemp Cultivation Rule**

**Requested Action of the Board of Regents:** Adoption of the Newly Proposed Rule

**Executive Summary:**

During the 2017 legislative session, Senate Bill 6 Industrial hemp research rules, was passed and chaptered into law. The statute delegates the NMDA the authority to develop an industrial hemp program and promulgate rules for the administration of that program which would complement federal law. The department is proposing a new rule to assist in the administration of the hemp program.

**References:**

Industrial Hemp Research and Development Program [76-24-1 through 76-24-2](https://example.com)

**Prior Approvals:** N/A

**Agenda Item Approved By:**

____________________________________  
Jeff Witte  
Cabinet Secretary & Director, NMDA
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The New Mexico Department of Agriculture (NMDA) held multiple hearings to obtain public comment on the newly developed 21.17.XX NMAC, Hemp Cultivation Rule. The hearings were held:

- Friday, October 12 in Las Cruces at 2 p.m. at NMDA, located at 3190 S. Espina, Las Cruces, NM 88001
- Monday, October 15 in Espanola at 1 p.m. at Espanola Library Conference Room, located at 313 N. Paseo De Onate, Española, NM 87532
- Monday, October 15 in Albuquerque at 6 p.m. at Los Griegos Center, located at 1231 Candelaria Rd NW, Albuquerque, NM 87107
- Tuesday, October 16 in Portales at 11 a.m. at Portales Chamber of Commerce (Basement Classroom), located at 100 S. Ave A, Portales, NM 88130
- Tuesday, October 16 in Carlsbad at 6 p.m. at River Walk Recreation Center – Power House Room, located at 400 River Walk Drive, Carlsbad NM 88220

The department received an outpour of public interest and comment on the development of the rule which will assist in administering the newly developed industrial hemp program. After review of the record of hearing and the hearing officer’s recommendation, I recommend the adoption of the Hemp Cultivation Rule.
NEWLY PROPOSED 21.17.XX NMAC HEMP PRODUCTION RULE

To: Jeff M. Witte, New Mexico Department of Agriculture Director/Secretary
From: Joe E. Gomez, Hearing Officer
CC: Anthony Parra, New Mexico Department of Agriculture Deputy Director
CC: Tiffany Rivera, New Mexico Department of Agriculture, Government Relations Specialist
Re: Proposed 21.17.XX NMAC—Recommendation
Date: November 8, 2018

A series of five public hearings were held October 12-16, 2018 in Las Cruces, Espanola, Albuquerque, Portales and Carlsbad to gather input into the Newly Proposed Rule 21.17.XX NMAC – Hemp Production.

The notice of hearing for 21.17.XX NMAC was published in the September 11th edition of the New Mexico Register, Volume 29, Issue No. 17; and in the Las Cruces Sun News, Albuquerque Journal, Carlsbad Current-Argus, the Eastern New Mexico News, Santa Fe New Mexican, and Espanola during the week of October 8, 2018. The notice of hearing as well as a copy of the proposed rule was also made available via the department’s website.

The New Mexico Department of Agriculture (NMDA) proposed a new rule to accompany the recently chaptered SB 6, “Hemp Cultivation Rules”.

The 2014 farm bill included the first provision of federal law which allowed for hemp production and research at the state level, if hemp production is legal in that state.

During the 2017 legislative session, Senate Bill 6 Industrial hemp research rules, was passed and chaptered into law. The statute delegates NMDA the authority to develop an industrial hemp program and promulgate rules for the administration of that program which would complement federal law. The department is proposing a new rule to assist in the administration of the hemp program.

At each hearing Brad Lewis, Agriculture and Environmental Services Division Director-NMDA, gave an explanation of the proposed new rule and the rationale behind it.
At each hearing, I opened the floor for public comments.

During the Las Cruces hearing, there were 57 in attendance, several comments were made, which included the following questions:

1) On the destruction of the crop for that year, at the end of the 240 days, you've got fire and disking. Have you talked about animal grazing?
2) I'm affiliated with trying to help all of you out, and hopefully we can all help each other out. You guys were talking about testing. You stated that sampling is to be found in policy rather than the rule. Do you guys have any like additional information to what kind of testing you want done? Like, specifically, like, are we restricted to like gas chromatography, high performance liquid chromatography? Do you have is a set standard that you would prefer, considering that's policy and not in the rule?
3) How many labs are in New Mexico right now that can provide accommodation for that?
4) My question is on the fee. I think it's a little high at $900 for small farmers. I don't think it's an issue for somebody like with 10 acres or more. But for small guys, I think it's a little high. I'd appreciate it if you'd consider lowering that.
5) I agree with Representative Gomez in that you should maybe create a sliding scale for small farmers, for smaller farmers.
6) I agree with the other two gentlemen, that native farmers in the community in New Mexico may not just have one site of, let's say, 10 acres, but they may have 2 acres or 1 acre, 3 acres, all within, you know, 40 miles of one another. So I think that's going to be kind of a hindrance for those farmers that are going to be farming throughout the state with 2 acre or 3 acres or 4 acres; all the same owner, but different locations.
7) I understand the comment about the GC Mass Spec. GC is very robust, but I'd like the people discussing that policy to consider that, you know, FID on a good quality GC can absolutely nail THC from CBD, and those are the two characters that you guys are interested in being able to distinguish between. But there's no, no mistake at all between those two. I don't know that you need to have the stringency of a mass spectrum for every one of these. It's a very expensive toy to own.
8) Have you guys had any thoughts about ensuring that the hemp farms won't be near any like medical cannabis facilities for any kind of cross-pollinations or anything like that to ensure that doesn't happen with pollination to -- you know, medical cannabis farms wouldn't want the pollination on their plants? I just thought if you guys had any kind of thoughts about that or any kind of rule about that.
9) When we were talking about destruction of crop, is composting or burning the crop composting considered a viable option for destroying that crop?
10) I was just wondering if the agency has considered the Vermont option for actually testing, the Vermont method?
11) Does this rule mimic anything on the federal level?
12) Are there any other states that have a program that has actually started?

The Española hearing had 54 in attendance, several comments were made, which included the following questions:

1) How many and where were the testing laboratories located.
2) As far as the land it's grown on, are there going to be rules to ownership, or leasing lands
3) Lowering application fee (Sliding scale).
4) Can you define commercial growing versus personal?
5) Number 9, applicant acknowledgement, be in compliance -- as the gentleman said --
   with the state and federal regulation. Now, are you -- are we aware that we're still -- the
   federal law is still Controlled Substance Act?
6) Do you know if the tribal indigenous people here are exempt from that?
7) What timeline do you guys have on issuing licensure? When do you anticipate issuing the
   first license?
8) I have a lot of growers who would be interested in producing hemp for animal feed.
   However, the personal production rule states that you could only grow 20 plants, so I'm
   wondering -- also, you're not attempting to authorize it as an animal feed for the State of
   New Mexico. Other states have done that, for example, Tennessee. So just wondering
   about that, if that could change.
9) Will the NMDA have requirements for certified seed or genetics or clones, or will there
   be any kind of like list of seed sources for growers.
10) Can you explain the process -- after we have this public hearing, what happens next?
11) I was wondering if there's a reason why it's so high, and if there was any chances for it to
    be lowered? Especially if we're going to make it a viable crop for small-scale farmers in
    northern New Mexico.
12) I was just going to ask if there was any exceptions for land grants specific and/or water
    associations that are associated with the land.
13) I believe you stated earlier that the personal fee was going to be $100. Under the fees on
    the rules here, it states $25. Can we get clarification on that?
14) With the $900 licensing fee, are there additional fees that the farmer/grower will incur?
15) And then what about qualifications for applications, are there people that will not be
    qualified? Like if, you know, you've had a crime or -- I know at the federal level, that's
    an issue. Are there people that shouldn't bother applying. I guess is what I'm getting at.
16) Will there be a cap on the number of licenses that are issued?
17) Any idea the duration of approval for the application?
18) It just seems like a short time frame for such a new program to try to get everybody
    pushed through. I'm just curious to know if there's going to be a backlog, which you
    probably can't answer at this time.
19) Back to the licensing fee. I realize that's a cap, but it's about double, I think, what they're
    doing up in Colorado. So I think clarity around what that fee is going towards, if its
    admin, and then any additional expense would probably be advantageous.
20) I'm Kathleen O'Dea, I'm the owner and director of Scepter Labs, the licensed medical
    marijuana lab in Santa Fe, also Victory Analytics, which is a hemp testing lab, and
    wanted to speak to your question about costs. We're hoping -- we do a lot of hemp
    testing. We've been doing it for about four years, and I think we'll be able -- my
    prediction is we'll be able to bring in the cost of testing for around $25 to $35 per sample,
    is my hope.
21) Is that $900 annually on top of the $6, or whatever, per acre?
22) How many inspectors do you anticipate having throughout the northern part of the state,
    or throughout the state?
23) When you say about location, there's a lot of patchwork around here. Let's say in this one location within an area of a mile, you have three pieces of land that you're going to be growing hemp on, would that be considered one location or one site?

24) Another question regarding security, other producers of medical have to establish a very significant amount of security. Is that going to be a requirement as well?

25) My organization, one of our goals is outreach and education about hemp. Part of our plan was to work with several local businesses within Albuquerque and Santa Fe to demo hemp plants. If I wanted to do that, would I require a license for each individual location, or how would that work if I wanted to apply for a continuous operation license?

26) If we are doing tissue culture for preserving plant genetics, would that be considered indoor production?

27) On the indoor production, there's a lot of farmers that they start their plants in the greenhouse because the females produce the highest CBC, So would that be considered any form of an indoor production for starting before you plant them in a field?

28) Under inspections, sampling, what happens if you get cross-pollination between some local homegrown cannabis and it tarnishes your hemp plant?

29) Is there any difference in your application between a research development application or a regular production application?

30) Is there going to be any research objective looking at reduced water use, for example, or reduced fertilizer use, or reducing anything else that's associated with changing from one crop to a hemp crop?

31) If a person was to go into the production and manufacturing part of it after it's been cultivated, does this research go into somebody that wants to start a pellet lab or, you know, to research into making pellets or breaking the fibers down? Do you know if it goes further than the cultivation?

32) Just for clarification, if I want to get a license, get a farm, and I go out with my own money and buy a pellet producer, and I'm a licensed business and I start making these pellets, I'm free to distribute them as long as they meet your testing requirements which are set forth in this, and whatever the next farm bill language is. Currently, we're basing off of the last one in between 2018.

33) Is hemp seed currently under the Controlled Substances Act, so how are people going to get the seed or the clones to get started for business?

34) Destroy based on too much THC. I know a lot of Colorado farmers had hot crops last year, and my understanding is, it just goes away. I don't know if they burn it or whatever. You know, it could still be used for hemp hurd, animal bedding, etcetera. Is there any option to be able to utilize the crop?

35) Will the NMDA put restrictions on how close a farmer may live in proximity to a school or a church?

The Albuquerque hearing had 87 in attendance, several comments were made, which included the following questions:

1) In regard to the 900 fee cap, I wanted to place an input that you guys reconsider the small farmers and maybe consider decreasing that fee, as well as I'd like to place a request for clarification on rules for acquiring germoplasmas or clones for production within this program for licensees within this program.
2) See comments from Dave Romero (below).
3) How is production on tribal lands going to be addressed?
4) I like the fact that you opened the floor indicating the Farm Bill -- 2018 Farm Bill. Locally, I am with a group called Black Farmers and Ranchers of New Mexico, nationally owned with the National Latino Farmers and Ranchers Trade Association and the National Rural Coalition. We have eyes on this because small farmers and ranchers, you know, having access, because there is something under the Farm Bill where Mitch McConnell has a very specific interest. He is lobbying with Ryan, Paul Ryan, you know, so that there is movement, very. So under "Exemptions," 21.17.XX.14, one of the categories that's being introduced into the Farm Bill is special considerations for socially disadvantaged farmers and ranchers and veterans. So within the concept of exemptions, is it going to be a categorization that addresses that, you when we are talking about exemptions and applications, will that open up? And then I think to introduce also that if there is a changing category to where hemp is no longer considered a drug, is that going to be treated, you know, like -- as a crop, like any other crop, tomatoes, onions, green chile, you know what I mean? What is that going to do to the overall procedure that you are introducing here?
5) Is there going to be any sort of a mandatory security element dictating that we have to have fencing or anything like that within the area that we are farming hemp?
6) I didn't see it necessarily in the rulemaking, but I was wondering, after a farmer does get their crop or their product done, have you guys even thought about addressing the transportation issue of how would you get that finalized product out of the state, or even with the beginning process, how you're going to get your clones and seeds into the state?
7) Based on the number of people in this room and that there is no cap on hemp growing as far as licensures go, that I can see, how is the State preparing for the amount of people that are going to need to be tested?
8) Kathleen O'Dea, Scepter Lab. To comment on your first question, which is do the labs have capacity, I can't speak to the other two labs. We are physically located in Santa Fe, and we test, I would say, somewhere around 75 percent of the marijuana -- medical marijuana that's currently sold in the state. We run at about 25 percent of our capacity. We conduct about, I want to say, 10,000 tests a year. So we could easily do 40,000 tests a year without too much, maybe an additional person or two. We don't really expect that this is going to cause that much of an uptake in our business because, after all, we are not sure what the Department of Agriculture is going to develop by way of sampling method or how many samples are going to be required to be taken per field size, but we think that it's only going to be a slight uptake around the time of harvest for most farmers, and it's not going to be a ton of samples. So we are not really -- I mean, we are not really expecting to get rich testing hemp or anything like that, but we think we would easily be able to accommodate the existing testing demand.
9) I am the president and founder of the New Mexico Hemp Association. And what I wanted to address was this non-compliant varieties. I guess its Section 21.17.XX.12. The last sentence of this states: "Locations growing cannabis varieties greater than one percent THC may be reported to an appropriate law enforcement agency." I would like to suggest that that one sentence be struck from the non-compliant varieties, and this is the reason why, is that until such time that we get the industry launched and we get it dialed in as far as the testing and stuff is concerned, we shouldn't be threatening farmers with
the potentiality of some type of being arrested and their crop being burned if, within the first couple years, some of them are going to test hot, anyway.

10) Mr. Lewis mentioned that for personal use, it was going to be a $100 fee, but here, I saw that it was a $25 fee for the personal use. Could you please clarify that?

11) Suggested personal production amount be increased beyond the 20-plant per location limit that's specified here.

12) In regard to exemptions, what's the correspondence with you guys? Would it be done through mail and then you guys would give an approval or denial stamp, or would we be required to drive to Las Cruces and sit at a hearing? Could you expand on that?

13) The first one, testing, is there going to be a time frame or deadline to have submitted a test, and if so -- or if it's going to be -- is it like a -- how often type thing? Is it going to be multiple tests per year, or is that something still within.

14) With the test, which may be also a policy thing, the amount of tests. Let's say a five-acre farm versus a ten-acre farm, is it going to be one test per acre, one test per farm?

15) The seeds, the acquisition of seeds, are we going to be required to buy certified seeds by a certain source, or is it whatever we want to acquire as long as it's below the .3 percent?

16) We are going to want to be testing, as producers, far more than the Department is going to require us to test. Going in hot, these are realities that we are going to be needing to deal with. So be proactive. If we are barely complying with their rules, then you're going to be running a really risky, you know, logic whenever you are operating your business. You know, your business model should be one of safety and precaution, because we are dealing and, you know, even if it becomes federal law, we are still going to be dealing in a new area, and none of us wants to ruin it for the group.

17) So once a real license is received, that person can then have plants in New Mexico?

18) My question would be, what are the parameters for licensure? Okay. An individual with farmland, what are the parameters for actually getting a license through the Department?

19) Is there a limited number of licenses that we issue, or is it unlimited?

20) I know it's been said before about trying to do some kind of waiver for the first year of small-scale farmers, or maybe then like a sliding scale, so the five-, ten-acre farmers aren't paying the $900 fee like Five-acre farmers are. I just want to reiterate it for the record.

21) I just want to know if there is anything in there addressing the manufacturing end.

22) Just one more question regarding the research and development side of the bill. Isn't that part of it? And I have not heard that be addressed at all, whether -- how does that fall into play?

The Portales hearing had 14 in attendance, several comments were made, which included the following questions:

1) I'm sure it's in the rule as to where you get the original seed to plant, is it not?

2) You're saying per location, and 25 plants on a personal level. So if you had one location that you were going to have 75 plants in, does that mean a $300 fee for that one location?

3) Now, on the other, on the $900 per location, is it limited to the number of plants, the number of acres? What's it limited to?
4) So what is the standard for a location, then? You say there's an increase for acreage -- an acreage increase.

5) Well, you know, if I just wanted to -- say I was going to have one location here, how many acres can I have in that one location?

6) I was wondering about how many plants -- a while ago, you said that, you know, there's add-on fees as you have more plants. That's not a cap. What's the safe amount at 100 acres, 500 acres you're growing? What's the State say about the number of plants?

7) The rulemaking process does not have any kind of rule for a research and development, say, to develop seeds specifically for the State of New Mexico. Is there going to be an addition?

8) Where does all the fees and caps and all this go? Where are these funds going with this license?

9) I have one of quick comment concerning testing. What methods do you seem to be looking at right now?

10) If it's not made yet, I would really like to see whole-plant testing, as opposed to top four inches.

11) One more question. Have we pretty well covered all the questions that you had in other areas, in other...

12) How would you get a lab license if you owned hemp?

13) With these labs, are they backed somehow on the prices? If so, what is their price if I took hemp in and said, "Test this"?

14) But let's just say, for instance, you've got 5 acres of hemp growing out there, how many plants in that 5 acres are you going to have to consider destroying the whole crop? You know, if you go -- how many plants do you have to test above the point 3?

15) If you're doing a breeding program, you're going to have variable genetics. You're going to come in and you're going to be selecting for certain genetics, of course, but then you might have an instance where you above point 5 percent THC in your breeding crop, and you have multiple different things that are not cultivars or not varieties or anything like that yet. Is there going to be any kind of mention of this in the rulemaking process in order to protect breeders or -- and that's why I was asking about the R and D portion of it, to kind of separate them a little bit from somebody who's growing it for production of CB or for hemp production itself, a large scale.

16) Now you've -- let's go back to your field testing and the difference in the soil and this and that. Are you guys going to come down and cut -- have you got guys you're sending out to take clippings and mix it up? And how many samples is going to be in that acre, 8, 10, 12, 15?

The Carlsbad hearing had 5 in attendance, several comments were made, which included the following questions:

1) There is no maximum on commercial or continuous, as there's a maximum 25 plants per personal?

2) In the statute, the law that was passed, was this just for research purposes or is this going to be for commercial?

3) Will there be a limit on licenses?
4) So this language was written in court in conjunction with the 2018 Farm Bill on a federal level. Due to the fact that we're having problems in DC right now agreeing on anything, if that farm bill is not passed by January 1st when these rules and statutes go into effect, what will be the position of the Department at that time?

5) Since we're on this side of the state and labs are hard to find, does a lab have to be within the boundary of New Mexico, or can a lab, such as Lubbock, Texas, be used out of state as long as it qualifies?

6) I have a question along those lines, and it's in regards to the legality of receiving seed or clone from, say, Colorado or California. In other states I've been involved in, the first plants that go in are illegal, and that's how the whole state starts their program, medical or otherwise.

There were 13 written testimonies received from:

1) **Georgia Farris**, The $900.00 production application and licensing fees are not reasonable for small farmers in New Mexico...gave suggestions on pricing structure, also questioned the research process.

2) **Victor Savedra**, The $900.00 production application and licensing fees are steep. He has several small properties separated from each other and presents a resolution that would be a broader definition of what constitutes separate locations. If the farm/ranch belongs to one owner and is within a pre-determined radius, he/she should not pay separate licensing fees.

3) **Robin Pfohl**, Is ill and uses CBD drops. Wants to buy locally

4) **Jack Rose**, Will there be a waiver for R&D activities which lead to plants containing elevated THC levels between 0.3% and 1%? Will NMDA have Approved Certified Seed? If NMDA will have Approved Certified Seed, will inspection and Sampling fees be waived if no inconsistencies or violations are identified? Will there be prohibition of male cannabis plants? If there is prohibition of male cannabis plants, will there be reasonable regulations regarding the production of male plants for R&D, or Certified Seed production?

5) **Laura Hernandez**, Questions on definitions, Applicant acknowledgements, Fees, Non-compliant varieties, Violations, and other concerns which include has there been discussions with the law enforcement side?

6) **Debbie Hughes**, Supports Hemp rule. Supports the ability for New Mexico Agriculture producers to be able to grow the Hemp plants and hope that it is a very viable product for the state.

7) **Doug Fine**, License Year should start January 1 instead of March 1. Note: I think it is more fair to specify the inspection and sampling requirements, are at least mention a maximum (which should be one for both sampling and inspection, but two could be acceptable). In general, a harvest certificate a privacy violation – if the crop tests under .3% it’s a crop, it’s hemp, it’s an agricultural product, and no one’s business that the farmer does with the crop. I don’t work in any other state that requires this. A few had this in draft regs, but it was always removed for the reason stated here. And a second note on this regarding the variety-specific certificate: I get that this is just for commercial crops, and I very much appreciate the fact that under these regs farmers can cultivate any variety of hemp that meets federal hemp definitions. But I strongly believe that should
extend to commercial crops for a period of at least three years and ideally five years. We need to give entrepreneurial farmers options for obtaining excellent cultivars and seeing how they grow in New Mexico before we start what is essentially a de facto department commercial certification process. Bottom line, the states that allow farmers to cultivate any variety they want out of the gate are succeeding. So I’m glad to see that is the case with our regs. But I think it should include commercial crops for a window—this is a new industry, which tons of new genetics. Many of them superior to that which the rest of the world experiences—I have requests for my own and my partner’s genetics from all over the world. I’m eager to get them approved by the department, but also would love some breathing room to see what grows best in southern New Mexico, do some cross breeding, etc. Plus, I want to bring my existing farm-to-table hemp product, called Hemp in Hemp, to New Mexico to help develop the economy here. And I use my proprietary cultivar Samurai in that entrepreneurial project.

8) **Coronado Soil and Water Conservation District**, Missing from the draft bill are incentives for a grower to enroll into a program and pay the fees in the first place. There are no specific research goals or objectives for the draft rule as written. There are no specific research goals and objectives for the draft rule as written. The draft rule does not represent a complete pilot hemp program for New Mexico.

9) **Lonnie Spires**, American Association for Laboratory Accreditation (A2LA). Section: 21.17.XX.11 Inspection/Sampling, a. We propose to add the word “testing” to the title of this section, to instead read “Inspection/Sampling/Testing”. Our rationale is that this section of the draft language currently references “department-approved” laboratories who will be approved to perform testing of the THC content. Testing is therefore related to the processes outlined in this section and should be referenced within the title. The draft language of this section does not currently qualify the “department approved laboratory”. We propose to add the following text at the end of paragraph two within this section in order to clarify the qualification criteria for department-approved laboratories, as well as qualification criteria for the third-party organizations who would accredit such laboratories:

“Department-approved laboratories that perform testing of Hemp and Cannabis-derived products for public safety must be licensed by the State and accredited to the ISO/IEC 17025 standard; the assessment and accreditation process must be carried out by a nonprofit accreditation body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement operating in conformance with the ISO/IEC 17011 standard.”

10) **Steve Chavez**, What assurances and restrictions are going to be made to guarantee that hemp grown in New Mexico is non-GMO and pesticide free? As a survivor of pancreatic cancer I am very concerned about the quality and cleanliness of the food and products I put into my body. As a licensed medical personal producer I am interested in applying for a commercial permit to grow hemp. Does this effect my medical license? How?

11) **William Ronald Moore**, I want to make the point that there should be a way for really small farmers to enter the marketplace at an affordable rate.

12) **Matt Kennicott**, Co-Founder and Chief Communications Officer, Glo CBD, More specifically to the language in the proposed rule, there are several items we would like to point out for the record.
1. There is mention of destroying cannabis plants covered under the proposed rule. It is not clear why or under what circumstances plants would need to be destroyed. What happens if a grower uses all of their plants for different products? Please clarify.

2. Under 21.17.XX.9, page 4, second paragraph says that the grower must use a laboratory test approved by the department to determine if strains that are to be grown meet the definition of hemp. Does this apply during licensing? Who pays for the testing? What is the time frame for the department to make a determination if the strain meets standards? What are the standards?

3. Section 21.17.XX.10, page four states that there will be additional fees for inspections of continuous and annual applications and licenses. Are there any other agricultural sectors that must submit to additional fees for inspections? If not, why is the hemp industry being singled out? Many, if not most, of these farmers will be small businesses. Placing a fee burden on these small businesses, on top of other Federal, State and local fees, would be onerous, and stifle the growth and development of small business may discourage many from even starting a business in the first place. We would encourage the department to find other streams of funding, rather than further burdening small businesses with more fees. We should be encouraging the growth of the private sector with a more favorable regulatory and fiscal scheme.

4. Further language in the same section as stated above mentions that a licensee shall be financially responsible for additional staff time with regards to noncompliance or additional sampling requirements or other expenditures that may be needed with regards to compliance. This is another unnecessary fiscal burden on potential producers. Why does a licensee pay an application fee if the fee is not going to cover some of the expenses for the department related to the act? Enforcement should be a permanent, base expenditure in the budget and should be fully borne by the department. We would encourage the department to seek a funding stream other than those that must be collected from producers and placing further financial burdens on small businesses.

5. Section 21.17.XX.11, last sentence, states that each licensee shall be financially responsible for any costs that are associated with sampling of cannabis samples. How often will the testing be required? Are any other agricultural sectors subject to similar provisions? If not, why is the hemp industry being singled out? This is also a cost that should be borne by the department.

6. How does the Inspection of Public Records Act (IPRA) apply to licenses in cases covered by the hemp rule? Is the licensee list a public document? Are applications for licenses considered public documents?

7. Is there a limit on the number of licenses that will be approved? Is there any delineation between existing medical crops and industrial hemp crops?

13) Dave Romero

- Applicant should be limited to New Mexico residents or Corporations with majority control by New Mexico residents. New Mexico residents or corporations should receive 25% local preference in all matters regarding Hemp regulation.
- Law Enforcement – County and state law enforcement should be formally informed that the applicant legally can grow and produce hemp so that law enforcement does not mistakenly arrest and destroy legal hemp production.
- Licensee – Should be limited to New Mexico residents. If out of state licensees are allowed then they should pay three times the determined amount for fees and expenses. Seventy five percent of those fees and expenses should be placed in an enterprise fund which is to be used to educate the public about the difference between hemp and Marijuana.
- Personal Production – The amount should be increased from 20 plants per location to 60 plants per location. The state should encourage the growing of hemp for the small family farmer.
- Annual Production Application and License – “Properly completed application” Time of receipt should be measured from the date of initial submission. However, the term “incomplete or improperly completed” should read with deference in favor of the New Mexico resident, corporation or instate entity. Once their application is found to be “complete” then his time should be measured from the date of original submission.
- Concern is the terms “incomplete or improperly completed” are vague and give too much discretion to the regulatory agency to strictly rule against the applicant. Many New Mexico farmers or small businessmen do not have the money to employ an attorney or professional to complete the application and deference should be given to those who pro se complete the form.
- Out of state applicants or foreign corporations with non-New Mexico control, must employ a New Mexico lawyer to complete and submit the applications.
- Fees: In the first year, local corporations and local individuals should pay 50% of the amounts on the fee list. The investment is risky and many smaller local growers must be encouraged to change to growing hemp instead of other regulated products.
- All fees should be increased by 300% over the fee list, for out of state applicants, be they entities, individuals or corporations. “Local Preference” is a standard City, County and State practice. (Hunting Example).
- Violations/ Penalties – The applicant has a procedural and substantive right to Due Process in the application submission, application acceptance, license, and termination or denial of license by a District Court.

It is my recommendation that you present the Newly Proposed 21.17.XX NMAC Hemp Production Rule to the New Mexico State University Board of Regents for their adoption of the rule with the following changes.

1) Section 21.17.XX.12. The last sentence of this states: "Locations growing cannabis varieties greater than one percent THC may be reported to an appropriate law enforcement agency." I suggest that one sentence be struck from the non-compliant varieties.

21.17.XX.12 NONCOMPLIANT VARIETIES: A sample test result containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight
basis shall constitute evidence that at least one cannabis plant or part of a plant in a location does not meet the THC standards for hemp. Cannabis varieties exhibiting THC levels greater than three-tenths of one percent (0.3 percent) shall be destroyed by a date determined by the department. Locations growing cannabis varieties greater than one percent (1.0 percent) THC may be reported to an appropriate law enforcement agency. Licensee may be provided the opportunity to resample and retest, pursuant to department policy.
[21.17 NMAC-]

2) Personal Use Production Application and License:

There were several comments that questioned the “production of hemp at a single location, annual or continuous, that shall not exceed 20 plants per location” to be too restrictive. I suggest this option to be removed from the rule.

3) Inspection/Sampling,

Propose to add the word “Testing” to the title of this section, to instead read inspection/Sampling/Testing”. Rationale is that this section of the draft language currently references “department-approved” laboratories who will be approved to perform testing of the THC content. Testing is therefore related to the processes outlined in this section and should be referenced within the title.

21.17.XX.11 INSPECTION/SAMPLING/Testing: All registered locations are subject to inspections by department staff or authorized agent to verify application information and compliance with rule requirements.

4) Law Enforcement – County and state law enforcement should be formally informed that the applicant legally can grow and produce hemp so that law enforcement does not mistakenly arrest and destroy legal hemp production.

5) Since this is a new program, I suggest a FAQ section be made available via the department's website. Some questions may include:

1) Destroying cannabis plants covered under the proposed rule. It is not clear why or under what circumstances plants would need to be destroyed. What happens if a grower uses all of their plants for different products? Please clarify.
2) Question regarding the research and development side of the bill. Isn't that part of it? How does that fall into play?
3) Is there any difference in your application between a research development application or a regular production application?
4) On the destruction of the crop for that year, at the end of the 240 days, you've got fire and disking. Have you talked about animal grazing?
5) When we were talking about destruction of crop, is composting or burning the crop composting considered a viable option for destroying that crop?
6) Do you guys have any like additional information to what kind of testing you want done?
7) How many labs are in New Mexico right now that can provide accommodation
8) How many and where were the testing laboratories located.
9) Are you attempting to authorize it as an animal feed for the State of New Mexico
10) Will the NMDA have requirements for certified seed or genetics or clones, or will there be any kind of like list of seed sources for growers.
11) Will there be a cap on the number of licenses that are issued?
12) Question regarding security, other producers of medical have to establish a very significant amount of security. Is that going to be a requirement as well?
13) Is hemp seed currently under the Controlled Substances Act, so how are people going to get the seed or the clones to get started for business?
14) Will the NMDA put restrictions on how close a farmer may live in proximity to a school or a church?
15) How is production on tribal lands going to be addressed?
16) After a farmer does get their crop or their product done, have you guys even thought about addressing the transportation issue of how would you get that finalized product out of the state, or even with the beginning process, how you're going to get your clones and seeds into the state?
17) The seeds, the acquisition of seeds, are we going to be required to buy certified seeds by a certain source, or is it whatever we want to acquire as long as it's below the .3 percent?
18) With the test, which may be also a policy thing, the amount of tests.
19) Does a lab have to be within the boundary of New Mexico, or can a lab, such as Lubbock, Texas
20) Where do you get the original seed to plant?
21) The $900.00 production application and licensing fees are not reasonable for small farmers in New Mexico

Respectfully,

Joe E. Gomez
Hearing Officer
NOTICE OF RULEMAKING HEARINGS

The New Mexico Department of Agriculture (NMDA) has scheduled rule hearings for:

Friday, October 12 in Las Cruces at 2 p.m.
NMDA, 3190 S. Espina Las Cruces, NM 88001

Monday, October 15 in Espanola at 1 p.m.
Espanola Library Conference Room, 313 N Paseo De Onate, Española, NM 87532

Monday, October 15 in Albuquerque at 6 p.m.
Los Griegos Center, 1231 Candelaria Rd NW Albuquerque, NM 87107

Tuesday, October 16 in Portales at 11 a.m.
Portales Chamber of Commerce (Basement Classroom), 100 S. Ave A Portales, NM 88130

Tuesday, October 16 in Carlsbad at 6 p.m.
River Walk Recreation Center – Power House Room 400 River walk Drive Carlsbad NM

Formal hearings will be held to receive public input on the newly developed rule 21.17.XX NMAC – Hemp Cultivation Rule.

Purpose:
To develop a rule to accompany statutory language which allows the department of agriculture to administer an industrial hemp program.

The 2014 farm bill included the first provision of federal law which allowed for hemp production and research. The farm bill allowed state departments of agriculture and institutions of higher education to pursue production in states where hemp could be legally grown.

During the 2017 legislative session, Senate Bill 6 was passed and chaptered into law. SB 6 granted NMDA the authority to develop an industrial hemp program and promulgate rules for the administration of that program which would complement federal law. State statute also grants persons and institutions of higher education the ability to apply for an industrial hemp production license through the NMDA. The proposed rule establishes licensure requirements, fee caps, inspection/sampling requirements, and testing processes to ensure uniformity to the definition of hemp.

Rule Summary: To establish a rule for the administration of the newly created hemp program at the New Mexico Department of Agriculture. The proposed rule establishes licensure requirements, fee caps, inspection/sampling requirements, and testing processes to ensure uniformity to the definition of hemp.

Legal Authority Authorizing the Rule:
Granted to the board of regents of New Mexico State University under the Industrial Hemp Research and Development Program Act, Chapter 76, Article 24, Section 1, NMSA 1978 Compilation.

Interested individuals may provide comments regarding the proposed rulemaking actions at the rule hearing and/or submit written comments via email at comments@nmda.nmsu.edu. Written comments must be received no later than 5:00 p.m. on October 16, 2018. Individuals are encouraged to submit written comments as soon as possible. Persons offering written comments at the meeting must have two copies for the hearing officer.
The full text of the proposed rules is available on the webpage at www.nmda.nmsu.edu and available at the New Mexico Department of Agriculture, located at 3190 S. Espina, Las Cruces, NM 88003.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact NMDA at (575) 646-3702 at least one week prior to the meeting or as soon as possible.
21.17.XX.1 ISSUING AGENCY: New Mexico state university, New Mexico department of agriculture, MSC 3189, Box 30005, Las Cruces, New Mexico 88003, Telephone No. (575) 646-3007.

21.17.XX.2 SCOPE: All individuals, businesses, agencies, institutions, or other entities engaged in the production of hemp in New Mexico.

21.17.XX.3 STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Industrial Hemp Research and Development Program Act, Chapter 76, Article 24, Section 2, NMSA 1978 Compilation.


21.17.XX.5 DURATION: Permanent.

21.17.XX.6 OBJECTIVE: Establishes rules regulating the licensing of growers producing hemp in New Mexico and the establishment of testing processes to ensure uniformity to the definition of hemp.

21.17.XX.7 DEFINITIONS:

1. “Annual Production” means production of a single crop that is destroyed within two hundred and forty days (240 days) of planting.
2. “Applicant” means individuals, businesses, agencies, institutions, or other entities that have submitted an application to the department.
3. “Application” means documents submitted to the department by an applicant as part of the process for obtaining a hemp production license for a single location.
4. “Business Day” means normal business hours and days as defined by New Mexico State University policy.
5. “Cannabis” means a plant of the genus cannabis.
6. “Continuous Production” means production of hemp throughout the year in a registered location.
7. “Crop” means planting or one or more hemp varieties within a two week (2 week) contiguous period within a location.
8. “Department” means the New Mexico department of agriculture.
9. “Destroy(ed)” meaning method approved by the department to ensure non-viability of a cannabis plant. Methods may include shredding, diskng, burning, or other methods as prescribed by the secretary.
10. “Director” means the director/secretary of New Mexico department of agriculture or designee.
11. “Hemp” means the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.
12. “Law Enforcement” means federal, state, and local agencies responsible for maintaining public order and enforcing the law.
13. “License” means document issued to an applicant by the department authorizing a licensee to produce hemp at a specific location.
14. “Licensee” means individuals, businesses, agencies, institutions, or other entities that possess a valid hemp production license.
15. “License Period” The license period shall begin at date of license issuance and terminate either 240 days after date of issuance or crop destruction, whichever occurs first, for hemp grown under an annual production license.
16. “License Year” The license year shall be a 12-month period from February 1 to January 31 for a continuous production license.
17. “Location” means contiguous area for which a licensee holds a valid hemp production license, (i.e., contiguous farmland, contiguous greenhouse operation) that is owned by, or leased from an entity.
18. “Personal Production” means production of hemp at a single location, annual or continuous, that shall not exceed 20 plants per location. Hemp produced under a personal production license shall not be used for commercial purposes.
19. “Secretary” means director/secretary of agriculture for New Mexico.
20. “THC” means delta-9 tetrahydrocannabinol.
21. “Variety” to be synonymous with cultivar or strain.

[21.17 NMAC-]

21.17.XX.7 APPLICATION/LICENSE:

Annual Production Application and License:

Applicants cultivating hemp for annual production shall apply for an annual hemp production license no less than 25 business days prior to planting of each crop at each location. The effective date of application for documents submitted in person shall be the actual calendar date the applicant presents a properly completed application. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. A separate application and application fee are required prior to planting of each new crop at each location. Any viable plants remaining after the expiration of a license shall be declared for inclusion in a subsequent application. An annual hemp production license is valid for a license period for specified varieties grown annually at a specified location.
Continuous Production Application and License:

Applications for a new location shall be made 25 business days prior to planting or prior to other propagative activities. Applicants producing hemp in continuous production shall apply for a renewal of their continuous hemp production license prior to February 1 of each year as defined by department policy. A separate application and application fee are required for each licensed location. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. The effective date of a renewal application received by the department shall be the date postmarked on a properly completed application received by mail. The effective date of the application for renewal application submitted in person shall be the actual calendar date the applicant presents a properly completed application. A continuous hemp production license is valid for a license year for specified varieties grown continuously at a specified location.

[21.17 NMAC-]

Personal Use Production Application and License:

Applications for a new location shall be made 25 business days prior to planting or prior to other propagative activities. Applicants producing hemp for personal use shall apply for a renewal of their personal hemp production license prior to February 1 of each year as defined by department policy. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. The effective date of a renewal application received by the department shall be the date postmarked on a properly completed application received by mail. The effective date of renewal application for documents submitted in person shall be the actual calendar date the applicant presents a properly completed application. Personal hemp production license is valid for a license year for specified varieties grown continuously or annually at a specified location.

21.17.XX.8 APPLICATION INFORMATION: Each applicant for a hemp production license, annual, continuous, or personal, shall submit a signed, complete, accurate, and legible application form provided by the department including fees.

[21.17 NMAC-]

21.17.XX.9 APPLICANT ACKNOWLEDGMENTS: By submitting an application, the applicant acknowledges and agrees to:

1. Submit all required documents by due dates specified by the department.
2. Not assigned or transferred to another business, location, individual, or other entity the license.
3. Destroy cannabis plants covered under this rule and found not to be in compliant with requirements set forth in this rule or department policy.
4. Not initiate harvest, for commercial purposes, without a department approved variety-specific laboratory analysis demonstrating cannabis varieties grown at that location meet the definition of hemp.
5. Be in compliance with state and federal regulation regarding the production of hemp.
6. Remit payment to the department for fees associated with enforcement of this rule within 20 calendar days of receipt of notice. Each subsequent notification resulting in a failure to remit payment will be considered a separate violation.

[21.17 NMAC-]

21.17.XX.10 **FEES:** Fees associated with the application for a license shall include but **not exceed** the following stated amounts for each license:

1. Annual production application and licensing, excluding personal production: $900 per location
2. Continuous production application and licensing, excluding personal production: $900 per location
3. $100 late fee for continuous renewal applications received after February 1 per location
4. Additional area inspection fee for continuous and annual application and license:
5. Outdoor production: $6.00 per acre; minimum $6.00
6. Indoor production: $0.75 per 1,000 square feet; minimum $5.00
7. D. Personal production application and license: $25 per location:
8. $15 late fee applicable for renewals received after February 1 per location

Stated fees for a registered location are inclusive of routine inspections and sampling visits as defined by department policy. Licensee shall be financially responsible for additional staff time and or fees directed at noncompliance issues or additional sampling requirements or other expenditures as required by the department and related to compliance requirements found in this rule. Reimbursable staff time or fees may be associated with mileage, per diem, and staff hours as allowed by department policy or rule.

[21.17 NMAC-]

21.17.XX.11 **INSPECTION/SAMPLING:** All registered locations are subject to inspections by department staff or authorized agent to verify application information and compliance with rule requirements.

All cannabis samples collected in support of obtaining a THC determination, shall be collected by the licensee at the direction and supervision of department staff. Licensee shall be responsible for delivery of cannabis samples to a department-approved laboratory within ten (10) calendar days of sampling, to determine THC content using quantification methods approved by the department. It is the responsibility of each licensee to ensure THC sample result report is forwarded to the department by the approved laboratory within five working days after completion of analysis. Licensee shall be financially responsible for costs associated with delivery and testing of samples. Sampling methodology shall be defined by the department.

[21.17 NMAC-]
21.17.XX.12 **NONCOMPLIANT VARIETIES:** A sample test result containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis shall constitute evidence that at least one cannabis plant or part of a plant in a location does not meet the THC standards for hemp. Cannabis varieties exhibiting THC levels greater than three-tenths of one percent (0.3 percent) shall be destroyed by a date determined by the department. Locations growing cannabis varieties greater than one percent (1.0 percent) THC may be reported to an appropriate law enforcement agency.

Licensee may be provided the opportunity to resample and retest, pursuant to department policy.

[21.17 NMAC-]

21.17.XX.13 **VIOLATIONS/PENALTIES:** It is a violation of state law to produce hemp without a valid license. Individuals, businesses, agencies, institutions, or other entities responsible for locations producing hemp, without a valid license will be provided 5 business days, after receipt of notification by the department, to submit a valid application or destroy the crop/plant. The department may summarily suspend or deny license for a period of up to five years for violations of this rule.

[21.17 NMAC-]

21.17.XX.14 **EXEMPTIONS:**

The secretary shall have authority to review and grant exceptions to rule requirements and rule violations.

21.17.XX.15 **RECORD RETENTION:**

The department shall retain applicant records including legal descriptions of hemp production locations for a period of no less than three years.

[21.17 NMAC-]

**HISTORY OF 21.17.XX NMAC:** [RESERVED]
TITLE 21  
AGRICULTURE AND RANCHING  
CHAPTER 17  
PEST, DISEASE, AND WEED CONTROL  
PART XX  
HEMP PRODUCTION RULE

21.17.XX.1  ISSUING AGENCY: New Mexico state university, New Mexico department of agriculture, MSC 3189, Box 30005, Las Cruces, New Mexico 88003, Telephone No. (575) 646-3007.

21.17.XX.2  SCOPE: All individuals, businesses, agencies, institutions, or other entities engaged in the production of hemp in New Mexico.

21.17.XX.3  STATUTORY AUTHORITY: Granted to the board of regents of New Mexico state university under the Industrial Hemp Research and Development Program Act, Chapter 76, Article 24, Section 2, NMSA 1978 Compilation.


21.17.XX.5  DURATION: Permanent.

21.17.XX.6  OBJECTIVE: Establishes rules regulating the licensing of growers producing hemp in New Mexico and the establishment of testing processes to ensure uniformity to the definition of hemp.

21.17.XX.7  DEFINITIONS:

1. “Annual Production” means production of a single crop that is destroyed within two hundred and forty days (240 days) of planting.
2. “Applicant” means individuals, businesses, agencies, institutions, or other entities that have submitted an application to the department.
3. “Application(s)” means documents submitted to the department by an applicant as part of the process for obtaining a hemp production license for a single location.
4. “Business Day” means normal business hours and days as defined by New Mexico State University policy.
5. “Cannabis” means a plant of the genus cannabis.
6. “Continuous Production” means production of hemp throughout the year in a registered location.
7. “Crop” means planting or one or more hemp varieties within a two week (2 week) contiguous period within a location.
8. “Department” means the New Mexico department of agriculture.
9. “Destroy(ed)” meaning method approved by the department to ensure non-viability of a cannabis plant. Methods may include shredding, disking, burning, or other methods as prescribed by the secretary.

10. “Director” means the director/secretary of New Mexico department of agriculture or designee.

11. “Hemp” means the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.

12. “Law Enforcement” means federal, state, and local agencies responsible for maintaining public order and enforcing the law.

13. “License” means document issued to an applicant by the department authorizing a licensee to produce hemp at a specific location.

14. “Licensee” means individuals, businesses, agencies, institutions, or other entities that possess a valid hemp production license.

15. “License Period” The license period shall begin at date of license issuance and terminate either 240 days after date of issuance or crop destruction, whichever occurs first, for hemp grown under an annual production license.

16. “License Year” The license year shall be a 12-month period from February 1 to January 31 for a continuous production license.

17. “Location” means contiguous area for which a licensee holds a valid hemp production license, (i.e., contiguous farmland, contiguous greenhouse operation) that is owned by, or leased from an entity.

18. “Personal Production” means production of hemp at a single location, annual or continuous, that shall not exceed 20 plants per location. Hemp produced under a personal production license shall not be used for commercial purposes.

19. “Secretary” means director/secretary of agriculture for New Mexico.

20. “THC” means delta-9 tetrahydrocannabinol.

21. “Variety” to be synonymous with cultivar or strain.

21.17.XX.7 APPLICATION/LICENSE:

Annual Production Application and License:

Applicants cultivating hemp for annual production shall apply for an annual hemp production license no less than 25 business days prior to planting of each crop at each location. The effective date of application for documents submitted in person shall be the actual calendar date the applicant presents a properly completed application. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. A separate application and application fee are required prior to planting of each new crop at each location. Any viable plants remaining after the expiration of a license shall be declared for inclusion in a subsequent application. An annual hemp production license is valid for a license period for specified varieties grown annually at a specified location.

Commented [LBE2]: Written comment, William Moore—supportive of personal license due to financial constraints; Ms. Kathleen Grody (Espanola 13: 23) limit of 20 plants for personal production appears not to authorize for use as a feed for personal animals; Mr. Romero (Albuquerque 12: 9) increase personal production from 20 to 60 plants to encourage small farm production; Mr. Senke (Albuquerque 34:19-25) increase personal beyond 20 plants, no commercial therefore no impact on commercial, also restrictive number if used for improving soil; Mr. Potales (Las Cruces, points out that he can purchase three personal use licenses for one location to allow for production of 75 plants; Mr. Peterson (Carlsbad 6: 22) questioned a limit on personal license but not on commercial; Development of a personal license to cover all uses of personal production is complicated and confusing to the public. Additionally, cost to inspect and process documents for dept. is same for 20 plants as 1000. Recommend simplifying categories to remaining two (continuous and personal).

Commented [LBE3]: Housekeeping edits, addressed in definitions
Continuous Production Application and License:

Applications for a new continuous production location shall be made 25 business days prior to planting or prior to other propagative activities. Applicants producing hemp in continuous production shall apply for a renewal of their continuous hemp production license prior to February 1 of each year as defined by department policy. A separate application and application fee are required for each licensed location. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. The effective date of a renewal application received by the department shall be the date postmarked on a properly completed application received by mail. The effective date of application for renewal application submitted in person shall be the actual calendar date the applicant presents a properly completed application. A continuous hemp production license is valid for a license year for specified varieties grown continuously at a specified location.

Personal Use Production Application and License:

Applications for a new location shall be made 25 business days prior to planting or prior to other propagative activities. Applicants producing hemp for personal use shall apply for a renewal of their personal hemp production license prior to February 1 of each year as defined by department policy. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. The effective date of a renewal application received by the department shall be the date postmarked on a properly completed application received by mail. The effective date of renewal application for documents submitted in person shall be the actual calendar date the applicant presents a properly completed application. Personal hemp production license is valid for a license year for specified varieties grown continuously or annually at a specified location.

21.17 XX.8  APPLICATION INFORMATION: Each applicant for a hemp production license, annual, continuous, or personal, shall submit a signed, complete, accurate, and legible application form provided by the department including fees.

21.17 XX.9  APPLICANT ACKNOWLEDGMENTS: By submitting an application, the applicant acknowledges and agrees to:

1. Submit all required documents by due dates specified by the department.
2. Not assign or transfer to another business, location, individual, or other entity the license.
3. Destroy cannabis plants covered under this rule and found not to be in compliant with requirements set forth in this rule or department policy.
4. Not initiate harvest, for commercial purposes, sale, transport, process, or utilize a cannabis variety in any manner without a valid document issued by the department approved variety specific laboratory analysis demonstrating cannabis varieties grown at that location meet the definition of hemp.
5. Be in compliance with state and federal regulation regarding the production of hemp.
4. **requirements set forth in regulations or department policies.** Remit payment to the department for fees associated with enforcement of this rule within 20 calendar days of receipt of notice. Each subsequent notification resulting in a failure to remit payment will be considered a separate violation.

6.5 **Other acknowledgements may be contained in policy as required by the department.**

[21.17 NMAC-]

21.17.XX.10 **FEES:** Fees associated with the application for a license shall include but not exceed the following stated amounts for each license:

1. **Annual production application and licensing, excluding personal production:** $900 per location
2. **Continuous production application and licensing, excluding personal production:** $900 per location
3. **Additional $100 late fee for continuous production license renewal application:** received after February 1 per location
4. **Additional area inspection fee for continuous and annual application and license:** per location:
   a. Outdoor production: $6.00 per acre; minimum $6.00
   b. Indoor production: $0.75 per 1,000 square feet; minimum $5.00

5. **Personal production application and license:** $25 per location:
   c. **Additional Cultivar Variety Fee:** $25 per additional cultivar/variety in excess of one variety

6. **$15 late fee applicable for renewals received after February 1 per location**

Stated fees for a registered location are inclusive of routine inspections and sampling visits as defined by department policy. Licensee shall be financially responsible for additional staff time and or fees directed at noncompliance issues, or additional sampling requirements, or other expenditures as required by the department and related to compliance requirements found in this rule- and department policy. Reimbursable staff time or fees may be associated with mileage, per diem, and staff hours, as allowed by department rule or policy.

[21.17 NMAC-]

21.17.XX.11 **INSPECTION/SAMPLING/TESTING:** All registered locations are subject to inspections by department staff or authorized agent, without prior notification, to verify application information and compliance with rule requirements.

Unless directed otherwise by the department, all cannabis samples collected in support of obtaining a THC determination, shall be collected by the licensee at the direction and supervision...
of department staff. Licensee shall be responsible for delivery of cannabis samples to a department-approved laboratory, within ten (10) calendar days of sampling, to determine THC content using quantification methods approved by the department. It is the responsibility of each licensee to ensure THC sample result report is forwarded to the department by the approved laboratory within five working days after completion of analysis. The department receives THC quantification results for each sample prior to transport, processing, or utilization of a cannabis variety in any manner. Licensee shall be financially responsible for costs associated with delivery and testing of samples. Sampling methodology shall be defined by the department in policy.

21.17.XX.12 NONCOMPLIANT VARIETIES: A sample test result containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent (.3 percent) on a dry weight basis (post decarboxylation) shall constitute evidence that at least one cannabis plant or part of a plant in a location does not meet the THC requirements standard definition for hemp. Cannabis varieties exhibiting THC levels greater than three-tenths of one percent (0.3 percent) shall be destroyed by a date determined by the department. Licensee is responsible for all costs related to crop destruction. Locations growing cannabis varieties greater than one percent (1.0 percent) THC may be reported to an appropriate law enforcement agency.

Licensee may be provided the opportunity to resample and retest, pursuant to department policy.

21.17.XX.13 VIOLATIONS/PENALTIES: It is a violation of state law to produce hemp without a valid hemp production license. Individuals, businesses, agencies, institutions, or other entities responsible for locations producing hemp, without a valid license will be provided five business days, after receipt of notification by the department, to submit a valid application or destroy the crop/plant.

The department may summarily suspend or deny license for a period of up to five years for three violations of this rule, or department policy within five years.

21.17.XX.14 EXEMPTIONS:

The secretary shall have authority to review and grant exceptions to rule requirements and rule violations.

21.17.XX.15 RECORD RETENTION:

The department shall retain applicant records including legal descriptions of hemp production locations for a period of no less than three years and in compliance with state records retention
schedules.
[21.17 NMAC-]

HISTORY OF 21.17.XX NMAC: [RESERVED]
The Honorable Maggie Toulouse Oliver  
Secretary of State  
State of New Mexico  
Capitol Annex, Suite 300  
Santa Fe, New Mexico 87501

Dear Madam Secretary:

I hereby transmit the original and nine (9) copies of the following enrolled and engrossed documents for inclusion in the session laws of the Fifty-Third Legislature, First Session 2017 pursuant to the Court's order in State of New Mexico ex. rel. The New Mexico Legislative Council v The Honorable Susana Martinez, Governor of the State of New Mexico and The Honorable Maggie Toulouse Oliver, Secretary of State, D-101-CV-2017-01550:

SENATE BILL 6, as amended  
SENATE BILL 24  
SENATE BILL 64  
SENATE BILL 67  
SENATE EDUCATION COMMITTEE SUBSTITUTE FOR SENATE BILL 134  
SENATE CORPORATIONS & TRANSPORTATION COMMITTEE SUBSTITUTE FOR SENATE BILL 184, as amended  
SENATE BILL 222  
SENATE BILL 356

Respectfully submitted,

LENORE M. NARANJO  
Secretary of State, Chief Clerk

Received from the Senate:  
Ramona Moore  
Time: 11:02  
Date: 9/28, 2017
 Introduced by
 SENATOR CISCO McSORLEY
 SENATOR ELIZABETH "LIZ" STEFANICS

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE
AND THE WATER AND NATURAL RESOURCES COMMITTEE
CHAPTER 140

AN ACT
RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76
NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO
DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON
INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE
NEW MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 76 NMSA 1978 is
enacted to read:

"INDUSTRIAL HEMP RESEARCH--NEW MEXICO DEPARTMENT OF
AGRICULTURE.--

A. As used in this section, "industrial hemp"
means the plant Cannabis sativa L. and any part of the plant,
whether growing or not, containing a delta-9-
tetrahydrocannabinol concentration of no more than
three-tenths percent on a dry weight basis.

B. The intent of this section is to bring
New Mexico into compliance with federal law.

C. Notwithstanding any other provision of law to
the contrary, the New Mexico department of agriculture shall
issue licenses pursuant to rules enacted under Subsection D
of this section to grow industrial hemp for research and
development purposes, including agricultural, agronomic,
ecological, processing, sales and marketing research."
D. The director of the New Mexico department of agriculture shall adopt rules to establish and carry out the provisions of this section, including requirements for licensure, training of law enforcement personnel, inspection, recordkeeping, fees not to exceed program costs and compliance processes. An institution of higher education, person or business that plans to grow industrial hemp seed or industrial hemp fiber shall obtain a grower's license by submitting an application to the New Mexico department of agriculture pursuant to promulgated rules.

E. A person who holds a license issued pursuant to this section may grow industrial hemp for research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research or any other purpose allowed by federal regulation in law.

F. New Mexico state university shall establish a "New Mexico industrial hemp research and development fund". The fund consists of fees collected by the New Mexico department of agriculture for administration of the industrial hemp research and development program, donations, grants and income earned from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The New Mexico department of agriculture shall administer the fund, and money in the fund is subject to
appropriation by the legislature to the New Mexico department of agriculture to conduct related programs. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the New Mexico department of agriculture or the director's authorized representative."

SECTION 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. "board" means the board of pharmacy;

D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled
Substances Act or rules adopted there to;

   F. "counterfeit substance" means a controlled
   substance that bears the unauthorized trademark, trade name,
   imprint, number, device or other identifying mark or likeness
   of a manufacturer, distributor or dispenser other than the
   person who in fact manufactured, distributed or dispensed the
   controlled substance;

   G. "deliver" means the actual, constructive or
   attempted transfer from one person to another of a controlled
   substance or controlled substance analog, whether or not
   there is an agency relationship;

   H. "dispense" means to deliver a controlled
   substance to an ultimate user or research subject pursuant to
   the lawful order of a practitioner, including the
   administering, prescribing, packaging, labeling or
   compounding necessary to prepare the controlled substance for
   that delivery;

   I. "dispenser" means a practitioner who dispenses
   and includes hospitals, pharmacies and clinics where
   controlled substances are dispensed;

   J. "distribute" means to deliver other than by
   administering or dispensing a controlled substance or
   controlled substance analog;

   K. "drug" or "substance" means substances
   recognized as drugs in the official United States
pharmacopoeia, official homeopathic pharmacopoeia of the
United States or official national formulary or any
respective supplement to those publications. It does not
include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any
part of marijuana, whether growing or not, and every
compound, manufacture, salt, derivative, mixture or
preparation of such resins;

M. "manufacture" means the production,
preparation, compounding, conversion or processing of a
controlled substance or controlled substance analog by
extraction from substances of natural origin or independently
by means of chemical synthesis or by a combination of
extraction and chemical synthesis and includes any packaging
or repackaging of the substance or labeling or relabeling of
its container, except that this term does not include the
preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to
administering or dispensing a controlled substance in the
course of the practitioner's professional practice; or

(2) by a practitioner, or by the
practitioner's agent under the practitioner's supervision,
for the purpose of or as an incident to research, teaching or
chemical analysis and not for sale;

N. "marijuana" means all parts of the plant...
cannabis, including any and all varieties, species and
subspecies of the genus Cannabis, whether growing or not, the
seeds thereof and every compound, manufacture, salt,
derivative, mixture or preparation of the plant or its seeds.
It does not include the mature stalks of the plant, hashish,
tetrahydrocannabinols extracted or isolated from marijuana,
fiber produced from the stalks, oil or cake made from the
seeds of the plant, any other compound, manufacture, salt,
derivative, mixture or preparation of the mature stalks,
fiber, oil or cake, or the sterilized seed of the plant that
is incapable of germination; or the plant Cannabis sativa L.
and any part of the plant, whether growing or not, containing
a delta-9-tetrahydrocannabinol concentration of no more than
three-tenths percent on a dry weight basis;

0. "narcotic drug" means any of the following,
whether produced directly or indirectly by extraction from
substances of vegetable origin or independently by means of
chemical synthesis or by a combination of extraction and
chemical synthesis:

(1) opium and opiate and any salt, compound,
derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative
or preparation that is a chemical equivalent of any of the
substances referred to in Paragraph (1) of this subsection,
except the isoquinoline alkaloids of opium;
(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decccanized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified
nurse-midwife, prescribing psychologist, veterinarian, 
euthanasia technician, pharmacist, pharmacist clinician or 
other person licensed or certified to prescribe and 
administer drugs that are subject to the Controlled 
Substances Act;

S. "prescription" means an order given 
individually for the person for whom is prescribed a 
controlled substance, either directly from a licensed 
practitioner or the practitioner's agent to the pharmacist, 
including by means of electronic transmission, or indirectly 
by means of a written order signed by the prescriber, bearing 
the name and address of the prescriber, the prescriber's 
license classification, the name and address of the patient, 
the name and quantity of the drug prescribed, directions for 
use and the date of issue and in accordance with the 
Controlled Substances Act or rules adopted thereto;

T. "scientific investigator" means a person 
registered to conduct research with controlled substances in 
the course of the person's professional practice or research 
and includes analytical laboratories;

U. "ultimate user" means a person who lawfully 
possesses a controlled substance for the person's own use or 
for the use of a member of the person's household or for 
administering to an animal under the care, custody and 
control of the person or by a member of the person's
V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the
strength, effectiveness or purity of controlled substances or
controlled substance analogs;

(5) scales or balances used, intended for
use or designed for use in weighing or measuring controlled
substances or controlled substance analogs;

(6) diluents and adulterants, such as
quinine hydrochloride, mannitol, mannite dextrose and
lactose, used, intended for use or designed for use in
cutting controlled substances or controlled substance
analogs;

(7) separation gins and sifters used,
intended for use or designed for use in removing twigs and
seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and
mixing devices used, intended for use or designed for use in
compounding controlled substances or controlled substance
analogs;

(9) capsules, balloons, envelopes and other
containers used, intended for use or designed for use in
packaging small quantities of controlled substances or
controlled substance analogs;

(10) containers and other objects used,
intended for use or designed for use in storing or concealing
controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other

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objects used, intended for use or designed for use in
parenterally injecting controlled substances or controlled
substance analogs into the human body;

(12) objects used, intended for use or
designed for use in ingesting, inhaling or otherwise
introducing marijuana, cocaine, hashish or hashish oil into
the human body, such as:

(a) metal, wooden, acrylic, glass,
stone, plastic or ceramic pipes, with or without screens,
permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used
to hold burning material, such as a marijuana cigarette, that
has become too small to hold in the hand;

(f) miniature cocaine spoons and
cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and
(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical
structure substantially similar to that of a controlled
substance in Schedule I, II, III, IV or V or that was
specifically designed to produce effects substantially
similar to that of controlled substances in Schedule I, II,
III, IV or V. Examples of chemical classes in which
controlled substance analogs are found include the following:
   (1) phenethylamines;
   (2) N-substituted piperidines;
   (3) morphinans;
   (4) ecgonines;
   (5) quinazolinones;
   (6) substituted indoles; and
   (7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled
substance analog" are those substances that are generally
recognized as safe and effective within the meaning of the
Federal Food, Drug, and Cosmetic Act or have been
manufactured, distributed or possessed in conformance with
the provisions of an approved new drug application or an
exemption for investigational use within the meaning of
Section 505 of the Federal Food, Drug, and Cosmetic Act;

X. "human consumption" includes application,
injection, inhalation, ingestion or any other manner of
introduction;

Y. "drug-free school zone" means a public school,
parochial school or private school or property that is used
for a public, parochial or private school purpose and the
area within one thousand feet of the school property line,
but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means
a professional relationship, as defined by the practitioner's
licensing board, between the practitioner and the patient."

SECTION 3. Section 30-31-6 NMSA 1978 (being Laws 1972,
Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled
substances are included in Schedule I:

A. any of the following opiates, including their
isomers, esters, ethers, salts, and salts of isomers, esters
and ethers, unless specifically exempted, whenever the
existence of these isomers, esters, ethers and salts is
possible within the specific chemical designation:

(1) acetylmethadon;
(2) allylprodine;
(3) alphacetylmethadon;
(4) alphameprodine;
(5) alphamethadon;
(6) benzethidine;
(7) betacetylmethadon;
(8) betameprodine;
(9) betamethadon;
(10) betaprodine;
(11) clonitazene;
(12) dextromoramide;
(13) dextrorphan;
(14) diampromide;
(15) diethylthiambutene;
(16) dimenoxadol;
(17) dimepheptanol;
(18) dimethylthiambutene;
(19) dioxaphetyl butyrate;
(20) dipipanone;
(21) ethylmethylthiambutene;
(22) etonitazene;
(23) etoxeridine;
(24) furethidine;
(25) hydroxypethidine;
(26) ketobemidone;
(27) levomoramide;
(28) levophenacylmorphan;
(29) morpheridine;
(30) noracymethadol;
(31) norlevorphanol;
(32) normethadone;
(33) norpipananone;
(34) phenadoxone;
(35) phenampromide;
(36) phenomorphan;
(37) phenoperidine;
(38) piritramide;
(39) proheptazine;
(40) properidine;
(41) racemoramide; and
(42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) acetorphine;
(2) acetyldihydrocodeine;
(3) benzylmorphine;
(4) codeine methylbromide;
(5) codeine-N-oxide;
(6) cyprenorphine;
(7) desomorphine;
(8) dihydromorphine;
(9) etorphine;
(10) heroin;
(11) hydromorphinol;
(12) methyldesorphine;
(13) methyldihydromorphine;
(14) morphine methylbromide;
(15) morphine methylsulfonate;
(16) morphine-N-oxide;
(17) myrophine;
(18) nicocodeine;
(19) nicomorphine;
(20) normorphine;
(21) pholcodine; and
(22) thebacon;

C. any material, compound, mixture or preparation
that contains any quantity of the following hallucinogenic
substances, their salts, isomers and salts of isomers, unless
specifically exempted, whenever the existence of these salts,
isomers and salts of isomers is possible within the specific
chemical designation:
(1) 3,4-methylenedioxy amphetamine;
(2) 5-methoxy-3,4-methylenedioxy
amphetamine;
(3) 3,4,5-trimethoxy amphetamine;
(4) bufotenine;
(5) diethyltryptamine;
(6) dimethyltryptamine;
(7) 4-methyl-2,5-dimethoxy amphetamine;
(8) ibogaine;
(9) lysergic acid diethylamide;
(10) marijuana;
(11) mescaline;
(12) peyote, except as otherwise provided in
the Controlled Substances Act;
(13) N-ethyl-3-piperidyl benzilate;
(14) N-methyl-3-piperidyl benzilate;
(15) psilocybin;
(16) psilocyn;
(17) tetrahydrocannabinols;
(18) hashish;
(19) synthetic cannabinoids, including:
   (a) 1-[2-(4-(morpholinyl)ethyl]-3-(1-
       naphthoyl)indole;
   (b) 1-butyl-3-(1-naphthoyl)indole;
   (c) 1-hexyl-3-(1-naphthoyl)indole;
   (d) 1-pentyl-3-(1-naphthoyl)indole;
   (e) 1-pentyl-3-(2-methoxyphenylacetyl)
   indole;
   (f) cannabicycloclohexanol (CP 47, 497 and
   homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
   -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
   1-dimethloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
   (g) 6aR,10aR)-9-(hydroxymethyl)
   -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,
10a-tetrahydrobenzo[c]chromen-1-ol;
   (h) dexanabinol, (6αS,10αS)
-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)
-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;
   (i) 1-pentyl-3-(4-chloro naphthoyl)
   indole;
   (j) (2-methyl-1-propyl-1H-indol-3-yl)
-1-naphthalenyl-methanone; and
   (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;
   (20) 3,4-methylenedioxyethylmethacathinone;
(21) 3,4-methylenedioxypropylmethacathinone;
(22) 4-methylmethacathinone;
(23) 4-methoxymethacathinone;
(24) 3-fluoromethacathinone; and
(25) 4-fluoromethacathinone;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana,
tetrahydrocannabinols or chemical derivatives of
tetrahydrocannabinol as Schedule I controlled substances does
not apply to:

(1) cultivation of industrial hemp by
qualified entities pursuant to rules adopted by the
New Mexico department of agriculture; or

(2) the use of marijuana,
tetrahydrocannabinols or chemical derivatives of
tetrahydrocannabinol by certified patients pursuant to the
Controlled Substances Therapeutic Research Act or by
qualified patients pursuant to the provisions of the Lynn and
Erin Compassionate Use Act; and

F. controlled substances added to Schedule I by
rule adopted by the board pursuant to Section 30-31-3 NMSA
1978."
HEMP COMMENTS
Received via comments@nmda.nmsu.edu

-----Original Message-----
From: Georgia Farris <georgia@cybermesa.com>
Sent: Sunday, September 23, 2018 10:44 AM
To: NMDA, Comments <Comments@nmda.nmsu.edu>
Cc: Georgia Cybermesa <georgia@cybermesa.com>
Subject: proposed hemp rule comments

Comments for the the Draft Hemp Rules August 28, 2018 version:

1. The $900 production application and licensing fees are not reasonable for small farmers in New Mexico. This draft ruling is biased toward large agribusiness corporations since only those large scale operations could make enough profit to afford the $900 annual fee.

I suggest that a much smaller amount be charged for production for small acreage in production. The price is only covering the application and license since the rule already says that the small or larger farms have to pay for the THC testing.

• Hemp Production less than 2 acres total - $100 dollars per year for 1 location for research or not for research. Hemp Production 2-5 acres total - $200 dollars per year for 1 location if it is for research, $400 per year for 1 location if not for research.
• Hemp Production greater than 5 acres - $900 per year location

In addition, the $900 annual fee is not reasonable considering that much of the early hemp production was proposed to be for research to be conducted. Small farmers are best suited to get more information about optimum watering, effects of alkaline soil, impact of sulfur and other nutrients, harvesting techniques, etc.

2. Where is the information about the process for having the Hemp grown for research purposes. What form is filled out to collaborate with one of the extension agents or NMSU sites? Is a research element not part of the Hemp production anymore?

I have only 1 acre of farming land in Santa Fe county and I want to test out growing Hemp to learn more about the optimal conditions and nutrients needed in New Mexico for the best quality hemp product (seed, bud, or stems). Also research would be done to evaluated different strains with almost no THC and techniques to harvest. This draft ruling will make that research and learning experience impossible. I think that the NM Legislators wanted small farmers to be able to test out growing hemp.

Thank you,
Georgia Farris
georgia@cybermesa.com 38 Eckards Way Espanola, NM  87532 505-747-8082

Victors295@gmail.com Submitted on Wed. 9/12/2018 4:07pm

There are several concerns I have after reading the Proposed Rules for hemp growing:

21.17.XX.10 (Fees) #2 - The listed fee for license is $900 per location. This seems like a very steep licensing fee for something that needs to be done annually.

   My farm/ranch is divided up over a few miles, I purchased my properties separately and made one farm. If I have to pay a fee for each location, I'm looking at $4500 a year for only 50 acres. In comparison, if another
farmer has 2k acres but not "seperate", then he/she will pay only $900 for farming a much larger area - this doesn't seem to make sense.

A resolution would be broader definition of what constitutes separate locations. If the farm/ranch belongs to one owner and is within a pre-determined radius, he/she should not pay separate licensing fees.

21.17.XX.11 (INSPECTION/SAMPLING)

I have no problem that the licensee pays for staff time, delivery and cost of testing of sample. I have a great concern that the State will decide what labs are to be used and licensee has no control over the cost of the testing(s) or distance from location of growth. Are there going to be set limits on charges for this?

As an overall outlook, I believe growing hemp crops are a great opportunity. However, start-up comes at a high cost. Seeds and clones are costly, and there are different equipment requirements than those used with the growth of oats, wheat or alfalfa which means more cost to farmers. Add to that, the cost of renewing the license at an expensive rate each year, testing costs and fees - It begins to look as if the state is rolling out the hemp program at a rate which will only be feasible for commercial farms and those of us in the private farming business would have to qualify for loans just to get started.

I look forward to the discussion of these issues and other concerns from fellow farmers at one of your meetings I will be attending.

Respectfully,

Victor Savedra

Robin Pfohl – robinp108@gmail.com Submitted Mon. 9/10/2018 5:31pm

Hello,

I am submitting this as a written comment for 21.17.XX NMAC – Hemp Cultivation Rule.

My name is Robin Pfohl and I am a resident of New Mexico. I was diagnosed in 2008 with Multiple Sclerosis and over the years have tried and failed many treatments for managing the disease. I live with constant pain. I started taking CBD drops (sublingual) about one year ago and this is the only thing I have found that helps me. It eases the pain enough that I can sleep. I would not be walking without it. Currently I have to order my CBD from Colorado. If/when New Mexico cultivates and regulates hemp, I would be able to purchase locally as well as be assured of the quality of what I purchase. I know I am only one person but there must be many more like me in New Mexico. Therefore, I hope that you can expedite the cultivation and regulation of hemp in New Mexico. Thank you.

Robin S. Pfohl

Albuquerque, NM

Jack Rose – jimmiejack55@hotmail.com Submitted 9/12/2018 3:20 pm

1. Will there be a “Research and Development Application and License”?

   Background: Without the ability for Research and Development, New Mexico growers will have inferior seed to grow in the region. With an R&D application and License, varieties which can do well in New Mexico’s environments can be created.

   Example- See Part 2 “Registration”, and subsequent rules, of 8 CCR 1203-32 from the Colorado Department of Agriculture
2. Will there be a waiver for R&D activities which lead to plants containing elevated THC levels between 0.3% and 1%?

   Background: Through the process of breeding new varieties, plants with THC levels above 0.3% may be encountered. These plants may contain elevated amounts of THC, but they and their subsequent generations may have improved genetics for any number of desired traits (yield, CBD value, etc.).

   Example- See Part 5 “Waiver”, and subsequent rules, of 8 CCR 1203-32 from the Colorado Department of Agriculture

3. Will NMDA have Approved Certified Seed?

   Background: Certification offers protections to growers, including but not limited to identity and quality of seed. Colorado has implemented its own state policy for Certified Seed.

   Example see Part 7 “CDA approved Certified Seed” of 8 CCR 1203-32 from the Colorado Department of Agriculture

4. If NMDA will have Approved Certified Seed, will inspection and Sampling fees be waived if no inconsistencies or violations are identified?

   Background: Growers who utilize Certified seed would still be required to submit to inspections and samplings. However, if no inconsistencies or violations are identified, fees associated with inspections, sampling, and testing can be waived.

   Example- See Part 4.6 “Inspection and Sampling Program” of 8 CCR 1203-32 from the Colorado Department of Agriculture

5. Will there be prohibition of male cannabis plants?

   Background: Production of Cannabinoids within female cannabis plants is impeded by fertilization of flowers from male plants. As a major use in the US for Industrial Hemp is for CBD production, any amount of male flowers could lower production for a given area.

6. If there is prohibition of male cannabis plants, will there be reasonable regulations regarding the production of male plants for R&D, or Certified Seed production?

   Background: Without male plants for cross pollination, new varieties cannot be developed. Rules similar to those for other wind pollinated crops would be considered reasonable.

   Example- Isolation requirements for Grain Crops can range from a few feet to over 500 feet

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COLORADO DEPARTMENT OF AGRICULTURE

Plant Industry Division

Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act

8 CCR 1203-23

Pursuant to the provisions and requirements of the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S., the following Rules are hereby promulgated to regulate the cultivation of Industrial Hemp:

Part 1 DEFINITIONS

1.1 “Act” means the Industrial Hemp Regulatory Program Act, Title 35, Article 61, C.R.S.

1.2 “CDA Approved Certified Seed” means Cannabis seed that is approved and labeled by the Department for cultivating Industrial Hemp.

1.3 “Commercial” means the growth of Industrial Hemp, for any purpose including engaging in commerce, market development and market research, by any person or legal entity other than an institution of higher education under the pilot program administered by the Department for purposes of agricultural or academic research in the development of growing Industrial Hemp.

1.4 “Commissioner” means the Commissioner of Agriculture and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.

1.5 “Department” means the Colorado Department of Agriculture.

1.6 “Harvest” means the termination of the cultivation process, including taking cuttings, or the movement of Industrial Hemp from a Registered Land Area to another location or movement within a Registered Land Area between indoor and outdoor planting areas.

1.7 “Industrial Hemp” means a plant of the genus Cannabis and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol (THC) concentration of no more than three-tenths of one percent (0.3%) on a dry weight basis.

1.8 “Law Enforcement” means the activities of the federal, state and local agencies responsible for maintaining public order and enforcing the law.

1.9 “Registrant” means any individual or legal entity who holds a valid Registration to grow Industrial Hemp under these Rules.

1.10 “Registration” means authorization by the Commissioner for any individual or legal entity to grow Industrial Hemp on a Registered Land Area.
1.11 “Registered Land Area” means a contiguous land area registered with the Department on which a Registrant plans to cultivate Industrial Hemp. A Registered Land Area may include land and buildings that are not used for cultivation.

1.12 “Research and Development” means cultivation of Industrial Hemp by an institution of higher education under the pilot program administered by the Department for purposes of agricultural or academic research in the development of growing Industrial Hemp.

1.13 “Variety” means a group of plants or an individual plant that exhibits distinctive observable physical characteristic(s) or has a distinct genetic composition.

Part 2 REGISTRATION

2.1 Each applicant for a Commercial Industrial Hemp Registration shall submit a signed, complete, accurate and legible application form provided by the Commissioner at least 30 days prior to planting which includes the following information:

2.1.1 The name and address of the applicant.

2.1.2 Type of business entity, such as corporation, LLC, partnership, sole proprietor, etc.

2.1.3 Business name(s) if different from (2.1.1) above.

2.1.4 The legal description (Section, Township, Range) in which the growing area is located.

2.1.5 The global positioning system location coordinates taken at the approximate center of the Registered Land Area.

2.1.6 A map of the Registered Land Area on the which the applicant plans to grow the Industrial Hemp, showing the boundaries and dimensions of the growing area(s) in acres or square feet.

2.1.7 By submitting an application the Registrant acknowledges and agrees to the following terms and conditions:

2.1.7.1 Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without further notice to the Registrant.

2.1.7.2 The Registrant shall allow and fully cooperate with any inspection and sampling that the Department deems necessary.

2.1.7.3 The Registrant shall pay for any inspection and laboratory analysis costs that the Department deems necessary within 30 days of the date of the invoice.

2.1.7.4 The Registrant shall submit all required reports by the applicable due-dates specified by the Commissioner.
2.1.8 A Registrant must have the legal right to cultivate Industrial Hemp on the Registered Land Area and the legal authority to grant the Department access for inspection and sampling.

2.2 Each applicant for a Research and Development Industrial Hemp Registration shall submit a signed, complete, accurate and legible application form provided by the Commissioner at least 30 days prior to planting which includes the following information:

2.2.1 The name and address of the applicant.

2.2.2 Type of business or organization such as corporation, LLC, partnership, sole proprietor, etc.

2.2.3 Business name(s) if different from (2.2.1) above.

2.2.4 The legal description (Section, Township, Range) of the growing area.

2.2.5 The global positioning system location coordinates taken at the approximate center of the Registered Land Area.

2.2.6 A map of the Registered Land Area on which the applicant plans to grow the Industrial Hemp, showing the boundaries and dimensions of the growing area in acres or square feet.

2.2.7 By submitting an application the Registrant acknowledges and agrees to the following terms and conditions:

2.2.7.1 Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without further notice to the Registrant.

2.2.7.2 The Registrant shall allow and fully cooperate with any inspection and sampling that the Department deems necessary.

2.2.7.3 The Registrant shall pay for any inspection and laboratory analysis costs that the Department deems necessary within 30 days of the date of the invoice.

2.2.7.4 The Registrant shall submit all required reports by the applicable due-dates specified by the Commissioner.

2.3 Registrations cannot be assigned or transferred to another business, individual or other entity.

2.4 No Industrial Hemp plant shall be included in more than one Registration simultaneously.

2.5 No Registered Land Area may contain Cannabis plants or parts thereof that the Registrant knows or has reason to know are of a variety that will produce a plant that when tested will produce more than 0.3% delta-9 THC concentration on a dry weight basis. No Registrant shall use any such variety for any purpose associated with the cultivation of Industrial Hemp.

This copy of the text of the rules “Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act” is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1203-23 and may be obtained from the following website: http://www.sos.state.co.us/CCR/Welcome.do.
2.6 Each noncontiguous land area on which Industrial Hemp is grown shall require a separate Registration. Any addition to a Registered Land Area shall also require a separate Registration.

2.7 In addition to the application form, each applicant for a Registration shall submit the Registration fee set by the Commissioner. If the Registration fee does not accompany the application, the application for Registration will be deemed incomplete.

2.8 The annual Registration fee for Commercial production of Industrial Hemp shall be $500 plus $5.00/acre outdoors and/or $.33/1000 sq. ft. indoors.

2.9 The annual Registration fee for production of Industrial Hemp for Research and Development shall be $500 plus $5/acre outdoors and/or $.33/1000 sq. ft. indoors.

2.10 All Registrations shall be valid for one year from date of issuance.

2.11 All Industrial Hemp plant material must be planted, grown and harvested under a valid Registration. Any plant material that is not harvested in the Registration period in which it was planted or volunteer plants that are not destroyed, must be declared for inclusion in a subsequent Registration.

2.12 Any Registrant that wishes to alter the growing area(s) on which the Registrant will conduct Industrial Hemp cultivation for either Commercial or Research and Development purposes shall, before altering the area, submit to the Department an updated legal description, global positioning system location, and map specifying the proposed alterations. Amendments to an existing Registration are limited to changes within the original land area registered, including variety changes, location(s) of varieties, and actual acreage or square feet of each variety planted.

2.13 Incomplete applications will not be processed and application fees will not be refunded if a Registration is not granted.

2.14 Any changes to contact information must be provided within 10 days of the change.

2.15 No Land area may be included in more than one Registration at the same time.

Part 3 REPORTS

3.1 Prior to planting any Cannabis Commercial Industrial Hemp Registrant shall file, on a form provided by the Commissioner, a Pre-Planting Report that includes:

3.1.1 A statement of verification that the Registrant has reasonable grounds to believe that the crop the Registrant will plant is of a type and variety of Cannabis that will produce a delta-9 THC concentration of no more than 0.3% on a dry weight basis.

3.1.2 A description of the Cannabis varieties to be planted on the Registered Land Area. All plant material to be used for cultivation of Cannabis within a Registered Land Area must be included.
3.1.3 A statement of intended end use for all parts of any Cannabis plants grown within a Registered Land Area.

3.2 Within 10 days after planting any Cannabis, and/or 10 days after emergence of any volunteer Cannabis plants in a Registered Land Area that the Registrant chooses to cultivate and not destroy, each Commercial Registrant shall submit, on a form provided by the Commissioner, a Planting Report that includes:

3.2.1 A list or description of all varieties of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.

3.2.2 The global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.

3.2.3 A Planting Report must be submitted any time Cannabis is planted in, moved within or moved into a Registered Land Area, except for replanting into a larger container within the same indoor location.

3.3 At least 30 days prior to harvest, each Commercial Industrial Hemp Registrant shall file a Harvest Report, on a form provided by the Commissioner that includes:

3.3.1 Documentation that the Commercial Registrant has entered into a purchase agreement with an in-state Industrial Hemp processor. If the Registrant has not entered into such an agreement, the Registrant shall include a statement of intended disposition of its Industrial Hemp crop.

3.3.2 The harvest date(s) and location of each variety of Industrial Hemp cultivated within a Registered Land Area.

3.3.3 A Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days. If any such changes are made the Commissioner may require additional testing prior to harvest.

3.3.4 A Registrant is not required to document the removal of male Cannabis plants on a Harvest Report provided that the male Cannabis plants are destroyed or utilized on the Registered Land Area prior to filing a Harvest Report for the remaining Cannabis plants.

3.4 Prior to planting, each Research and Development Industrial Hemp Registrant shall file, on a form provided by the Commissioner, a Pre-Planting Report that includes:

3.4.1 A statement of verification that the Registrant has reasonable grounds to believe that the crop the Registrant will plant is of a type and variety of Cannabis that will produce a delta-9 THC concentration of no more than 0.3% on a dry weight basis.

3.4.2 A description of the Cannabis varieties to be planted on the Registered Land Area. All plant material to be used for cultivation of Cannabis within a Registered Land Area must be included.
3.4.3 A statement of intended end use for all parts of any Cannabis plants grown within a Registered Land Area.

3.5 Within 10 days after planting any Cannabis, and/or 10 days after emergence of any volunteer Cannabis plants in a Registered Land Area that the Registrant chooses to cultivate and not destroy, each Research and Development Registrant shall submit, on a form provided by the Commissioner, a Planting Report that includes:

3.5.1 A list or description of all varieties of Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed within a Registered Land Area.

3.5.2 The global positioning system coordinates and a map showing the location and actual acreage or square feet of each variety of any Cannabis planted, or of volunteer Cannabis plants that have emerged and are not destroyed, within a Registered Land Area.

3.5.3 A Planting Report must be submitted any time Cannabis is planted in, moved into or moved within a Registered Land Area, except for replanting into a container of the same size within the same indoor location.

3.6 At least 30 days prior to harvest, each Research and Development Industrial Hemp Registrant shall file a Harvest Report, on a form provided by the Commissioner that includes:

3.6.1 A statement of the intended use of all Industrial Hemp cultivated within a Registered Land Area.

3.6.2 The harvest date(s) and location of each variety cultivated within a Registered Land Area.

3.6.3 A Registrant must notify the Commissioner immediately of any changes in the reported harvest date(s) in excess of 5 days. If any such changes are made the Commissioner may require additional testing prior to harvest.

3.6.4 A Registrant is not required to document the removal of male Cannabis plants on a Harvest Report provided that the male Cannabis plants are destroyed or utilized on the Registered Land Area prior to filing a Harvest Report for the remaining Cannabis plants.

3.7 Each Commercial and Research and Development Registrant shall report to the Commissioner any changes to information provided in the Registration or any previously submitted reports, including any changes to the purchase agreement or statement of intended disposition, within 10 days of such change.

Part 4 INSPECTION AND SAMPLING PROGRAM

4.1 All Registrations are subject to routine inspection and sampling to verify that the delta-9 THC concentration of the Cannabis planted within a Registered Land Area does not exceed 0.3% on dry weight basis. The Commissioner may select up to 100% of the Registrants to be inspected. The Commissioner shall send notification to each Registrant of their selection. The notification shall inform the Registrant of the scope and process by which the inspection will be conducted and require the Registrant to contact the Department within 10 days to set a date and time for the
4.2 In addition to any routine inspection and sampling under Rule 4.1, the Commissioner may inspect and take samples from any Registered Land Area during normal business hours without advance notice if he has reason to believe a violation of the Act or these Rules may be occurring or has occurred. The Commissioner may also conduct such additional inspection and sampling to verify compliance with the reporting requirements of these Rules.

4.3 A Registered Land Area may be subject to inspection and sampling prior to voluntary termination of the Registration before its expiration date.

4.4 During the inspection, the Registrant or authorized representative shall be present at the growing operation. The Registrant or authorized representative shall provide the Department’s Inspector with complete and unrestricted access to all Cannabis plants, parts and seeds within a Registered Land Area whether growing or harvested, and all land, buildings and other structures used for the cultivation and storage of Industrial Hemp, and all documents and records pertaining to the Registrant’s Industrial Hemp growing business.

4.5 All Cannabis plants within a Registered Land Area may be sampled to ensure compliance with the Industrial Hemp Program.

4.5.1 Individual or composite samples of each variety of Cannabis may be sampled from the Registered Land Area at the Department’s discretion.

4.5.2 The sampled material will be prepared for testing using protocols approved by the Commissioner.

4.5.3 Quantitative laboratory determination of the delta-9 THC concentration on a dry weight basis will be performed according to protocols approved by the Commissioner.

4.5.4 A sample test result with a delta-9 concentration on a dry weight basis greater than 0.3% THC shall constitute evidence that at least one Cannabis plant or part of a plant in the Registered Land Area contains a delta-9 THC concentration on a dry weight basis of more than 0.3% and that the Registrant of that Registered Land Area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend or revoke the Registration of an Industrial Hemp Registrant in accordance with the Act, these Rules and 24-4-104, C.R.S. Sample test results for Industrial Hemp Registrations with a delta-9 THC concentration greater than 0.3% on a dry weight basis may be provided to the appropriate law enforcement agencies.

4.6 Fields planted with CDA Approved Certified Seed may be inspected and sampled to confirm consistency with the Planting Report(s). The Department will waive all inspection and/or sampling costs if no inconsistencies or violations are identified.

4.7 Fees

4.7.1 Registrants selected for inspection and sampling shall pay a charge of $35 dollars per hour per inspector for actual drive time, mileage, inspection and sampling time.
4.7.2 Registrants selected for inspection and sampling shall reimburse the Department for all laboratory costs incurred by the Department within 30 days of the date of invoice.

Part 5 WAIVER

5.1 Notwithstanding the fact that a sample of a Research and Development Registrant’s Industrial Hemp tests higher than 0.3% but less than 1.0% delta-9 THC concentration the Registrant shall not be subject to any penalty under the Act or these Rules if:

5.1.1 The sampled Industrial Hemp was grown solely for Research and Development purposes by an individual or entity holding a Research and Development Registration, and the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

5.1.2 Test results from a Research and Development Registrant may, at the Commissioner’s discretion, be accepted in lieu of Department sampling.

5.2 Notwithstanding the fact that a sample of a Commercial Registrant’s Industrial Hemp tests higher than 0.3% but less than 1.0% delta-9 THC concentration the Registrant shall not be subject to revocation or suspension of their Registration if the crop is destroyed or utilized on site in a manner approved of and verified by the Commissioner.

5.3 Registrants shall have 10 days from the date of notification of test results higher than 0.3% delta-9 THC concentration to request a waiver as provided for in Rules 5.1 or 5.2.

Part 6 VIOLATIONS/DISCIPLINARY SANCTIONS/CIVIL PENALTIES

6.1 In addition to any other violations of Title 35, Article 61, C.R.S., or these Rules, the following acts and omissions by any applicant or Registrant or authorized representative thereof shall constitute violations for which civil penalties up to $2,500 per violation and disciplinary sanctions, including denial of an application or summary suspension or revocation of a Registration, may be imposed by the Commissioner in accordance with Sections 35-61-107 and 24-4-104, C.R.S.:

6.1.1 Refusal or failure by an applicant, Registrant or authorized representative to fully cooperate and assist the Department with all aspects of the administration and enforcement of the Act and these Rules, including the application, registration, reporting, inspection and sampling, and waiver processes.

6.1.2 Failure to provide any information required or requested by the Commissioner for purposes of the Act or these Rules.

6.1.3 Providing false, misleading, or incorrect information pertaining to the Registrant’s cultivation of Industrial Hemp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of the Act or these Rules.

6.1.4 Failure to submit any required report in accordance with Part 3.

This copy of the text of the rules “Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act” is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1203-23 and may be obtained from the following website: http://www.sos.state.co.us/CCR/Welcome.do.
6.1.5 Growing Cannabis that when tested is shown to have a delta-9 THC concentration greater than 0.3% on a dry weight basis.

6.1.6 Failure to pay fees assessed by the Commissioner for inspection or laboratory analysis costs.

Part 7 CDA APPROVED CERTIFIED SEED

7.1 A variety of Industrial Hemp may be approved by the Department as CDA Approved Certified Seed if it is tested by the Department and confirmed to produce mature plants with a delta-9 THC concentration of no more than 0.3% on a dry weight basis in approved multiple geographic trials in Colorado.

7.1.1 The genetics of the plant material must be accepted by the Colorado Seed Growers Association ("CSGA") variety review board or the variety review board of the Association Of Seed Certifying Agencies ("AOSCA").

7.1.2 The variety must fit the description on the application form as submitted to the CSGA or AOSCA variety review board.

7.1.3 The seed must be produced and certified in accordance with the certification requirements of a CDA approved seed certifying agency.

7.1.4 The seed must be labeled with a CDA Approved Certified Seed tag.

7.2 In addition to the Registration fees required by Rules 2.8 and 2.9, all Registrants shall pay to the Department an additional fee established by the Committee, for the purpose of funding the costs of administering the CDA Approved Seed Certification program.

7.3 An applicant that submits a variety for approval under the CDA Approved Seed Certification program shall pay the testing costs incurred by the Department and submit such other information as required on a form provided by the Commissioner.

Part 8 RESERVED

Part 9 STATEMENTS OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE

9.1 Adopted November 12, 2013 – Effective December 30, 2013

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), §§ 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:
1. Adopt a Part 1 setting forth definitions of specific terms used in these Rules.

2. Adopt Rules in Part 2 establishing a process for registering growers of industrial hemp and setting forth the information and fees required.

3. Adopt Rules in Part 3 establishing the information reporting requirements with which registrants must comply.

4. Adopt Rules in Part 4 establishing an inspection program to ensure compliance with the provisions of the Act and these Rules.

5. Adopt Rules in Part 5 creating conditional penalty waiver provisions for registrants whose industrial hemp crop THC content tests between 0.3% and 1.0% by dry weight.

6. Adopt Rules in Part 6 specifying violations of these Rules for which penalties may be imposed.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 13-241 authorized the creation of a program within the Department of Agriculture to regulate industrial hemp cultivation.

2. The bill created a nine-member advisory committee to work with the Department to develop rules establishing an Industrial Hemp Regulatory Program. This committee was appointed by Senator Gail Schwartz and Representative Randy Fischer.

3. The committee held three public meetings to determine what rules were necessary to implement this program and draft the appropriate language. The committee will continue to work with the Department to refine and update these Rules over the coming years, as well as review the testing protocols that Department staff is currently developing.


Statutory Authority

These emergency rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.
2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 - 4 weeks to plan sampling.

9.3 Adopted August 5, 2014 – Effective September 30, 2014

Statutory Authority

These rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purposes of these proposed rules are to make permanent emergency rules effective June 11, 2014. Specifically, these amendments:

1. Adopt a registration time period of 30 days prior to planting with the elimination of the May 1 registration deadline.

2. Allow the Department to collect crop intended harvest date and disposition information 30 days prior to harvest, rather than 7 days prior to harvest.

Factual and Policy Basis

The factual and policy issues encountered when developing these rules include:

1. Senate Bill 14-184 eliminated the May 1 deadline for program registration. The Department needs 30 days to process hemp applications.

2. The Department needs 3 - 4 weeks to plan sampling.


Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture ("CDA") pursuant to his authority under the Industrial Hemp Regulatory Program Act (the "Act"), Sections 35-61-104(5) and 35-61-105(2), C.R.S.
Purpose

The purposes of these proposed Rules are to:

1. Amend the definition of “Commercial” in Rule 1.2. to establish clear separation between the activities permitted under a Commercial registration and a Research and Development registration.

2. Amend the definition of “Law Enforcement” in Rule 1.7.

3. Adopt a new Rule 1.8 to define “Registrant.”

4. Adopt a new Rule 1.9 to define “Registration.”

5. Adopt a new Rule 1.10 to define “Registered Land Area” and delete the definition of “Growing Area.”

6. Amend the definition of “Research and Development” in Rule 1.11 to follow the 2014 Farm Bill language.

7. Adopt a new Rule 1.12 to define “Variety.”

8. Amend language referencing site and growing area(s) used throughout the Rules to reflect the above definition changes.

9. Amend language referencing sampling and analysis costs and add terms of payment used in Rules 2.1.7.3 and 2.2.7.3.

10. Separate language from Rule 2.2.5 and create Rule 2.2.6 for Rule language consistency between Commercial and Research & Development Rules format.

11. Create a new Rule 2.3 barring the transfer of ownership of a registration.

12. Create a new Rule 2.4 language barring registration of one plant under two registrations.

13. Create a new Rule 2.5 barring any cannabis plants other than Industrial Hemp on a registered land area.

14. Create a new Rule 2.6 to define what can be included in a single registration.

15. Amend registration fees in Rules 2.8 and 2.9 to cover the cost of administering the program.

16. Adopt a new Rule 2.11 to require harvest of all plants within a registration period. Allow for material that is planted under one registration to be included in subsequent registrations through declaration during registration.

17. Adopt a new Rule 2.13 limiting amendments to a registration.
18. Adopt a new Rule 2.13 regarding processing of applications.

19. Adopt a new Rule 2.14 requiring registrants to maintain current contact information with the Department.

20. Amend Rules 3.1.2 and 3.4.1 to require reporting of all plant material used in an Industrial Hemp registered land area.

21. Adopt new Rules 3.1.3 and 3.4.2 requiring registrants to report the intended use of all parts of the Industrial Hemp crop included in a registered land area.

22. Adopt new Rules 3.2 and 3.5 requiring reporting of the varieties and location of all Industrial Hemp planted in a registered land area.

23. Adopt a new Rule 3.5.3 requiring research and development registrants to verify that all the Industrial Hemp to be cultivated is reasonably believed to produce a crop with a THC of 0.3% or less on a dry weight basis.

24. Amend Rules 3.3.2 and 3.6.2 to require reporting of specific crop location information at least 30 days prior to harvest.

25. Adopt a new Rule 3.7 to require reporting of any changes in information previously submitted to the Department within 10 days.

26. Amend Rule 4.1 to allow sampling of all cannabis plants on a registered Industrial Hemp land area, allow sampling of up to 100% of the registrants, allow the Department to notify the registrant of inspection by methods other than certified mail, require registrants to contact the Department within 10 days of inspection notification and explain the consequence for failing to do so.

27. Amend Rule 4.2 to allow access to all cannabis material associated with a registration.

28. Amend Rules 4.3 and 4.3.1 to allow individual or composite sampling of all cannabis plants on a registered Industrial Hemp land area.

29. Amend Rule 4.3.2 to allow more valid scientific testing protocols.

30. Amend Rule 4.3.4 to include the updated language from existing Rule 4.3.4.1 and remove the term commercial so any registration found not in compliance could be suspended or revoked in accordance with C.R.S. 24-4-104.

31. Amend Rule 4.4.2 to set terms of payment to 30 days of invoice.

32. Amend Rule 5.1 to include the same 1.0% THC limit for a waiver from penalty as applied to commercial registrations.

33. Amend Rule 6.1 to clarify scope and add summary suspension language for clarity purposes.
34. Amend Rule 6.1.5 to include proper terminology for cannabis exceeding 0.3% THC.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. The revised definitions for "Commercial" and "Research and Development" in Rules 1.2 and 1.11 are intended to establish a clear separation between the activities allowed under a Commercial registration and a Research and Development registration. All Industrial Hemp production activities not authorized by the 2014 Farm Bill Research and Development language, including all privately-conducted research and development, are covered by a commercial registration. In addition to private scientific research, this change in definitional language will allow research for competitive advantage or product development without limiting the sale or distribution of plant material used and produced under a commercial registration, similar to what commercial enterprises in other industries do for product development in a research division of a company. This Rule change meets the needs of registrants who have requested sale of material from their research and development registrations by aligning their research to be conducted under commercial registration without structurally changing their research practices.

2. Rule 1.7 is intended to clarify the broad scope of governmental agencies involved in law enforcement and eliminate unnecessary language about their activities.

3. Rules 1.8 and 1.9 are intended to define the difference between a person or entity who has been granted approval from and the authorization to grow Industrial Hemp on a specific site.

4. Rule 1.10 creates a definition for an area registered to grow Industrial Hemp that includes property the registrant may want to include that is not a growing area.

5. Rule 1.12 creates a definition for plants used in the Rules that clarifies registration, planting and harvest requirements. The definition is also necessary for delineation purposes during sampling.

6. The changes in Rules 2.1, 2.2, 3.1, and 3.4 are needed to make the language in those Rules consistent with other language in the Rules.

7. Amending the language in 2.1.7.3 and 2.2.7.3 is intended to standardize the terminology with that used in Part 4, clarify the costs for which a registrant is responsible, and set the terms of payment which are not currently specified. This clarification is necessary because some registrants have delayed payment of fees until another registration is granted or until they have negotiated individual payment terms, creating administrative confusion and increasing program costs.

8. Separating the requirements in Rule 2.2.6 and 2.2.5 improves consistency with 2.1.6 and 2.1.5 for ease of Rule readability.

9. The prohibition in Rule 2.3 on the transfer of registration is necessary to facilitate inspection and sampling and to prevent the transfer of registrations to persons or entities.
10. Rule 2.4 is necessary to avoid confusion when a registrant holds multiple registrations. This Rule will enable the Department to accurately identify, inspect and sample all of the plants grown under a specific registration.

11. Under Article XVIII, Section 16 of the Colorado Constitution (Adopted by voters as “Amendment 64”) “Industrial Hemp” is defined and regulated separately from “Marijuana”. The Department therefore has no legal jurisdiction over cannabis that contains more than 0.3% THC on a dry weight basis because it is constitutionally defined as Marijuana and not Industrial Hemp. The Department thus does not have the authority to grant the possession or use of any cannabis material above 0.3% THC within its Industrial Hemp registration program; all such material is regulated as Marijuana under the authority of the Department of Revenue. Rule 2.5 is necessary to prevent the use or presence of plant material in a registered land area that would be outside the Department of Agriculture’s jurisdiction. The proposed Rule language does not limit the right to possess or conduct Marijuana research but does prevent Marijuana material from knowingly being used under the Industrial Hemp program by excluding it from the area the registrant has agreed is dedicated to Industrial Hemp.

12. Rule 2.6 defines what may be included in a single registration. The change is necessary to track registration sites, what is planted on a registered land area and ensure accurate testing can be done. The current system has created administrative issues as registrants have added sites miles away from existing registrations during the growing season and cancelled growing areas registered under the same registration, creating situations where it has become difficult to track where plant material currently is being grown for inspection purposes. These changes in registrations have also increased the cost of program administration as the Department attempts to track sites currently registered to grow Industrial Hemp. The Rule does not limit the registrants ability to stagger planting within a registered land area. The Rule is also intended to facilitate the establishment of an equitable fee structure to self-fund the program as mandated in the Act.

13. The Department is proposing to increase the fees in Rule 2.8 and 2.9 to comply with the self-funding mandate set forth in Section 35-61-106 (2), C.R.S. Current fees have generated less than 20% of the necessary revenue to support the program. Section 35-61-106 (2), C.R.S., limits the sources of revenue to registration fees and land area. Leaving registration fees at current levels would require per acre fees to exceed $55. The new registration fee structure was developed to equitably generate sufficient revenue to self-fund the program at current registration levels. The fees for Commercial and Research & Development registrations were set at the same level so as not to favor either type of registration or disadvantage research for competitive advantage conducted under a commercial registration.

14. Section 35-61-104(3), C.R.S. defines the effective period of a valid registration to one year. To regulate the program it is necessary for plant material to be registered before planting as required in Rules 2.1 and 2.2. To insure that all plant material is regulated who would not otherwise qualify for a registration due to previous sanctions and penalties. This also closes a potential loophole through which a legally acquired Industrial Hemp registration could be transferred to another individual for purposes of evasion in growing or transporting of Marijuana.
under a valid registration and therefore protected under Section 35-61-102(2), C.R.S., Rule 2.11 was created to clarify the requirement to harvest within a registration and add language necessary for the perpetuation of genetics.

15. Rule 2.12 is necessary to prohibit the expansion of a registration outside of the original land area described in the application for registration. Without this limitation it is very difficult and time consuming for the Department to track plant material to a registration or ensure compliance with planting reports. Registrants have used the current amendment language to establish new growing sites and assume sites originally registered to another registrant. The current system allowing registrants to add new locations through amendments without cost has significantly increased the administrative costs of the program which must be passed on to all registrants.

16. Rule 2.13 insures that the cost to process an application incurred by the Department prior and regardless of whether a registration is issued are not passed along to other registrants should a registration not be granted. Under Section 35-61-106(2), C.R.S., the Commissioner is required to collect fees to cover all of the program’s costs, including those associated with applications that are denied.

17. The Department has spent considerable resources trying to contact the registrants after registration due to changes in contact information. This has increased administrative costs for the program. Rule 2.14 requires registrant contact information remain current so the Department can contact registrants regarding sampling and inspection without added administrative costs. Some registrants have changed their contact information including mailing address, e-mail address and phone numbers to evade requests by the Department to conduct inspections.

18. Rules 3.1.2 and 3.4.1 require a registrant to disclose all plant material intended for use in a registered land area to be disclosed. This is necessary to enable the Department to confirm that all plant material used within a land area registered with the Industrial Hemp program is of a type and variety that will produce plants with a THC content not to exceed 0.3% on a dry weight basis.

19. Rules 3.1.3 and 3.4.2 are necessary to facilitate the inspection and sampling of Industrial Hemp grown in the program. The Industrial Hemp inspection is done by a limited number of inspectors who also inspect multiple other programs for the Department. To accomplish inspections required for all the programs considerable planning and coordination occurs months prior to the need to facilitate optimum use of inspection staff and control costs.

20. The requirement of a planting report in Rules 3.2 and 3.5 is necessary for the Department to determine what fields have actually been planted so we can determine what fields may need inspection, allocate resources for inspection, collect variety information to support a seed certification program and collect agronomic data on the crop to determine economic value to the state.

21. Rule 3.5.3 is intended to ensure that research and development registrants plant material that they reasonably believe will not exceed 0.3% THC on a dry weight basis and that all material used in the research project is included in the planting report.
22. Rules 3.3.2 and 3.6.2 are necessary for the Department to determine what will be harvested compared to what was actually planted, identify gaps, and schedule inspections appropriately. This will also allow the Department to collect harvest data to determine the size of the final crop and document crop size developments for economic purposes.

23. Rule 3.7 is necessary to ensure that the Department has the most current information on all registrants so that it can effectively plan inspection resources and monitor industry developments.

24. The change in Rule 4.1 allowing sampling of up to 100% of registrants is necessary to accommodate the July 1, 2014 statutory change allowing year round registration while still conducting an effective inspection program including testing in the event an unanticipated violation is reported or suspected. The amended language also eliminates the exemption from testing after two years which could prevent the Department from retesting registrants with prior violations in a timely or effective manner. The current language has the potential for abuse by registrants who have been tested for two years and thus could grow Marijuana without concern of inspection the third year.

The amended language in Rule 4.1 with respect to notice of inspection allows the Department to communicate with the registrants in a method agreed to with the registrant or deemed effective from previous communications with the registrant. The use of certified mail has allowed some registrants to see the Department is sending them communication and avoid signing for it in an effort to evade inspection notification. In other cases the address provided has been returned as undeliverable via certified mail and the registrant has asked for an e-mail or phone call so they can comply.

The time period for response to notification was changed from 30 days after notification to 10 days to allow the Department to determine harvest timing and arrange for inspections. The 30 days hampered the Department's ability to coordinate inspections of multiple sites increasing the inspection travel costs for the registrant as harvest in many cases was more immediate once the registrant replied.

25. Registrants have agreed under Rule 2.5 not to include plant material known or that should reasonably be known will exceed 0.3% THC on a registered land as terms of registration. This amended section of 4.2 is necessary to support, verify and enforce Rules 2.5, 3.1.2, 3.4.1, 4.1, 4.3, and 4.3.1.

The changes to Rule 4.2 are necessary to allow the Department to inspect all plants in the registered land area. Registrants have used the current Rule language to assert that some plants used by them for cultivation of Industrial Hemp cannot be tested by the Department because they are Marijuana that is being grown for personal use or under a Medical Marijuana card application. The amendments to Rule 4.2 are necessary to verify compliance with Rules 2.5, 3.1.2, 3.4.1, 4.2, 4.3, and 4.3.1 which prohibit the presence or use of Marijuana within a land area registered for the cultivation of Industrial Hemp.

26. The amended language in Rules 4.3 and 4.3.1 allows all cannabis material grown in a land area under an Industrial Hemp registration to be sampled. It allows the Department or registrant to determine if a specific plant or group of plants is to be sampled. This
amended language allows the Department to work with Industrial Hemp breeding projects where sampling every individual plant would be cost prohibitive to a registrant and could effectively destroy a breeding program if all plants were selected for inspection.

27. The amended language in Rule 4.3.2 clarifies a procedural process that inaccurately represented scientific methodology. Samples are divided after preparation for testing so that the two samples are of the same composite make up.

28. The amended language in Rule 4.3.4 clarifies the legal effect of tests results that exceed 0.3% THC for both commercial and research and development registrants.

29. The amended language in Rule 4.4.2 is for administrative purpose. Registrants have used the lack of clear terms of payment in Rule as a negotiation point to make payment plans for services or delay payment until a new registration is needed.

30. Amending Rule 5.1 to include an upper THC limit in plant material used in research and development is necessary to ensure programs are not knowingly using Marijuana with a high THC content under an Industrial Hemp registration.

31. The amendment to Rule 6.1 clarifies that a registration may be summarily suspended in appropriate circumstances under 35-61-107 and 24-4-104, C.R.S.

32. The amendment to Rule 6.1.5 conforms with the changes to other Rules prohibiting the presence or use of plant material that exceeds 0.3% THC on a registered land area.

33. These amendments incorporate changes as a result of the Department’s Regulatory Efficiency Review Process.

9.5 Adopted February 10, 2016-Effective March 30, 2016

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Industrial Hemp Regulatory Program Act (the “Act”), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

1. Adopt a new Rule 1.2 defining “CDA Approved Certified Seed”.

2. Adopt a new Rule 1.6 defining “Harvest”.

3. Adopt a new Rule 2.1.8 requiring Registrants to have all legal rights necessary to cultivate Industrial Hemp on a Registered Land Area.

4. Amend language in Rule 2.11 to clarify the process for material that is perpetuated from one Registration to another Registration.
5. Adopt a new Rule 2.15 clarifying that land area cannot be covered by more than one Registration.

6. Amend Rules 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6 to require reports be submitted on a form provided by the Commissioner.

7. Amend Rules 3.2 and 3.5 to address reporting of any volunteer Cannabis plants that the Registrant chooses to cultivate rather than destroy.

8. Adopt Rules 3.2.3 and 3.5.3 specifying when submission of a Planting Report is required.

9. Adopt Rules 3.3.3 and 3.6.3 requiring notification to the Commissioner of any changes to the reported harvest date of more than 5 days.

10. Adopt a new Rule 4.2 to allow the Commissioner to do additional inspection or sampling to confirm compliance with the Act and Rules.

11. Adopt a new Rule 4.3 to allow for inspection or sampling of a Registered Land Area that is voluntarily exiting the program.

12. Amend Rule 4.5.4 to clarify the legal limits where law enforcement has jurisdiction.

13. Adopt a new Rule 4.6 to allow reduced testing for Registrants who plant CDA Approved Certified Seed.

14. Adopt a new Rule 5.3 to establish a time period for requesting a waiver.

15. Adopt a new Part 7 to allow the Department to approve varieties of Industrial Hemp as CDA Approved Certified Seed and establish fees to cover the costs of the program.

16. Make non-substantive edits with respect to wording and capitalization changes throughout to improve consistency and readability.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. The definition in Rule 1.2 of “CDA Approved Certified Seed” is intended to establish the term used in the development of a seed program to assist Industrial Hemp growers to purchase seed that is known to produce mature plants that will not exceed 0.3% THC.

2. The definition in Rule 1.6 of “Harvest” is intended to clarify when reporting to the Department is required and assist Industrial Hemp growers in meeting the reporting requirements.

3. Rule 2.1.8 is intended to ensure that the Department has the ability to inspect and sample land areas Registered in the Industrial Hemp Program and ensure that Registrants understand their obligations when entering into land lease agreements.
4. Rule 2.11 will allow Registrants the ability to carry plant material over from one Registration that is expiring into another Registration. The Rule will allow plant material to finish its life cycle under a new Registration rather than requiring premature harvest under the Registration period in which it was planted. This will allow perpetuation of parent stock for breeding purposes.

5. Rule 2.15 will ensure the Department has the ability to determine which Registration covers the plant material on a Registered Land Area and can apply any sanctions that may occur only to the Registration the plants are cultivated under.

6. The Amendments to Rules 3.1 through 3.6 requiring use of forms provided by the Department will ensure that the information reported by Registrants is complete and consistent.

7. The amendments to Rules 3.2 and 3.5 allow for the Registration and cultivation of volunteer plants so long as they are reported within 10 days of emergence. This provision allows growers to register volunteer plants on land areas on which Industrial Hemp was previously grown.

8. Rules 3.2.3 and 3.5.3 are intended to clarify for Registrants how to document the movement of plant material within or into a Registered Land Area. This facilitates the movement of young plant material to final growing locations.

9. Rules 3.3.3 and 3.6.3 provide growers a 10 day window for harvest. This recognizes the harvest date may vary due to factors beyond a Registrant’s control such as weather events.

10. Rule 4.2 clarifies that the Department has the authority to conduct inspections and sampling in addition to the routine inspection and sampling described in Rule 4.1 when the Department determines that it is necessary to ensure compliance with the Act and Rules.

11. Rule 4.3 ensures that a Registrant cannot avoid inspection and sampling through early termination of their Registration.

12. Rule 4.5.4 was changed to clarify that 0.3% delta-9 THC concentration is the legal limit of the Program and does not limit the Departments ability to reach out to law enforcement when appropriate circumstances arise.

13. Rule 4.6 will allow the Department to set testing protocols for fields planted with CDA Approved Certified Seed that differ from the protocols for fields planted with non-certified seed. Registrants who plant CDA Approved Certified Seed will not be subjected to inspection and testing fees unless inspections establish that the variety planted was not the same variety as indicated on the Planting Report.

14. Rule 5.3 sets a reasonable time for a Registrant to indicate his desire to exercise the waiver provisions set forth in Rule 5.1 and 5.2. The Rule is necessary to ensure the Department can communicate with law enforcement the timeliness of actions the Registrant is taking to destroy the crop should he chose to exercise the waiver.

This copy of the text of the rules “Rules Pertaining to the Administration and Enforcement of the Industrial Hemp Regulatory Program Act” is provided as a convenience to the public by the Colorado Department of Agriculture and does not constitute an official publication of these Rules. The official version of these Rules is published by the Office of the Secretary of State in the Colorado Code of Regulations at 8 CCR 1203-23 and may be obtained from the following website: http://www.sos.state.co.us/CCR/Welcome.do.
15. Under Rule 7.1 a variety of seed to be certified must first undergo testing conducted by the Department to verify that it will consistently produce mature plants with a delta-9 THC concentration at or below 0.3% on a dry weight basis. These trials will be conducted in various regions in the state to ensure stability across the different growing environments in the state. Varieties approved by the Department may be certified by Colorado State University or the authorized seed certifying agency of another state when produced under certified field standards.

16. Rules 7.2 and 7.3 establishes the mechanism for equitably funding the CDA Approved Certified Seed program between the breeder applicants and Registrants. This is intended to encourage the development of CDA Approved Certified Seed while also recognizing the economic benefits to Registrants of planting CDA Approved Certified Seed.

9.6. **Adopted February 8, 2017 -Effective March 30, 2017**

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Industrial Hemp Regulatory Program Act (the “act”), Sections 35-61-104(5) and 35-61-105(2), C.R.S.

Purpose

The purpose of these proposed Rules are to:

1. Amend the definition of “CDA Approved Certified Seed” in Rule 1.2.
2. Amend the definition of “Harvest” in Rule 1.6 to add the common language used to define the term “Harvest”.
3. Amend Rules 2.1.6, 2.2.6, 3.1.2 and 3.4.2 to remove premature requirement for submitting a variety location map.
4. Amend Rules 3.2.2 and 3.5.2 to move the variety location requirements to a more appropriate time when the Registrants can comply.
5. Amend Rule 3.5.3 to exempt reporting of changes in growing container except for larger sizes.
6. Adopt Rules 3.3.4 and 3.6.4 to allow the removal of unwanted male Cannabis plants prior to harvest without submitting a Harvest Report.
7. Amend Rule 4.2 to include both present and past tense of potential violations as cause for inspection.
8. Amend Part 6 to expand the scope of the obligation to cooperate and assist the Department to all aspects of the administration and enforcement of the Act and these Rules.
9. Amend Rule 7.1 to clarify the requirements for CDA Approved Certified Seed.

10. Adopt Rules 7.1.1, 7.1.2, 7.1.3 and 7.1.4 to add clarity to the CDA Approved Certified Seed process.

11. Make typographical, grammatical, and non-substantive changes throughout for clarification.

Factual and Policy Basis

The factual and policy issues encountered when developing these Rules include:

1. Rule 1.2 was amended to clarify that the term "CDA Approved Certified Seed" is specific to seed lots that meet the program standards and not just the variety name.

2. The definition of "Harvest" in Rule 1.6 was amended to clarify that this term includes the normal and common practice of reaping a mature plant.

3. The map requirements under Rules 2.1.6, 2.2.6, 3.1.2 and 3.4.2 as part of their Pre-Planting requirement required premature reporting by Registrants. Realigning the time of reporting to the Planting Report in Rules 3.2.2 and 3.5.2 allows Registrants to accurately report their final planting locations at the appropriate time.

4. Amending Rule 3.5.3 to reduce the reporting burden for normal occurrences of the growing such as broken pots while still allows for the Department to adequately regulate the cultivation and growing cycle.

5. The removal of unwanted male plants is a common practice in breeding programs and all female plant production. New Rules 3.3.4 and 3.6.4 accommodate and facilitate this industry practice by eliminating the need to file unnecessary Harvest Reports for discarded male plants within some specific parameters.

6. Amend Part 6 to reflect the equal importance of cooperation and assistance by an applicant or registrant with all aspects of the administration of the program. This will help ensure the Commissioner has all information necessary to ensure compliance with the Program requirements.

7. The amendment to Rule 7.1 identifies CDA Approved Certified Seed as seed that will produce mature plants that will not exceed the .3% delta-9 tetrahydrocannabinol concentration standard. The Rule distinguishes CDA Approved Certified Seed from other certified seed not approved by the CDA for which the mature plants’ delta-9 tetrahydrocannabinol concentration has not been verified in CDA trials conducted across the state.

8. Rule 7.1.1 establishes a system through a variety review board to ensure that the investments in breeding and the intellectual property rights of breeders are protected. Breeders entering a variety must be able to demonstrate ownership of the variety to a panel of experts by identifying unique characteristics that distinguish their entry from other varieties.
9. Rule 7.1.2 ensures that the information submitted to the variety review board accurately represents the variety when viewed in the field and ensures integrity in the process.

10. Rule 7.1.3 ensures the same production practices used in other agricultural crops are applied to CDA Approved Certified Seed lots to ensure purity and trueness to type.

11. The labeling requirement in Rule 7.1.4 provides consumer confidence and easily identifies seed being purchased as true to type and pure, and verifies that mature plants of this variety have not surpassed the .3% delta-9 tetrahydrocannabinol concentration limit in CDA trials conducted across the state.

9.7. Adopted February 22, 2018 – Effective April 15, 2018

Statutory Authority

These Rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Industrial Hemp Regulatory Program Act (the “act”), Section 35-61-104(5), C.R.S.

Purpose

1. Amend and clarify the definitions of “commercial” and “research and development”.

2. Amend the definition of “harvest” to add the common language used to define the term “harvest” to include the practice of taking cuttings.

3. The changes to Rule 4.7.2 are necessary to recapture language that was inadvertently deleted during the last rulemaking.

4. Amend Rule 7.3 to require reporting on a form provided by the Commissioner in order for the Department to capture additional information as deemed necessary by the certified seed program.

Factual and policy basis

1. To clarify the language in 1.3 and 1.12 and make it consistent with the implementation of the program.

2. The definition of “harvest” was amended to clarify that this term includes the normal and common practice of harvesting cuttings.

3. Add language that was intended to be included in Rule 4.7.2 and was inadvertently deleted during the last rulemaking.

4. The amendment to Rule 7.3 allows the Department to track varietal identity entering into the certified seed program.
Unlike other crops, cannabis represents a species which can be cultivated for fiber and nutritional purposes as well as an illicit substance. While the vast majority of the people who seek to grow hemp will do so in accordance with policies, there are not enough controls in the current policy to prevent or detect misuse. The document, as written, does not demonstrate coordination between the proposed hemp rules and those of the controlled substances act.

Definitions:

- 4 and 6: contain a letter at the beginning of the definition which does not belong
- 7: contains a tabbed space which does not belong
- 11: the definition for hemp could use some work. I’ve offered a couple of options to consider which may provide more clarification.
  - “hemp” means all parts of the plant Cannabis sativa L., including any and all varieties and subspecies, whether growing or not, the seeds thereof and every mixture or preparation of the plant or its seeds containing no more than three-tenths percent THC on a dry weight basis.
  - “hemp” means the plant Cannabis sativa L. and any part or derivative of such plant, including seeds of such plant, whether growing or not, that is used exclusively for industrial purposes (fiber and seed) with a tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. The term “tetrahydrocannabinols” includes all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols.
- 20: does not specify what THC you are looking to regulate. The majority of the THC in plants is THC-A, which degrades with time (since harvest) and temperature. Is the intent of the rule to measure THC, THC-A, total THC? As written, a drug strain could possess 0.3% THC at the time of harvest but contain over the 1% at the time of testing. This needs to be clarified so users of the rule are clear on the requirements.

Applicant acknowledgements

- 4: What are the laboratory provisions? Is there a list of approved labs? What do the labs need to do to be an approved lab? Where do hemp producers go to find the approved lab list? What happens if an applicant uses an unapproved lab?
- 5: Will the website provide a link so applicants can refer to the state and federal regulations regarding hemp productions?
- 6: What are the consequences when applicants don’t pay their fees?

Fees

- 7. Contains a letter at the beginning of the requirement which does not belong
Non-compliant varieties

What are the expectations between 0.3% and 1%? It isn’t clear what will happen to these plants/locations/applicants in this situation. When does the policy disallow the licensee from collecting the samples and require an onsite inspection to verify the licensee is attempting compliance?

Violations

What are the consequences for labs which consistently have concentrations above 0.3%?

Other concerns

Has there been discussions with the law enforcement side? Where is the continuity between this rule and the CSA to ensure there are no gaps that can be exploited?

There is no provision to document all individuals who have access to the cultivation location or are involved in the growing and harvest of the crop. This does not show consistency between the other rules concerning cannabis.

As written, this rule can require the crime labs in the state to quantitate marijuana submissions to verify they are indeed drug types and not hemp. Some states with hemp laws have included language and policies which allows the compliance and does not burden the crime labs with quantitating one of the largest drug type submissions. I’d like to see clarification which does not imply an already over-burdened crime lab system must adopt additional testing on one of the largest types of submissions. Clarification can take the form of many options, such as packaging or labeling requirements (i.e., products not appropriately labeled are not compliant with this rule and believed to be drug strains) or language within the rule which puts the burden on the farmers/licensee to prove hemp compliance (i.e., without proof of industrial hemp, it is considered marijuana).

Respectfully submitted,

Laura Hernandez

From: Debbie Hughes <conserve@hughes.net>
Sent: Monday, October 08, 2018 4:16 PM
To: NMDA, Comments <Comments@nmda.nmsu.edu>
Subject: Comments on Hemp Rule

I would like to support the Hemp rules developed by NMDA. I believe that there are many valuable uses of the Hemp plant. I have been utilizing CBD products for pain relief for a damaged nerve and it is very affective. I have not had any negative affects from the CBD products. Many of my family members are now using the CBD products. I support the ability for New Mexico Agriculture Producers to be able to grow the Hemp plants and hope that it is a very viable product for the state.

Debbie Hughes, Rancher
Howdy Brad:

OK, on the draft rules. Here are my initial comments:

— **License Year**: I love that it’s year round, My only question is why March 1 — we’re already prepping for next season in some of my projects, and Jan. 1 might be more helpful. But it’s a minor point.

—— **APPLICANT ACKNOWLEDGMENTS**: By submitting an application, the applicant acknowledges and agrees to the following terms and conditions:

A. The registrant agrees to comply with any inspection and sampling requirements the department deems necessary.

*Note: I think it is more fair to specify the inspection and sampling requirements, our at least mention a maximum (which should be one for both sampling and inspection, but two could be acceptable). More on this, below.*

— Also on Applicant Acknowledgements: **F**. It is a violation of this rule for a registrant to initiate harvest for commercial purposes without a variety-specific harvest certificate issued by the department

  *In general, a harvest certificate a privacy violation – if the crop tests under .3% it’s a crop, it’s hemp, it’s an agricultural product, and no one’s business that the farmer does with the crop. I don’t work in any other state that requires this. A few had this in draft regs, but it was always removed for the reason stated here.*

  *And a second note on this regarding the variety-specific certificate: I get that this is just for commercial crops, and I very much appreciate the fact that under these regs farmers can cultivate any variety of hemp that meets federal hemp definitions. But I strongly believe that should extend to commercial crops for a period of at least three years and ideally five years. We need to give entrepreneurial farmers options for obtaining excellent cultivars and seeing how they grow in New Mexico before we start what is essentially a de facto department commercial certification process. Bottom line, the states that allow farmers to cultivate any variety they want out of the gate are succeeding. So I’m glad to see that is the case with our regs. But I think it should include commercial crops for a window — this is a new industry, which tons of new genetics. Many of them superior to that which the rest of the world experiences — I have requests for my own and my partner’s genetics from all over the world. I’m eager to get them approved by the department, but also would love some breathing room to see what grows best in southern New Mexico, do some cross breeding, etc. Plus, I want to bring my existing farm-to-table hemp product, called Hemp in Hemp, to New Mexico to help develop the economy here. And I use my proprietary cultivar Samurai in that entrepreneurial project.*
**21.17.XX.X INSPECTION/SAMPLING:** All registered locations are subject to periodic inspections by department staff or authorized agent to verify compliance with submitted application information and compliance with rule regulations.

_erp the above note, I believe it should be one testing and one inspection max.

**Related Note:** I’ve seen a whole range of testing protocols around the country and I strongly suggest we implement whole plant testing. This is a middle ground between flower only testing (which is simply not fair) and leaf testing (which Vermont does and is very farmer-friendly). The fact is, even the best liquid chromatography testing has a margin of error of several tenths of a percent. With whole plant testing, a hot plant will still test hot, but plants on the edge which deserve to be harvested and won’t ever get anyone high should have a shot at passing their test. So it might be ideal to define testing as something like, “one ounce of plant material gathered from all parts of the plant.”

**21.17.XX.X EXEMPTIONS:**

The secretary shall have authority to review and grant exceptions to regulations contained within this rule on an individual request.

This is the one of the best clauses I’ve seen in any hemp regulations in the country. Thanks for that. And for the genetic openness. Between those two, I feel prepared to succeed, and help other New Mexico farmers and entrepreneurs succeed.

**General note:** might be good to add a clause reading something like, “As federal law evolves on hemp, these regs may evoke to reflect those changes.” I mention that because pretty soon 1% is going to be the hemp definition, and in a decade it might be as high as 5%. The days .3% are very numbered. It’s a stupid and recent definition.

Best,

Doug
October 9, 2018

To Whom It May Concern:

Re: Comments on Hemp Production Draft Rule, August 28, 2018 Version.  
Title 21, Chapter 17, Part XX

The stated objectives of this Draft Rule are to establish rules regulating the licensing of growers and the establishment of testing processes to ensure uniformity in hemp production in New Mexico. The program envisions issuing licenses for annual production, continuous production, and personal use production. The Draft Rule lays out application and compliance information as well as associated fees.

The Draft Rule requires an annual fee of $900 per location for both annual and continuous production, and a $25 fee for personal production. Personal production is defined as the production of not more than 20 plants per location, not to be used for commercial purposes. There are also fees envisioned for routine inspections and sampling as well as fees associated with mileage, per diem, and staff hours.

Missing from the Draft Rule are any incentives for a grower to enroll in the program and pay the fees in the first place. Unfortunately, the program, as defined, is not a part of any statewide economic development program for rural economies of New Mexico. Despite the fact that the stated scope includes all individuals, businesses, agencies, institutions, or other entities engaged in the production of hemp [21.17.XX.2], No businesses, agencies, institutions, or other entities are identified that may be interested in partnering with growers, purchasing, or processing the raw hemp. Licensed growers interested in growing hemp for personal use to feed their livestock are restricted to only 20 plants, and currently hemp is not identified as a commercial feed in the New Mexico Commercial Feed Act.

The 2014 Farm Bill allowed for the growing of industrial hemp specifically for research purposes, as long as states created such programs. The issuing agency for this Draft Rule is the Board of Regents of New Mexico State University under the Industrial Hemp Research and Development Program Act of 1978. However, there are no specific research goals or objectives for the Draft Rule as written. There is no language authorizing research to develop hemp.
cultivars suitable to the New Mexico climate or that are capable of producing plants that are under the 0.3% dry weight limit for THC. It does not address the issue of whether a New Mexico grower must grow hemp plants strictly from seed or can grow from cloned seedlings. Hemp research in New Mexico could address reduced water use, research on markets for various hemp products, and the viability of hemp for livestock feed, among many other issues.

In short, the language of this Draft Rule does not represent a complete pilot hemp program for the state of New Mexico. States which already allow for industrial hemp production and research have continued to consider policies related to licensure, funding, seed certification, markets and other issues, including one state which amended its Commercial Feed Law to include hemp. To ensure success in the adoption of hemp production by growers, the issuing agencies should continue to develop this program.

Thank you for allowing us to comment on this Draft Rule.

Sincerely yours,

Lynn D. Montgomery
Chair

LDM:ck
October 15, 2018  Anna Williams awilliams@a2la.org

Attention: New Mexico Department of Agriculture Re:
Proposed Hemp Rules
Posted Date: August 28, 2018

The American Association for Laboratory Accreditation (A2LA) is a nonprofit, non-governmental, public service, membership society that strives to promote quality in testing and testing-related activities through accreditation. A2LA offers accreditation to international standards to laboratories, calibration providers, inspection bodies, proficiency testing providers, reference material producers and product certification bodies from industries such as environmental, life sciences, and biological fields dedicated to promoting uncompromising quality in accreditation accepted everywhere and by everyone.

A2LA is dedicated to advancing and supporting the growth of accreditation through a multitude of initiatives including efforts by the New Mexico Department of Agriculture to provide common sense regulations and guidance in the area of hemp testing. The efforts of the New Mexico Department of Agriculture are important to the advancement of reliable testing and end user confidence. For these reasons, A2LA fully supports the objectives set forth within the Proposed Hemp Rules and offers the following comments and recommendations for consideration.

Comments – A2LA:

1. Section: 21.17.XX.11 Inspection/Sampling-
   a. We propose to add the word “Testing” to the title of this section, to instead read “Inspection/Sampling/Testing”. Our rationale is that this section of the draft language currently references “department-approved” laboratories who will be approved to perform testing of the THC content. Testing is therefore related to the processes outlined in this section and should be referenced within the title.
   b. The draft language of this section does not currently qualify the “department approved laboratory”. We propose to add the following text at the end of paragraph two within this section in order to clarify the qualification criteria for department-approved laboratories, as well as qualification criteria for the third-party organizations who would accredit such laboratories:

   “Department-approved laboratories that perform testing of Hemp and Cannabis-derived products for public safety must be licensed by the State and accredited to the ISO/IEC 17025 standard; the assessment and accreditation process must be carried out by a non-profit accreditation body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement operating in conformance with the ISO/IEC 17011 standard.

A2LA remains ready to be a continuing source of support and guidance to the New Mexico Department of Agriculture on issues of quality, laboratory competence, and accreditation and will continue to support the valuable work being done.

Regards,

Lonnie Spires
President/CEO
A2LA
Good morning,

Thank you for holding this public meeting regarding the upcoming Hemp bill.

My questions and comment is to the subject of intellectual property and genetics.

What assurances and restrictions are going to be made to guarantee that hemp grown in New Mexico is non-GMO and pesticide free?

As a survivor of pancreatic cancer I am very concerned about the quality and cleanliness of the food and products I put into my body.

As a licensed medical personal producer I am interested in applying for a commercial permit to grow hemp.

Does this effect my medical license? How?

Thank you for taking the time to consider my questions.

From: William Ronald Moore
To: NMDA, Comments
Subject: hemp regulations
Date: Tuesday, October 16, 2018 3:55:37 PM

I want to make the point that there should be a way for really small farmers to enter the marketplace at an affordable rate.

I am 71 with metastasized prostate cancer. There are people in my same situation that have stopped their progression of cancer at this stage by a regimen of CBD oil. The problem for me is the cost of that is minimum of $200 a month (no insurance pays). I am on a fixed income ($642 Social Security) and will have to work until I can't (how come disability is only available for young people). I want to be able to organically produce CBD oil for myself (and ideally 2 friends in my cancer support group). I am concerned that there is not going to be a level of growing that will be affordable for my needs.
I will definitely apply for a personal production license. I grow a lot of my own organic produce, meat, and eggs. Organics are important to me because of my health issues, and I don't really trust industrial farming (even organics). After trying my hand with a personal production license I would like to have the option of growing on a little bigger scale to produce income. My farm-able land is only 1/4 acre but I am amazingly productive on that. $900 prices me out of that possibility. There should be a lower level for people to enter the market place that don't want to grow industrially.

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From: Matthew A. Kennicott  
To: NMDA, Comments  
Subject: Hemp Rule Comments  
Date: Tuesday, October 16, 2018 4:56:46 PM

To Whom It May Concern:

As one of the cofounders of Glo CBD, a company born and located in Albuquerque, we appreciate the opportunity to comment on the proposed hemp rules.

New Mexico stands the chance to lead the nation in something highly positive with the possibility of adopting a non-restrictive, open hemp rule.

As you are likely aware, the Farm Bill of 2018 contains provisions which fully legalize hemp at the federal level. This versatile, harmless plant was banned in 1937 with the passage and signing of the Marihuana Tax Act. We are on the verge of our economy undertaking a major shift with hemp about to enjoy full legalization once again, as it had been since before the founding of our country. Products from clothing to dietary supplements to medication are all made from hemp or compounds found in hemp. We urge you to be as open as possible with the number of licenses approved and the amount of crop that can be grown, especially considering the timeline for federal legislation, in the final version of this rule.

More specifically to the language in the proposed rule, there are several items we would like to point out for the record.

1. There is mention of destroying cannabis plants covered under the proposed rule. It is not clear why or under what circumstances plants would need to be destroyed. What happens if a grower uses all of their plants for different products? Please clarify.

2. Under 21.17.XX.9, page 4, second paragraph says that the grower must use a laboratory test approved by the department to determine if strains that are to be grown meet the definition of hemp. Does this apply during licensing? Who pays for the testing?
What is the time frame for the department to make a determination if the strain meets standards? What are the standards?

3. Section 21.17.XX.10, page four states that there will be additional fees for inspections of continuous and annual applications and licenses. Are there any other agricultural sectors that must submit to additional fees for inspections? If not, why is the hemp industry being singled out? Many, if not most, of these farmers will be small businesses. Placing a fee burden on these small businesses, on top of other Federal, State and local fees, would be onerous, and stifle the growth and development of small business may discourage many from even starting a business in the first place. We would encourage the department to find other streams of funding, rather than further burdening small businesses with more fees. We should be encouraging the growth of the private sector with a more favorable regulatory and fiscal scheme.

4. Further language in the same section as stated above mentions that a licensee shall be financially responsible for additional staff time with regards to noncompliance or additional sampling requirements or other expenditures that may be needed with regards to compliance. This is another unnecessary fiscal burden on potential producers. Why does a licensee pay an application fee if the fee is not going to cover some of the expenses for the department related to the act? Enforcement should be a permanent, base expenditure in the budget and should be fully borne by the department. We would encourage the department to seek a funding stream other than those that must be collected from producers and placing further financial burdens on small businesses.

5. Section 21.17.XX.11, last sentence, states that each licensee shall be financially responsible for any costs that are associated with sampling of cannabis samples. How often will the testing be required? Are any other agricultural sectors subject to similar provisions? If not, why is the hemp industry being singled out? This is also a cost that should be borne by the department.

6. How does the Inspection of Public Records Act (IPRA) apply to licenses in cases covered by the hemp rule? Is the licensee list a public document? Are applications for licenses considered public documents?

7. Is there a limit on the number of licenses that will be approved?
   Is there any delineation between existing medical crops and industrial hemp crops?

Thank you again for the opportunity to comment on this rule. We believe that working together will help foster a more open, collaborative relationship amongst the department and the hemp growing community. Glo CBD stands ready to assist in any way possible throughout this process and into implementation.

Sincerely,
Matt Kennicott
Co-Founder and Chief Communications Officer,
Glo CBD
Good morning,

Thank you for holding this public meeting regarding the upcoming Hemp bill.

My questions and comment is to the subject of intellectual property and genetics.

What assurances and restrictions are going to be made to guarantee that hemp grown in New Mexico is non-GMO and pesticide free?

As a survivor of pancreatic cancer I am very concerned about the quality and cleanliness of the food and products I put into my body.

As a licensed medical personal producer I am interested in applying for a commercial permit to grow hemp.

Does this affect my medical license? How?

Thank you for taking the time to consider my questions.

Steve Estolano Chavez
Chavez.steve@gmail.com
October 10, 2018

RE:  Hearings on Proposed Hemp Rules and Regulations

TO:  NEW MEXICO DEPARTMENT OF AGRICULTURE

COMMENTS:

21.17.XX.7 DEFINITIONS

"APPLICANT" Should be limited to New Mexico Residents or Corporations with majority control by New Mexico residents. New Mexico Residents or Corporations should receive a twenty five per cent (25%) local preference in all matters regarding Hemp regulation.

"LAW ENFORCEMENT" County and state law enforcement should be formally informed that the applicant legally can grow and produce hemp so that law enforcement does not mistakenly arrest and destroy legal hemp production.

"LICENSEE" Should be limited to New Mexico residents. If out of state licensees are allowed, then they should pay three times the determined amount for fees and expenses. Seventy-Five per cent of those fees and expenses should be placed in an enterprise fund which is to be used to educate the public about the difference between "Hemp" and "Marijuana."

"PERSONAL PRODUCTION" The amount should be increased from 20 plants per location to 60 plants per location. The state should encourage the growing of hemp for the small family farmer.
Annual Production Application and License

"properly completed application" Time of receipt should be measured from the date of initial submission. However, the term "incomplete or improperly completed" should be read with deference in favor of the New Mexico resident, corporation or instate entity. Once their application is found to be "complete" then his time should measured from the date of original submission.

Concern is that the terms "incomplete or improperly completed" are vague and give too much discretion to the regulatory agency to strictly rule against the applicant. Many New Mexico farmers or small businessmen do not have the money to employee an attorney or professional to complete the application and deference should be given to those who pro se complete the form.

Out of state applicants or foreign corporations with non New Mexico control, must employ a New Mexico lawyer to complete and submit the application.

21.17.XXX.10 FEES:

In the first year, Local corporations and local individuals should pay 50 % of the amounts on the fee list. The investment is risky and many smaller local growers must be encouraged to change to growing Hemp instead of other non regulated products.

All fees should be increased by 300 % over the fee list, for out of state applicants, be they entities, individuals or corporations. “Local Preference” is a standard City, County and State practice.

21.17.XX.13 VIOLATIONS/PENALTIES

The applicant has a procedural and substantive right to Due Process in the application submission, application acceptance, application, license, and termination or denial of license by a District Court.

[Signature]
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HEARING OFFICER GOMEZ: Good afternoon. My name is Joe Gomez. Today I will be serving as your hearing officer for the public hearing on the New Mexico Department of Agriculture's newly proposed hemp cultivation rule. Please make sure that you have signed in for the record. I'm going to ask everybody to please silence or turn off your cell phones. Thank you.

The date is October 15, 2018. The time now is 1:05 p.m. This hearing is being held at the Española Library Conference room located at 313 North Paseo De Oñate, Española, New Mexico 87532. The notice of hearing for 21.17.XX NMAC was published in the September 11th edition of New Mexico Register, Volume 29, Issue Number 17, and in the Las Cruces Sun News, the Albuquerque Journal, Carlsbad Current-Argus, and the Eastern New Mexico News, Santa Fe New Mexican, and Española during the week of October 8, 2018. The notice of hearing as well as a copy of the rules have also been made available via the department's website.

During today's hearing, all interested parties will be given an opportunity to give comments on the proposed rule only. If there are other comments, NMDA staff will meet with you after the hearing.

So again to make that clear, we're just going to go over the -- we're going to take questions over
anything in the proposed rule. If there's any questions on growing or fees or anything of the sort, we'll leave that for after the hearing, and Brad and Mr. Parra will visit with you.

The hearing is being recorded and the summary of all testimony presented today will be prepared for Jeff M. Witte, director секретарь of the New Mexico Department of Agriculture and will be submitted to the New Mexico State University Board of Regents.

With me today is Brad Lewis, the division director for agriculture and environmental services at NMDA.

Brad, can you please explain the need for the new rules and its components?

MR. ANTHONY PARRA: Brad, will you hold for a minute and let's get the rest of the people in the door?

MR. BRAD LEWIS: Will do.

(A discussion was held off the record.)

HEARING OFFICER GOMEZ: All right. We're going to get started again. And for the benefit of those who came in after we started, I'm going to repeat another paragraph. During today's hearing, all interested parties will be given an opportunity to give comment on the proposed rule only. If there are other comments that need to be made, NMDA staff will meet with you.
after the hearing.

Again, if those comments don't involve the rule -- the draft rule as presented, we will answer those questions after the hearing.

This hearing is being recorded, and a summary of all testimony presented today will be prepared for Jeff M. Witte, director/secretary of the New Mexico Department of Agriculture and will be submitted to the New Mexico State University Board of Regents.

With me today is Brad Lewis, the division director for agriculture and environmental services at NMDA.

Brad, can you please explain the need for the new rule.

MR. BRAD LEWIS: During the 2017 legislative session, Senate Bill 6 industrial hemp research rules was passed and chaptered into law. The statute delegates the New Mexico Department of Agriculture the authority to develop an industrial hemp program, and promulgate rules for the administration of that program, which would complicate federal law. State statute also grants persons and institutions of higher education the ability to apply for an industrial hemp production license through the New Mexico Department of Agriculture.
The proposed rule establishes licensure requirements, fee caps, inspection, sampling requirements, defines hemp, addresses noncompliant varieties and penalties, provides for exemptions and defines recordkeeping requirements.

Principal components of the rule include that there are three licensing categories: Annual, continuous, and personal. Fee caps were established at $900 per location for annual and continuous grow licenses, and $100 per location for personal. Details for much of the inspection and sampling will be found in policy rather than in rule. Growers will be responsible for sampling and transporting samples to a New Mexico department-approved laboratory for testing for THC. All noncompliant fields will be destroyed, and violations will be met with suspension or denial of future licenses.

HEARING OFFICER GOMEZ: Thank you, Brad. We will now open the floor for comments. Please address yourself to me by stating your name and affiliation for the record.

Any comments? Yes, sir.

MR. GENE GALLEGOS: Mr. Examiner, Gene Gallegos, Rule 9, paragraph 5, you've got to be in compliance with the state, federal regulation regarding production.
Where do you access that regulation so you're in compliance with it when you file your application?

MR. BRAD LEWIS: Gene, once this rule is chaptered in, this will be what will be considered the rule of New Mexico or the law of New Mexico. So the rule will take into effect both federal and other laws in the state. So if you adhere to the rule in here, you should be all right with respect to the other laws.

MR. GENE GALLEGOS: Okay. Good. Rule 11, approved laboratories. Where are they? How do you find that information?

MR. BRAD LEWIS: At this point in time, we're in open discussion to utilize the existing THC testing laboratories in the state. There's two in the northern part of the state, one in the southern part of the state. We expect that will change at some point in time, as other labs begin to get certified to test for THC.

MR. GENE GALLEGOS: The two in the northern part of the state are located where?

MR. BRAD LEWIS: One is in Albuquerque -- both in Albuquerque -- Albuquerque and Santa Fe.

MR. GENE GALLEGOS: Okay. Thank you.

HEARING OFFICER GOMEZ: Any other questions?

MR. STEVE CHAVEZ: I'm just representing myself,
no organization. As far as the land it's grown on, are there going to be rules to ownership, or leasing lands, do you know?

MR. BRAD LEWIS: Understand. We participate in a policy that you'll have to have permission of a landowner, if you do not hold title to a piece of property to grow.

MR. STEVE CHAVEZ: This is with regard to commercial?

MR. BRAD LEWIS: With regard to commercial. And this is help protect the landowner with respect to state and federal seizure laws.

Yes, ma'am?

ANNETTE ALVAREZ: Annette Alvarez, Pecos, New Mexico. Can you define commercial growing versus personal?

MR. BRAD LEWIS: It would be defined as if you're growing to sell, rather than to grow for your own use.

MS. ANNETTE ALVAREZ: Thank you.

HEARING OFFICER GOMEZ: My pleasure. Thank you. Yes, sir?

MR. JERRY FUENTES: Jerry Fuentes with the Industrial Hemp Coalition, and also the New Mexico Hemp Association and the Truchas land grant. We'd like to ask that the rule-making people would consider lowering
the application fee or putting in a sliding scale for some of the smaller farmers. We asked it of you the last time, so we hope that you consider this. Thank you very much.

MR. BRAD LEWIS: Thank you.

MS. RUTH FAHRBACH: Ruth Fahrbach, Taos Hemp. I had a question about this Number 9, applicant acknowledgement, be in compliance -- as the gentleman said -- with the state and federal regulation. Now, are you -- are we aware that we're still -- the federal law is still Controlled Substance Act?

MR. BRAD LEWIS: Correct.

MS. RUTH FAHRBACH: Is that still in effect?

MR. BRAD LEWIS: Good question. We're kind of in a grey area, because of the expiration of the farm bill -- 2014 farm bill. So the new 2018 farm bill language will address much of the hemp in there. But, yes, we're aware of the federal laws with that. The federal laws in 2014 said that institutions of higher education, et cetera, can grow hemp as part of a research program. So in order to comply with that, if those same statements are in the 2018, which we expect they will be, there is a research component that will be on the application form. So you'll have to provide us a research component.
MS. RUTH FAHRBACH: What does that mean?

MR. BRAD LEWIS: A research component could be, you're looking at production in terms of the specific cultivar, with respect to -- will it grow in this climate? How much does it produce? Is there a market for the product up here? Those type of things are all research components.

MS. RUTH FAHRBACH: Do you know if the tribal indigenous people here are exempt from that?

MR. BRAD LEWIS: It depends on where they're growing. Are you talking about on reservation land or off reservation land?

MS. RUTH FAHRBACH: On the reservation.

MR. BRAD LEWIS: On the reservation, the 2018 language will require tribal language -- tribal lands to put in a plan. Same as each state. Each state has to put in a plan to the federal government for the production and licensing. I expect that most tribal lands will just borrow the language in the state that they are in, and they will modify that, and then submit it to the federal government for approval.

MS. RUTH FAHRBACH. Okay. But they should be exempt from the CSA?

MR. BRAD LEWIS: They're exempt from the state portion of it, but the federal will have a separate set
of guidelines for production of hemp on tribal lands.

MS. RUTH FAHRBACH: Okay. Thank you.

MR. BRAD LEWIS: You bet.

MR. PAUL ROMERO: Paul Romero, personal individual. You've got places for testing this, that, and the other, is there going to be processing plants locally? Is that going to be discussed later?

MR. BRAD LEWIS: Paul, can we address that after the session? It's a good point.

MR. PAUL ROMERO: It's a question for everybody.

MR. BRAD LEWIS: Right. We'll try to address that since the -- our statutory authority stops at harvest, but we'll go ahead and visit with you regarding post harvest-type things afterwards.

MR. PAUL ROMERO: If we're going to grow this thing, we ought to know how to produce it, how to have it scaled, sorted, and delivered, right?

MR. BRAD LEWIS: Right. You're exactly right. And we'll address that after we close out this formal part. There are a number of people in the industry that are here that could help address that.

MR. PAUL ROMERO: It's good to know those. Will there be a listing available?

MR. BRAD LEWIS: Bring it up in about ten minutes or so.
MR. JERRY FUENTES: I'd also like to add -- Jerry Fuentes again -- that if the farm bill is passed -- is signed and passed, it's going to change all the language that we have here and we might have to change it again, right?

MR. BRAD LEWIS: Most of the language here is probably going to stay intact. We think we know what the language in the 2018 farm bill is going to say. So our directive from our secretary of agriculture would be inclusive as much as we could with that language from the 2018 farm bill. There's no doubt -- your point is well-taken. We'll probably have to go back into this rule in a year or two years or something as the industry changes.

MR. JERRY FUENTES: Federal law.

MR. BRAD LEWIS: Right. Federal law -- state laws change. The industry's going to change significantly. You're exactly right.

MR. JERRY FUENTES: Compliance with federal law.

MR. BRAD LEWIS: You're exactly right.

MR. STEPHEN SISNEROS: Stephen Sisneros, New Mexico Hemp Enterprises. What timeline do you guys have on issuing licensure? When do you anticipate issuing the first license?
MR. BRAD LEWIS: I think we would like to get it in place by December 1st. That's based on a lot of things that are out of the control of New Mexico Department of Agriculture, but that's our timeline. Yes, sir?

MR. MARIO TRUJILLO: Mario Trujillo, Taos County Farm Bureau. So according to section 13 here -- so currently industrial hemp production is illegal in the State of New Mexico until such time that this is done. So if I'm reading this correctly, anybody that's producing without that license may actually be denied a license once this is actually made available; is that correct?

MR. BRAD LEWIS: I think we'd have to look at the circumstances.

MR. MARIO TRUJILLO: Okay.

MR. BRAD LEWIS: It gets complicated. We could talk about it after we close out this formal session.

HEARING OFFICER GOMEZ: Yes, ma'am?

MS. KATHLEEN GROODY: Kathleen Groody, Coronado Soil and Water Conservation District. I have a lot of growers who would be interested in producing hemp for animal feed. However, the personal production rule states that you could only grow 20 plants. So I'm wondering -- also, you're not attempting to authorize it
as an animal feed for the State of New Mexico. Other states have done that, for example, Tennessee. So just wondering about that, if that could change.

MR. BRAD LEWIS: There are some federal laws that are involved in that, and -- could I get you to hold that. It's been brought up before in several of the other meetings, but because the feed portion of it is not part of this specific rule, we would rather address that off -- when we close out this official part on that. So if you could keep that question in the back of your mind, we'll come back to it. And it's a good question. Thank you.

HEARING OFFICER GOMEZ: Yes, sir?

MR. KEVIN LOMBARD: Kevin Lombard with the -- from Farmington. Will the NMDA have requirements for certified seed or genetics or clones, or will there be any kind of like list of seed sources for growers, or anything like that?

MR. BRAD LEWIS: The statute does not provide that authority, Kevin. So at this point in time, the Department of Ag does not foresee having specific requirements for that, but we could talk about it after we close out this with the industry people that are in the room.

Yes, ma'am?
MS. ANNETTE ALVAREZ: Can you explain the process -- after we have this public hearing, what happens next to where -- I mean can you explain the process?

MR. BRAD LEWIS: Sure. After we finish the public hearings in the state, we await -- all the documentation and everything from the court reporter is all sent into us, all that is then reviewed internally, a packet is put together with the hearing officers of those recommendations, and a packet is submitted to the secretary of agriculture, Jeff Witte. Jeff Witte will review everything from the public input and the recommendations from the hearing officer, he'll sit down with his staff and start going over the rule and start determining what changes need to be made in those rules. Those changes will be made, redrafted, submitted to the secretary of Ag for approval. From there, it will go to the Board of Regents for approval with New Mexico State University for that. Then it comes back to New Mexico Department of Agriculture, and I believe it is filed in Santa Fe after some reviews in Santa Fe.

Can we get your name?

MS. ANNETTE ALVAREZ: Annette Alvarez, Pecos, New Mexico.

MR. BRAD LEWIS: Yes, sir.
MR. MATHEW LADEGAARD: I just want to comment about what the gentleman said over there about the -- my name is Matthew -- about the $900 fee. I was wondering if there's a reason why it's so high, and if there was any chances for it to be lowered? Especially if we're going to make it a viable crop for small-scale farmers in northern New Mexico.

MR. BRAD LEWIS: Matthew, the amount stated in the rule are fee caps. Okay. We don't expect the fee to be that -- at that point for you. With respect to reducing it and, you know, following Jerry's submission, those things have been entered into the record for the secretary of agriculture to review on those.

MR. MATHEW LADEGAARD: Okay.

MR. RON MARTINEZ: Ron Martinez, Baca land grant. I was just going to ask if there was any exceptions for land grants specific and/or water associations that are associated with the land.

MR. BRAD LEWIS: The rule provides authorization for the secretary of agriculture to look at exceptions on that. And so my recommendation would be to state your case and submit it for an exemption, and the secretary of agriculture will review that and look at it.

MR. RON MARTINEZ: Good to know.
MR. BRAD LEWIS: You bet.

Yes, ma'am?

MS. TRACY RICE: Hi, Tracy Rice, Grow with Hemp in Taos, New Mexico. I believe you stated earlier that the personal fee was going to be $100. Under the fees on the rules here, it states $25. Can we get clarification on that?

MR. BRAD LEWIS: I'll have to look at it again, and see exactly what the language is in there. The fee should be $25 cap, and then the plant should be $25 a plant, I think.

MS. TRACY RICE: I'm sorry, there's a plant fee?

MR. BRAD LEWIS: There's a cap for the fee and a cap for the plant.

MS. TRACY RICE: With the $900 licensing fee, are there additional fees that the farmer/grower will incur?

MR. BRAD LEWIS: Under the cap, there's an acreage fee, and then in a greenhouse -- if they're greenhouse grown, the square-foot fee.

MS. TRACY RICE: So I think I also read that they're responsible for the THC testing.

MR. BRAD LEWIS: They are responsible for the THC testing.

MS. TRACY RICE: So that's not included in the $900?
MR. BRAD LEWIS: No, it is not.

MS. TRACY RICE: And then what about qualifications for applications, are there people that will not be qualified? Like if, you know, you've had a crime or -- I know at the federal level, that's an issue. Are there people that shouldn't bother applying, I guess is what I'm getting at.

MR. BRAD LEWIS: Not at this point. I think if you -- the caveat to that would be that if you failed to meet expectations under a previous license, like didn't pay fees, didn't comply with orders, those type of things, then that would be a consideration for a denial for future licenses.

MS. TRACY RICE: Is the application drafted and available for viewing?

MR. BRAD LEWIS: We can't do that until after the hearing processes and after we look at the rule changes on that.

MS. TRACY RICE: Any idea -- will there be a cap on the number of licenses that are issued?

MR. BRAD LEWIS: There's no cap on the number of licenses, right, or acres.

MS. TRACY RICE: Any idea the duration of approval for the application?

MR. BRAD LEWIS: We submitted -- in the rule, we
said 25 days, so hopefully we'll get that done within
25 days. Now, 10,000 people apply for a license, then,
you know, there's going to be some adjustments there.

MS. TRACY RICE: Right. I think it states it
will backdate to when the actual license or the
application was received.

MR. BRAD LEWIS: I can't remember the exact
language within that.

MS. TRACY RICE: It just seems like a short time
frame for such a new program to try to get everybody
pushed through. I'm just curious to know if there's
going to be a backlog, which you probably can't answer
at this time.

MR. BRAD LEWIS: We hope not. We'll bring in a
third staff to start reviewing applications as fast as
we can and then get them processed at the same time. I
think the secretary's intent was to get this out in the
public as fast as possible.

MS. TRACY RICE: Back to the licensing fee. I
realize that's a cap, but it's about double, I think,
what they're doing up in Colorado. So I think clarity
around what that fee is going towards, if it's admin,
and then any additional expense would probably be
advantageous.

MR. BRAD LEWIS: Right. We've broken it down.
Our secretary of agriculture looks at those things very carefully to make sure that it's not -- that we're not making money off of the project.

MS. TRACY RICE: Thank you.

MR. BRAD LEWIS: You're welcome.

Yes, ma'am?

MS. KATHLEEN O'DEA: I'm Kathleen O'Dea. I'm the owner and director of Scepter Labs, the licensed medical marijuana lab in Santa Fe, also Victory Analytics, which is a hemp testing lab, and wanted to speak to your question about costs. We're hoping -- we do a lot of hemp testing. We've been doing it for about four years, and I think we'll be able -- my prediction is we'll be able to bring in the cost of testing for around $25 to $35 per sample, is my hope. And also with regard to Colorado, we do operate a hemp farm in Colorado. There, the fee is $500 flat, plus an additional $5 per acre.

MR. BRAD LEWIS: Thank you.

HEARING OFFICER GOMEZ: Any other questions?

MS. TRACY RICE: Is that $900 annually on top of the $6, or whatever, per acre?

MR. BRAD LEWIS: The fee for an annual production is per crop because we could double the crop in parts of the state and per location.

MS. TRACY RICE: Okay. So I pay $900 for my
first crop, and then $6 per acre for every crop thereafter?

MR. BRAD LEWIS: For every acre within that crop.

MS. TRACY RICE: But not another $900 annually, or is it every year?

MR. BRAD LEWIS: Every year.

MS. TRACY RICE: But if it's a continuation crop --

MR. BRAD LEWIS: The continuous will be a single fee, plus acre or square footage.

MS. TRACY RICE: Got it.

MR. BRAD LEWIS: So the expectation is, the continuous will be slightly more to cover additional inspections rather than the annual.

MS. TRACY RICE: And to your comment, getting a sample to you, is that through courier? Is that mail? Are there any issues with having something like that go in the mail?

UNKNOWN SPEAKER: It depends on what happens with the federal farm bill. You cannot send it through the U.S. Mail. We do offer -- I'm not sure how it's going to be on the hemp side, but we currently offer free courier service from Albuquerque to the lab in Santa Fe, but we'll just have to -- I don't think we'll be able to courier it for free and then also charge a $25 a sample.
We're going to try to be as reasonable as possible.

UNKNOWN SPEAKER: What type of test is going to be performed?

MR. BRAD LEWIS: Excuse me, sir, can we hold this question until after the hearing.

UNKNOWN SPEAKER: Yes, sorry.

MR. BRAD LEWIS: This gentleman by the door.

MR. JOHN COUGILL: John Cougill. I have a question. I'm not really familiar. You're saying it's $900 if you want to do unlimited production, but you have a limitation, and what is the limitation on per acre?

MR. BRAD LEWIS: There is no limitation on acre.

MR. JOHN COUGILL: So you could do a thousand acres, ten thousand acres?

MR. BRAD LEWIS: Right. But there is a per-acre charge to cover the additional inspection costs that are associated with additional acres.

MR. JOHN COUGILL: What is considered additional acres?

MR. BRAD LEWIS: It will be -- if you have another acre or portion thereof acre.

MR. JOHN COUGILL: Say I wanted to do ten acres, it would be $900 plus $6 per each acre within the ten acres, per year?
MR. BRAD LEWIS: Right.

MR JOHN COUGILL: So it would be $960?

MR. BRAD LEWIS: Correct. For one year, one location, one crop.

MR. JOHN COUGILL: What do you consider a location? What would be the definition if, say, I had one on one side of the road, one on the other, would it be a continuous?

MR. BRAD LEWIS: We would consider that a continuous. The fee is associated with the time an inspector takes to get to a location. Once he's in that location, then they are already there. We pay for the travel time, everything else, but if you have something that's another five miles down the road, we would consider that a separate location. So we're trying to look at this from a reasonable point of view.

MR. JOHN COUGILL: Okay. I was just looking for people who are trying to make ends meet. What about co-ops? Do you have any rules on co-oping -- farmers co-oping together?

MR. BRAD LEWIS: It would probably be based on -- if you have five farmers in five locations, even within a co-op, it would still be a per location, because the cost is associated with getting the inspector there, if that makes sense.
MR. EDUARDO MARTINEZ: How many --

HEARING OFFICER GOMEZ: State your name.

MR. EDUARDO MARTINEZ: Eduardo Martinez with the Medanales farmers co-op. How many inspectors do you anticipate having throughout the northern part of the state, or throughout the state?

MR. BRAD LEWIS: At this point in time, we have zero that are dedicated to the hemp program on this. So we're having to borrow inspectors from other programs to do this, because legislators provided us no additional budget within the department to hire anybody. And so in order try to maintain the fees as low as we possibly can, we're borrowing inspectors from other places and training them for that.

Jerry?

MR. JERRY FUENTES: Jerry Fuentes again. When you say about location, there's a lot of patchwork around here. Let's say in this one location within an area of a mile, you have three pieces of land that you're going to be growing hemp on, would that be considered one location or one site?

MR. BRAD LEWIS: We would probably consider that as a location. It starts getting -- the problem is, you start looking at, well, I've got -- you gave Jerry a mile, and Gene is 1.2 miles, and that type of thing in
there.

MR. JERRY FUENTES: Give us an inch, and we'll take a mile, right?

MR. BRAD LEWIS: You're exactly right. So we're trying to -- you know, we don't want to break location by farm road or highway or an irrigation ditch. Some states do. If it's not a continuous field, then it's a separate location. We're trying not to look at it that way.

MR. JERRY FUENTES: Thank you.

MR. BRAD LEWIS: That's what we're trying to do.

MR. STEVE CHAVEZ: Steve Chavez. Another question regarding security. Other producers of medical have to establish a very significant amount of security. Is that going to be a requirement as well?

MR. BRAD LEWIS: At this point in time, we don't have that requirement.

HEARING OFFICER GOMEZ: Yes, sir?

UNKNOWN SPEAKER: My organization, one of our goals is outreach and education about hemp. Part of our plan was to work with several local businesses within Albuquerque and Santa Fe to demo hemp plants. If I wanted to do that, would I require a license for each individual location, or how would that work if I wanted to apply for a continuous operation license?
MR. BRAD LEWIS: I would say, let's -- go ahead and submit something to us, the secretary, regarding exemptions on that. I mean, like I said, we're not trying to --

UNKNOWN SPEAKER: Yeah. And that's like a weird area too because it would be a cost in production in a vegetated state so people could see what it is.

MR. BRAD LEWIS: Right.

UNKNOWN SPEAKER: Which isn't harvesting. So that's kind of why I am curious. But, yeah, definitely. Thank you.

MR. BRAD LEWIS: Right. And that's why the secretary of ag had that exemption clause put in there, was exactly for those cases.

UNKNOWN SPEAKER: Appreciate it.

HEARING OFFICER GOMES: Yes, ma'am?

KATHLEEN GROODY: I had a question. If we are doing tissue culture for preserving plant genetics, would that be considered indoor production?

MR. BRAD LEWIS: I would say, Kathleen, probably the best way is to write it up and look at an exemption to see how that would be considered, if that would be considered a continuous grow field or not.

MS. KATHLEEN GROODY: Thank you.

HEARING OFFICER GOMEZ: This gentleman and then
MR. JOHN COUGILL: Hi, John Cougill again. On the indoor production, there's a lot of farmers that they start their plants in the greenhouse because the females produce the highest CBC. So would that be considered any form of an indoor production for starting before you plant them afield?

MR. BRAD LEWIS: We've had this discussion. One of the advisors to the committee is exactly in the same point of view. I think we're looking at it as a continuous grow, because you have to keep your mother plants around from one year to the next, and so forth. And part of this is an enforcement just to make sure that -- you know, it's not going to take much for something to go awry with this program. So we're trying to provide sufficient oversight that keeps everybody in line with the definition of it, yet not become so overburdensome with that oversight on it.

So I think in our earlier discussions with the industry that we decided that would be a continuous grow operation, and then when you moved your operation outside, that would be another separate annual grow license on that.

MR. PAUL ROMERO: Paul Romero. Under inspections, sampling, what happens if you get
cross-pollination between some local homegrown cannabis and it tarnishes your hemp plant?

MR. BRAD LEWIS: That's a good question. Can we address that after we close this out? Because there's a lot of facets to it that are not directly involved with the rule.

MR. PAUL ROMERO: They're not mentioned in here.

MR. BRAD LEWIS: Right. You're exactly right. So we could address that --

MR. PAUL ROMERO: Do you get better certification for GMO hemp or organic hemp?

MR. BRAD LEWIS: You know, let's talk about that after we close this out.

MR. PAUL ROMERO: Isn't hemp GMO'd already?

MR. BRAD LEWIS: I don't think it is. I don't think -- they're working on it, but it's not.

MR. PAUL ROMERO: So that's an inferior -- it's an inferior plant to good pot, right? In the grow season, you're going to be known as a bad pot grower.

HEARING OFFICER GOMEZ: Do we have any other questions? Yes, sir?

MR. DAVID VALDEZ: David Valdez for NM Brief Relief. I just want to clarify that you are going to allow smaller scale, like one, two, three-acre growers to apply and be able to even -- we do have a few
individuals who have small acres and would like to do
this, but they don't know if it's even feasible for them
to do it or not, or even -- not just personal but for --
you know, to sell.

MR. BRAD LEWIS: Right. That's exactly the
intent is to try to be as inclusive as we possible can,
but still have to maintain a budget in the Department of
Agriculture. So we're trying to strike that balance.
You're exactly right.

MR. DAVID VALDEZ: Thank you.

MR. JOHN COUGILL: One more question. Would they
have to come through you, a person who wanted to do a
pellet production, or breaking it down into fibers and
stuff, would they come through your department to start
up a business to be doing this?

MR. BRAD LEWIS: No. Our statutory authority
stops at harvest, at this point in time.

MR. JOHN COUGILL: So would they have to get a
license from the state?

MR. BRAD LEWIS: It would be a business license
probably.

MR. JOHN COUGILL: Would not necessarily a
hemp -- because being it -- it's going to still be a
hemp production all the way through.

MR. BRAD LEWIS: Right.
MR. JOHN COUGILL: So this rule only covers the harvest?

MR. BRAD LEWIS: Till harvest, till the cultivation and production.

Is there any other question on the rule?

Yes, sir.

MR. VINCE CORDOVA: Vince Cordova. Is there any difference in your application between a research development application or a regular production application?

MR. BRAD LEWIS: No, it will be the same application form. The criteria is that in order to comply and bridge the gap between federal and state laws and all the various other entities in between 2014 old language, proposed 2018, that we'll ask for a research component. Let us know why you're growing it.

MR. JERRY FUENTES: Either commercial, rather than --

MR. BRAD LEWIS: Or -- yeah, whether you're an individual or whatever, let us know why you're growing it, fulfill that research requirement that we have.

Yes, ma'am?

KATHLEEN GROODY: Is there going to be any research objective looking at reduced water use, for example, or reduced fertilizer use, or reducing anything
else that's associated with changing from one crop to a hemp crop?

MR. BRAD LEWIS: Without wavering too far from our rule requirements, the University's already looking at drawing up research projects for all those things.

MS. KATHLEEN GROODY: Kathleen Groody, Coronado Soil and Water Conservation District.

MR. JOHN COUGILL: I was just going to ask, how far does this research travel out of your hands in agricultural?

MR. BRAD LEWIS: We're not asking for your results.

MR. JOHN COUGILL: I mean, if a person was to go into the production and manufacturing part of it after it's been cultivated, does this research go into somebody that wants to start a pellet lab or, you know, to research into making pellets or breaking the fibers down? Do you know if it goes further then the cultivation?

MR. BRAD LEWIS: Ours -- for the University, it will.

MR. JOHN COUGILL: Right.

MR. BRAD LEWIS: Yes. It will be all-encompassing.

MR. STEPHEN SISNEROS: Stephen Sisneros, New
Mexico Hemp Enterprises. Just for clarification, if I want to get a license, get a farm, and I go out with my own money and buy a pellet producer, and I'm a licensed business and I start making these pellets, I'm free to distribute them as long as they meet your testing requirements which are set forth in this, and whatever the next farm bill language is. Currently, we're basing off of the last one in between 2018.

MR. BRAD LEWIS: Correct. If -- you know, if -- if that was -- if you're buying New Mexico hemp, you know, that should have been met, all the requirements and everything else.

MR. STEPHEN SISNEROS: And basically the core requirement you are tasked with right now is ensuring that it does not fall into the controlled substance area of cannabis?

MR. BRAD LEWIS: Well, more specifically, it does not exceed the .3 percent THC, because the controlled substance portion of it is going to evolve and change, and everything else. So it will be the .3 percent is what our directive is.

MR. STEPHEN SISNEROS: Thank you.

HEARING OFFICER GOMEZ: Any other questions?

Ma'am? State your name again.

MS. KATHLEEN GROODY: I feel like you've already
answered this, but people are going to ask me at my
congregation meeting, and that is, hemp seed is
currently under the Controlled Substances Act, so how is
it that people are going to -- where are we going to get
the seed or the clones to get started for business?

MR. BRAD LEWIS: Let us address that from an
industry side after we close this portion of the session
out. I think a lot of people have the same question,
and we'll just solicit input from the industry people
that are in here.

MS. ANNETTE ALVAREZ: When is the 2018 farm bill
expected -- the language to come out?

MR. BRAD LEWIS: Can you speak up again?

MS. ANNETTE ALVAREZ: Annette Alvarez from Pecos.
I'm just asking when the farm bill 2018 is expected.

MR. BRAD LEWIS: I don't know. That's my reply.

MR. JOHN COUGILL: John Cougill again. Is this
-- is this a done deal whether they bring the 2018 to
pass or not, or are we waiting for them to sign off on
it?

MR. BRAD LEWIS: No. We're progressing based on
state statute. The legislators have directed the
Department of Agriculture to do this, and so this is our
directive.

MR. JOHN COUGILL: So with or without their
signing off, it's effective at this point?

MR. BRAD LEWIS: We're moving forward, correct.

MR. JERRY FUENTES: I just want to make a statement on one thing. Jerry Fuentes. I want to thank Jeff Woody for -- when we were making the negotiations with him on all this that we were doing, we asked him to be inclusive for the small farmers and for everyone, and he did, and we really, really thank him for that.

Everyone is treated equal under the law. Thank you, sir.

HEARING OFFICER GOMEZ: Yes?

MR. TRACY RICE: Sorry, Tracy Rice, Grow with Hemp. Destroy based on too much THC. I know a lot of Colorado farmers had hot crops last year, and my understanding is, it just goes away. I don't know if they burn it or whatever. You know, it could still be used for hemp hurd, animal bedding, et cetera. Is there any option to be able to utilize the crop?

MR. BRAD LEWIS: Not at this point in time, there's not an option. I think as an industry, you probably need to look at going back into the statute and maybe providing some of those options, so . . .

MS. RUTH FAHRBACH: What do you mean -- Ruth Fahrbach, Taos Hemp. What do you mean by going back into the statute --
MR. BRAD LEWIS: The statute --

MS. RUTH FAHRBACH: Because I do have a -- I agree with Tracy here -- Taos Hemp is speaking here -- when you have a definition, annual production, I think the language here is a little too -- it's not correct. It means production of a single crop that is destroyed within 240 days, and really you can't destroy hemp, because even the tuber that's underneath the ground is doing something. It's aerating the soil. And we're going to need time to use that crop, you know, maybe longer than 240 days.

MR. BRAD LEWIS: I think the intent of the word "destruction" -- we could go back in and clarify -- was that it's a non-harvestable product that cannot be commercially sold or used.

MS. RUTH FAHRBACH: So it's cut?

MR. BRAD LEWIS: It's cut, and burned, whatever.

MS. RUTH FAHRBACH: We don't -- yeah, we don't want it to be burned. We'll have to come up -- we have to come up with a new statute that will take that further, right? That's what you're saying.

MR. BRAD LEWIS: Right now -- yeah, if you look at the state statute for definition, the definition of hemp is .3 percent below, correct?

MS. RUTH FAHRBACH: Right.
MR. BRAD LEWIS: That means anything above .3 percent is not hemp.

MS. RUTH FAHRBACH: Yes.

MR. BRAD LEWIS: But if it is hemp --

MS. RUTH FAHRBACH: Yeah, I'm saying anything with hemp.

MR. BRAD LEWIS: That is classified as hemp.

MS. RUTH FAHRBACH: We have to begin a new --

MR. BRAD LEWIS: No, you could do -- you could use whatever you want for that product, so . . .

MS. RUTH FAHRBACH: We just have to develop the businesses?

MR. BRAD LEWIS: Correct. Exactly correct.

MR. KEVIN LOMBARD: Kevin Lombard from Farmington. Maybe I missed something, but will the NMDA put restrictions on how close a farmer may live in proximity to a school or a church?

MR. BRAD LEWIS: No.

MR. JERRY FUENTES: As to the amount of hemp, there's several states that have it at 1 percent now. .03 percent is what -- that's what the international standard is, but a lot of states have it up to 1 percent. We could go to the legislature and we could change the law, and we could lift it up from .03 percent to 1 percent at this next legislature, because there's a
lot more cultivars, and a lot more uses for hemp that
you could get -- that you could use that will only have
1 percent hemp [sic], and you still won't get buzzed off
of 1 percent hemp. Thank you. We'll be looking to
do that.

MR. BRAD LEWIS: Other questions?

MS. RENAE PABLO: I have a question. Renae Pablo
with Navajo Agricultural Products Industry in
Farmington. Can we clarify what you mean by exempt on
tribal lands? Because there's only that grey area
behind exempt, and Navajo Nation falls on two -- three
states and there's always that question about interstate
sales as well. So we'd like to have that clarified.

MR. BRAD LEWIS: Great question, Renae. The way
I interpret the proposed language in the 2018 farm
bill -- again, this is proposed. It hadn't been signed
off. Still being discussed in Washington, everything
else. Tribal entities will have to submit a hemp
production plan to Washington, and that will have to be
approved, and the 2008 proposed language has specific
requirements that those plans have to have in there. So
that plan will have to be inclusive of those
requirements in the 2018 proposed language.

Then with respect to -- so that tribal entity
that is over two or three states, that tribal entity
will submit one plan for those tribal lands, regardless of how many states they cross over on there.

MS. RENAE PABLO: That should come from the tribal government and not just --

MR. BRAD LEWIS: Right.

MS. RENEE PABLO: -- an entity on the tribal land?

MR. BRAD LEWIS: That should -- yeah, they should work with the, you know, BIA or whatever on those plans.

MS. RENAE PABLO: Okay.

HEARING OFFICER GOMEZ: Do we have any other questions associated with this proposed rule?

Seeing none, we will be closing the hearing. The time is 1:57 p.m. I'd like to thank all for participating. Written comments must be received no later than 5:00 p.m. on October 16, 2018. The official recording of hearing will be submitted to the director secretary. Thank you all for coming.

(The hearing was concluded at 1:58 p.m.)
REPORTER'S CERTIFICATE

I, DESTENIE M. VISARRAGA, RPR, NM CCR #136, DO HEREBY CERTIFY that I did report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcript of the proceeding had upon the taking of this hearing.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

Destenie M. Visarraga, RPR, NM CCR #136
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NEW MEXICO DEPARTMENT OF AGRICULTURE

TRANSCRIPT OF PROCEEDINGS

RULEMAKING HEARING
October 15, 2018
6:10 p.m.
LOS GRIEGOS CENTER
1231 Candelaria Road, Northwest
Albuquerque, New Mexico

REPORTED BY: DENISE KOPAN, CCR #124
KATHY TOWNSEND COURT REPORTERS
110 Twelfth Street, NW
Albuquerque, New Mexico 87102
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EXHIBITS

(None)
MR. PARRA: We are about to get started. Because of the size of this group, I need your help, and I'm going to ask you for your help up-front.

The primary purpose of this hearing is for input on the draft rule for the licensure of it. So if we can go into public hearing and take the opportunity to get input on the licensure and get that done with, what we will do is have the formal hearing, and then have a conversation, because I know there are lots of questions about production and lots of ideas, processing, where do I go with it, where do I get seed, how do I grow it, stuff like that.

And they are all great questions, and we have got a lot of great resources in the room that can help answer those questions. We can't answer them all, but as a group, we can come to answers together. But if we can separate that from the normal hearing on the rule itself, and licensure comments, comments about inspection, stuff related to what's in that draft rule, that would help us a lot, and it will help you guys a lot in a way that we probably get out of here before midnight. So if I could get you guys to indulge us in that.

The other thing is if you are going to give comment, please stand up, speak clearly, state your
name, state who your affiliation is with, and spell the name. It will really help the court reporter.

Let me explain the process of what we are going through right now. We have had this draft rule out for a little bit for people to read it and comment on it. Mr. Gomez here is our Hearing Officer, and he is going to take input.

We had a hearing in Las Cruces last Friday with probably a third of the turnout that we have here; we had one in Estancia this morning, or early this afternoon, we probably had half the turnout. By far, this is the largest.

We have two more hearings down in Portales and Carlsbad, and all those comments are going to be put in the public record and taken into consideration so a decision can be made so we can get licensure going and we can get the applications out.

Once Mr. Gomez gets all the input, drafts his recommendations to the Secretary, and it goes to the Board of Regents at New Mexico State University for approval, then we can do the application and get people licensed and start production.

Again, I just want to ask, please indulge us and focus on the rule for the first part of it. The second part of it, staff and I are -- we are going to
I will tell you right now, we don't know all the answers, but we will try to help you find them. So if we can do that, I'm going to turn it over to Mr. Gomez and Mr. Lewis, and thank you guys for coming.

MR. GOMEZ: Thank you, Mr. Parra.

Good evening. My name is Joe Gomez. Today, I will be serving as your Hearing Officer for the public hearing on the New Mexico Department of Agriculture's newly proposed hemp cultivation rule.

Please make sure that everybody has signed in. There are some sign-in sheets over here in the front and a few in the back. I'm going to ask everyone to please silence or turn off your cell phones, and thank you very much.

The date is October 15th, 2018, and the time now is 6:12 p.m. This hearing is being held at Los Griegos Center, located at 1231 Candelaria Road, Northwest, Albuquerque, New Mexico, 87107.

The notice of hearing for 21.17.XX NMAC was published in the September 11th edition of the New Mexico Register, Volume 29, Issue Number 17, and in the Las Cruces Sun-News, the Albuquerque Journal, the

The notice of hearing, as well as a copy of the rules, has been made available via the Department's website.

During today's hearing, all interested parties will give -- will be given an opportunity to give comment on the proposed rule only; and as Mr. Parra indicated earlier, if there are other comments, NMDA staff will meet with you after the hearing.

This hearing is being recorded, and a summary of all testimony presented today will be prepared for Jeff M. Witte, Director/Secretary of the New Mexico Department of Agriculture, and will be submitted to the New Mexico State University Board of Regents.

With me today is Mr. Brad Lewis, the Division Director for Agriculture and Environmental Services at NMDA.

Brad, can you please explain the need for the new rule?

MR. LEWIS: During the 2017 legislative session, Senate Bill 6, Industrial Hemp Research Rule, was passed and chaptered into law. The statute delegates the New Mexico Department of Agriculture the
authority to develop an industrial hemp program and promulgate rules for the administration of that program which would complement federal law.

State statute also grants persons and institutions of higher education the ability to apply for an industrial hemp production license through the New Mexico Department of Agriculture.

The proposed rule establishes licensure requirements, fee caps, inspection/sampling requirements, defines hemp, addresses non-compliant varieties and penalties, and provides for exemptions. It also defines record-keeping requirements.

A few of the principal elements within the rule include the development of three licensing categories: An annual and continuous licensing category, as well as a personal category. Fee caps are established at $900 per location for annual and continuous, $100 per location for personal.

It also requires the grower to be responsible for sampling and transporting samples to determine THC content to an approved laboratory. Laboratories will be approved by the New Mexico Department of Agriculture.

Sampling by the grower will be conducted with oversight by a Department of Agriculture staff member.

It also provides deposition of non-compliant plants or
fields and that they will be destroyed if found to be
over the .3 percent THC. And it also provides
authorization to deal with violations, including
suspension or license denial for violators.

Thank you, Joe.

MR. GOMEZ: Thank you, Brad.

We will now open the floor for comments.

Please address yourself to the Chair by stating your
name and affiliation for the record, and since this is a
big crowd, like Mr. Parra indicated, if you could spell
your name for our court reporter, we would really
appreciate that.

So yes, sir, in the back.

MR. SISNEROS: Stephen, S-t-e-p-h-e-n,
Sisneros, S-i-s-n-e-r-o-s.

I just want to thank the NMDA for having these
meetings and providing these rules.

In regard to the 900 fee cap, I wanted to
place an input that you guys reconsider the small
farmers and maybe consider decreasing that fee, as well
as I'd like to place a request for clarification on
rules for acquiring germoplasmas or clones for
production within this program for licensees within this
program.

Thank you.
MR. GOMEZ: Thank you.

Yes, sir?

MR. ROMERO: My name is Dave Romero. I am an attorney out of Las Vegas. I represent various parties that are interested in the changing hemp environment. This is a critical hearing which shapes the future of the regulation of hemp, and that is why I am here. I think that's why we are all here, to help shape that. Some of the -- and I have my comments for the record. If you will just mark that as Exhibit A.

MR. GOMEZ: Thank you.

MR. ROMERO: My comments are these.

As far as the regulations concerning the definition of "Applicant," my proposal is that that should be limited to New Mexico residents or corporations with majority control by New Mexico residents.

New Mexico residents or corporations should receive a 25 percent local preference in all matters regarding hemp regulation. I see some people here that I see are heavy-hitters in Colorado, and what my fear is is that those other states, where hemp or marijuana has been made legal, are now trying to step in the front of the line against New Mexicans, when we are really talking about a New Mexico asset with New Mexico
natives, which should be favored for the average person from New Mexico and not out-of-staters just wanting to carpetbag.

Law Enforcement. County and State law enforcement should be formally informed that the applicant can legally grow and produce hemp so that law enforcement does not mistakenly arrest and destroy legal hemp production.

I have worked a lot with law enforcement, and, unfortunately, there are many people who can't distinguish between hemp and marijuana. And so they will get a tip, go out there, wake you up in the middle of the night, arrest you, destroy the product. And so they need to be educated. And that's why I am suggesting that type of language for the rule under the definition of Law Enforcement.

Licensee. This should be limited, again, to New Mexico residents. If out-of-state licensees are allowed, then they should pay three times the determined amount of fees and expenses. 75 percent of those fees and expenses should be placed in an enterprise fund which is used to educate the public about the difference between hemp, marijuana, or the benefits of hemp.

It's much like -- and we already do this as a state. It's much like when you go hunting and
fishing. We residents pay a certain price, but the Tejanos, when they come in, they are going to be paying double, triple, quadruple to take our assets. And in the same sense, there is a taking of assets here by outsiders. And so the prices that you see here, and in line with what I heard earlier, should be tripled for those who are not residents or those corporations that are not majority owned by residents.

The definition of "Personal Production." The amounts should be increased from 20 plants per location to 60 plants per location. The State should encourage the growing of hemp for the small family farmer.

Under the sections of "Annual Production," "Application" and "License," properly completed application is the definition that I want to address. And it says, essentially, that your application is not registered as received until it's properly reviewed, and then it's appropriate.

I have worked in State government and regulations and licensing for a long time, and what I have seen are those -- there are many individuals who don't understand the system, the procedures, the language, the definitions, the presentation.

And so what I believe, instead of waiting until the application is finally approved, allow the
application, when you take it in and you present it, that that's the beginning date.

If the Department of Agriculture finds that that application is deficient for whatever reason, then it gives anybody who is applying the chance to go back to correct it and resubmit it. And if you are dealing -- if you're not dealing with a lawyer and you are dealing with somebody who is just trying to read these regulations, who has a hard time with it, sometimes it might take two, three, four times to get it right.

Also, what's an "approved application"? What I have found in my experience is every four years the politics in Santa Fe changes. One is a Democratic Governor, one is a Republican Governor. Republicans seem to be much more conservative and strict in their approach to recognizing the value of hemp.

I want to be able to avoid partially the discretion that the Department has in judging whether an application is correct by first allowing the date that you submit it to be the date that it's registered as long as you bring back a properly -- a proper form later on, instead of somebody going back and getting frustrated and being denied four times and finally the time runs out for them to get their application in.

As to fees, in the first year of fees that are
proposed here, I think that the fees should be reduced by 50 percent for residents of New Mexico or local corporations.

And the reason why is that there are many farmers that I represent who have money, time, and expertise invested in weed, or grass, or green chile, or the products we have seen all the time, and it's kind of scary for many of them to change their practice, what their parents and great-grandparents did, and what they are doing, and to invest it in a product called hemp, which most people associate as being illegal.

And so farmers and those small families who are spending a lot of money and changing their life, their lifestyle, their work, the risk should be reduced for those individuals by reducing, at least for the first year, the cost of the application.

So that sometimes you don't know what you are getting into until you are in the middle of the season and the grass or the hail kills everything and you think, "I should have spent my money elsewhere," but at least the risk is minimized to locals, not out-of-staters, by reducing the initial fee by 50 percent, and then the second year, you can go up to the other fees that you have stated here.

The penalties clause, "Violations and
Penalties." I want to make sure that there is sufficient recognition, due process recognition, substantive, procedural, so if Santa Fe gets political, anybody who is affected by the decisions by the Secretary, by staff, without reasonable justification, has a right to appeal those decisions to the District Court for maybe a more neutral decision, or a more balanced approach.

And that's all.

MR. GOMEZ: Thank you.

MR. LEWIS: Thank you.

MR. GOMEZ: Any other comments?

MR. CARR: Byron, B-y-r-o-n, Carr, C-a-r-r.

Two items. How is production on tribal lands going to be addressed? Is there going to be requirements that the State is going to issue on what they need from individual growers on tribal lands?

And also, on your "Applicant Acknowledgments," number five, "Be in compliance with State and federal regulations." Federal regulations as far as, you know, it still being a Schedule 1, or, you know, how is that going to affect growers?

Anyway, thank you.

MR. LEWIS: Okay. With respect to tribal lands, we are hoping -- the State, of course, has no
authority over all the tribal lands on there. And so the proposed language and the 2018 Farm Bill addresses tribal lands, and basically, if I remember the language, tribes will have to submit a State plan, or a tribal plan, for hemp production on those lands, similar to the State's, and then that has to be approved by Washington, the same that the State plans -- all State plans will have to be approved on there.

MR. CARR: Okay. So the tribal -- the tribe has to submit its own application with their list of individual growers?

MR. LEWIS: The tribe has to submit a State plan --

MR. CARR: Okay.

MR. LEWIS: -- which is similar to the rule. I suspect most tribal entities will copy a State rule and submit that as their plan. So that's the governing body of how they are going to cultivate that on tribal lands. And then it will be up to the tribe to determine licensing and so forth on that.

MR. CARR: Okay. So basically, if you are an individual grower on tribal lands, it's a two-stage. First, you have got the tribal rules and regs, and then you get the State rules and regs?

MR. LEWIS: No. You just have the tribal
rules and regs.

    MR. CARR: Okay.

    MR. LEWIS: Yeah, we will have no authority on
tribal lands.

    MR. CARR: Okay.

    MR. LEWIS: Okay. So it will be a sovereign
entity with respect to hemp in the state.

    MR. CARR: Thank you.

    MR. GOMEZ: Thank you.

    Yes, sir?

Can you please come up?

    MR. PICKETT: Eugene Pickett.

    P-i-c-k-e-t-t.

    I like the fact that you opened the floor
indicating the Farm Bill -- 2018 Farm Bill. Locally, I
am with a group called Black Farmers and Ranchers of New
Mexico, nationally owned with the National Latino
Farmers and Ranchers Trade Association and the National
Rural Coalition.

    We have eyes on this because small farmers and
ranchers, you know, having access, because there is
something under the Farm Bill where Mitch McConnell has
a very specific interest. He is lobbying with Ryan,
Paul Ryan, you know, so that there is movement, very
specific movement.
So under "Exemptions," 21.17.XX.14, one of the categories that's being introduced into the Farm Bill is special considerations for socially disadvantaged farmers and ranchers and veterans.

So within the concept of exemptions, is it going to be a categorization that addresses that, you know, so when we are talking about exemptions and applications, will that open up?

And then I think to introduce also that if there is a changing category to where hemp is no longer considered a drug, is that going to be treated, you know, like -- as a crop, like any other crop, tomatoes, onions, green chile, you know what I mean?

What is that going to do to the overall procedure that you are introducing here?

MR. LEWIS: Okay. I will address the -- your first question dealt with the exemptions. The exemption clause was put into the rule to allow Secretary Witte to address any exemption that comes up.

So if you feel that there is a specific role for that exemption in there, those can be written up, and then they can be presented to Secretary Witte for his consideration.

MR. PICKETT: But what I'm saying is that because there has already been language introduced to --
in the 2014 Farm Bill, okay, and it's going to be a part of the 2018 Farm Bill, that under those categories, which are for socially disadvantaged farmers and ranchers and veterans, okay?

MR. LEWIS: Right.

MR. PICKETT: Okay. That specific language, you know, since you opened up like with the Farm Bill, that that's in the Farm Bill. So are you going to recognize that within the category of exemptions? Because that's pretty specific.

MR. LEWIS: Right. And I understand where you are addressing that, and I think we would have to look at the specific language and the specific tie-in to the hemp portion of McConnell's --

MR. PICKETT: Is that something we need to provide you?

MR. LEWIS: No. We have copies of it.

MR. PICKETT: So then you actually review that, and then that will be something --

MR. LEWIS: You are exactly right. The purpose is that we will take everything into consideration, and we will review it for possible inclusion into the State rule.

MR. PICKETT: Okay. Because that also specifies small farmers, small rural communities.
MR. LEWIS: Right.

MR. PICKETT: Because this is a tremendous opportunity, you know, and like the gentleman spoke to the fact that we have a lot of large conglomerates who not only are expressing interest, but moving on interest.

So like, you know, in New Mexico, in specific, since it's moving ahead, that, you know, like small farmers and ranchers should have a special consideration, as well.

MR. LEWIS: It will be noted.

MR. PICKETT: Okay.

MR. LEWIS: Thank you.

MR. GOMEZ: Thank you.

Any other comments?

MR. NIEDERHAUS: Mark Niederhaus.

N-i-e-d-e-r-h-a-u-s.

First off, thank you for taking the time. We appreciate it.

MR. LEWIS: Thank you.

MR. NIEDERHAUS: I didn't notice inside the recommended -- or the legislation that there is any mandatory security element.

Is there going to be any sort of a mandatory security element dictating that we have to have fencing
or anything like that within the area that we are farming hemp?

    MR. LEWIS: Not at this time.

    MR. NIEDERHAUS: Okay. Awesome. Thank you.

    MR. LEWIS: You are very welcome. Thank you.

    MR. GOMEZ: Any other questions?

    Yes, sir?

    MR. EDWARDS: J. L. Edwards.

    I didn't see it necessarily in the rulemaking, but I was wondering, after a farmer does get their crop or their product done, have you guys even thought about addressing the transportation issue of how would you get that finalized product out of the state, or even with the beginning process, how you're going to get your clones and seeds into the state?

    And I often see, when states come on-line, whether it be a medicinal program, or recreational, or even hemp production, with the research and development, has it even been mentioned that you could possibly, develop a research and development program that would include transportation?

    And, also, will you guys have a license structure regarding transportation? Because this is the one thing that all states deal with last. So if I am
farming and I have all my goods, and you mentioned
transportation to the lab, but if I get pulled over with
a semi of stuff going to the lab, how do I explain that
to the law enforcement?

And furthermore, I think that if you guys
develop the license structure regarding transportation,
whether exporting it out of the state or importing it
in, it would be beneficial to all farmers in the long
run. So that way, they have something to do with their
end product.

MR. LEWIS: All good questions.

The answer is yes, we have looked at that. We
have been in open discussion with the District
Attorney's office regarding what they need from the
Department of Agriculture with respect to a certificate,
a piece of paper, that separates it, whatever you are
carrying, as designated as hemp versus something else in
there.

So those discussions are going on now. I will
cautions you that we cannot do -- or work anything with
the federal ports that are in the southern part of the
state. When you go out of Las Cruces, you'll go through
a port.

We have talked to Legal for custom and border
production, El Paso, trying to find some way around the
federal law. I think everybody is in a gray area hoping that the Farm Bill program will remove hemp from the Schedule 1 list, which will make everything easy. But yes, we have been looking into those things and are in open discussion to make it easy for people to move it. The interstate is out of our hands. That's a federal issue for those types of things.

MR. EDWARDS: But if I may add -- excuse me, J. L. Edwards -- I spoke with the DEA, and they basically -- from my understanding, they say if there is a program -- say, Texas doesn't necessarily have a program.

MR. LEWIS: Right.

MR. EDWARDS: So, therefore, you cannot take anything into Texas, but Georgia does have a program. So within my situation, I can go from here to Georgia, because like you say, if you guys planned to remove it from the Schedule 1 list, then it's not --

MR. LEWIS: Right.

MR. EDWARDS: So I am just wondering how that would be addressed, or how you guys are dealing with other federal agencies, such as the DEA, which says it's a commodity.

So where is the federal oversight, or the illegality to that, if the Department is saying, "Well,
hemp is a commodity. 29 states have come on-line and acknowledged it as a commodity," where would the -- I guess the federal penalty fall into place with that if states independently deschedule?

MR. LEWIS: Okay. I think -- let me go ahead and see if we can move that topic until after we close this.

I know, Stephen, did you want to --

MR. SISNEROS: I just want to thank you guys for treating it like a commodity and not having any security requirements or transfer requirements based on the 2014 Farm Bill and 7606, which is kind of -- my understanding, it was drafted on as long as it's under .03 THC, it's hemp. Treat it like a commodity.

Thank you.

MR. GOMEZ: Yes, ma'am?

MS. CASTILLO: My name is Gloria Castillo. I am with the New Mexico Industrial Hemp Coalition.

I just want to address his -- what he was saying and what Steve was saying, which is that right now, in the Farm Bill, food, fuel, and fiber is in the Farm Bill under Senator McConnell's amendment.

So when you're talking to the DEA, you need to be specific that they are only -- you know, what the DOJ has done has put these claims out on CBD, and that's
something that we don't want. And so the Department of Justice, right now, is only concerning itself with marijuana, and it's really not to the benefit to go over there and talk to them about what they are going to do about hemp because right now we are good.

MR. EDWARDS: Thank you.

MS. CASTILLO: So I just want to clarify that point.

MR. GOMEZ: Any other questions to the rule?

MS. CLAYTON: Megan Clayton. M-e-g-a-n, C-l-a-y-t-o-n.

So everybody has to provide and pay for their own sampling, but I am not hearing a lot about State-regulated farms -- or laboratories.

How many places -- I mean, based on the number of people in this room and that there is no cap on hemp growing as far as licensures go, that I can see, how is the State preparing for the amount of people that are going to need to be tested?

If me and every person in this room has to be tested at the same time, the laboratory is, in no way, going to be able to -- one laboratory -- handle all of us.

As is normal for New Mexico, very last minute,
you open one, and then expect everybody to submit at the same time and then expect us to be in compliance when there is no possible way to get results that fast and no -- is each section -- like is Las Cruces going to have their own labs?

Is New Mexico State going to oversee the laboratories to make sure that they are able to get the samples in and out in a timely manner in order to be compliant with these rules?

MR. LEWIS: All good questions.

The proposal on the table now, at least initially, is to use the three existing laboratories in the state that have the expertise to do this.

MS. CLAYTON: The three that are already testing the medical marijuana?

MR. LEWIS: Right, on that.

MS. CLAYTON: So they are not anticipating by staying well ahead of the game? We should probably, in January, have, I don't know, three more open?

MR. LEWIS: No. And I understand your point. Part of what we are also looking at is we don't think there is anything in state statute that precludes -- right now, the three labs in the state are operating under the Department of Health for the medical program on there.
If you're not testing for medical, I am not sure there is anything in state statute that would preclude anybody else opening up another independent lab just to test hemp on that.

MS. CLAYTON: So my next question was, is there an on-site test? You know, I mean, nowadays, you could take a pee test for an employer right there on the desk.

Is there going to be a possibility that we will be able to test in the field without having to transport it, avoiding having any transportation issues?

MR. LEWIS: We do have some lab owners that are in the room right now. And so if I start lying, they could stand up and start throwing things at me.

Yes, they do have exactly a task, but they were geared for the medical industry. And so the resolution of those in field tests is not at the point that you could test hemp with it.

MS. CLAYTON: Okay.

MR. LEWIS: So the resolution is probably one to two, you know, whatever, for THC.


To comment on your first question, which is do
the labs have capacity, I can't speak to the other two labs. We are physically located in Santa Fe, and we test, I would say, somewhere around 75 percent of the marijuana -- medical marijuana that's currently sold in the state.

We run at about 25 percent of our capacity. We conduct about, I want to say, 10,000 tests a year. So we could easily do 40,000 tests a year without too much, maybe an additional person or two. We don't really expect that this is going to cause that much of an uptake in our business because, after all, we are not sure what the Department of Agriculture is going to develop by way of sampling method or how many samples are going to be required to be taken per field size, but we think that it's only going to be a slight uptake around the time of harvest for most farmers, and it's not going to be a ton of samples. So we are not really -- I mean, we are not really expecting to get rich testing hemp or anything like that, but we think we would easily be able to accommodate the existing testing demand.

MS. CLAYTON: Thank you.

MS. O'DEA: And our current turnaround time of -- and we are also trying to keep this as low-priced as possible. We are thinking 20 -- somewhere between 25
and $35 per sample for a test.

The other point I wanted to comment on is that currently our instruments are calibrated down to, I think it's point -- the legal limit for THC is -- everybody keeps saying "0.03." It's not. It's 0.3 percent THC. And we are calibrated down to 0.01 percent.

So we already look at -- and we are validated to that level. That is the level of our instrumentation. We are calibrated that low. So we already test, identify, and quantitate THC, CBD, any of the cannabinoid levels, well below the State limit for hemp on the THC side.

It could be done in the field if the Department of Agriculture allowed it. Actually, I don't see anything that would prohibit it. You know, if you are looking at -- I mean, for us, looking at low quantities of THC, when it's a regulatory issue and it's really important to be precise, I am not sure I would really want to transport some of my delicate instruments to a field setting and be super confident of the result, but it might be possible, and it's something we could consider. We prefer to test it in the laboratory on-site where we can be certain of the results.

MS. CLAYTON: Well, thank you very, very much
for all of that awesome information. I have one last question.

And that is, you don't address in the violations exactly what would happen -- let's say I can't get my lovely sample to their awesome laboratory on time and I thereby become non-compliant, is it going to be a year I am not allowed to apply again?

Is it going to be indefinite, that I can never apply again if I am totally shady and I am growing 50 percent THC and blowing it off the charts there?

How long is it that I would be in Application Jail? Because that is not really addressed here.

MR. LEWIS: You are right, because of the number of individual violations, it's hard to put a list on those types of things in rule. So those will probably develop in policy and on an individual case basis. And then there is always an appeals process, too, within the process.

So, you know, whether all those types of things is an issue and so forth --

MS. CLAYTON: Right.

MR. LEWIS: -- I think the important thing is that the product that is removed from the field has been found to be at the .3 percent or lower level.

MS. CLAYTON: And so with medical marijuana
being legal and hemp now being on the table, something
that they see in the West often in soy crops, corn
crops, is blow-over from other crops. What is the State
going to do as far as the gray area that pops up?
Because if I am located within two miles of
somebody who has a legal grow, how am I going to be held
responsible, or them held responsible, for keeping
microscopic pieces of pollen from getting on my
plants?

MR. LEWIS: Okay. Without wavering too
far --

MS. CLAYTON: Well, it's just not addressed in
this. That would be a rule and regulation, if I was to
send my lab samples in and they were to come back higher
than, say, three years, I have been growing the same
crop with the same seed, and suddenly, I have a
marijuana grower a mile away from me and now my crop is
not testing the same.

MR. LEWIS: Right. No, I understand, and it's
not unique, the issue is not unique to the hemp industry
or the medical marijuana industry. The State grows seed
crops all across the state. And so the
cross-pollination is not unique to it.
The same thing happens in grain, it happens in
seed, corn, it happens in all the other -- alfalfa, all
the other crops that we do that have the potential of being cross-pollinated, whether through wind or through bees, that type of thing. The intention in the State was try to let industry regulate themselves initially.

MS. CLAYTON: Okay.

MR. LEWIS: And industry is always free to come back to the Department of Agriculture and say, "This is not working. We need an additional regulation." But the point was try to make this rule as less oppressive to industry as possible.

MS. CLAYTON: I appreciate that. Just trying to cover my bases.

MR. LEWIS: Right. And look at it. So it may be something that if it's a significant issue in the future, industry could come back and say, "Look, we need to start looking at adjusting this."

MS. CLAYTON: Thank you very much.

MR. GOMEZ: Thank you.

MR. CHAPPELEAR: I am the president and founder of the New Mexico Hemp Association. And what I wanted to address was this non-compliant varieties. I guess it's Section 21.17.XX.12.

The last sentence of this states: "Locations growing cannabis varieties greater than one percent THC may be reported to an appropriate law enforcement
I would like to suggest that that one sentence be struck from the non-compliant varieties, and this is the reason why, is that until such time that we get the industry launched and we get it dialed in as far as the testing and stuff is concerned, we shouldn't be threatening farmers with the potentiality of some type of being arrested and their crop being burned if, within the first couple years, some of them are going to test hot, anyway.

And, I mean, it's not like these people are trying to go to the 50 percent. I mean, you are in the wrong industry if that's what you are hitting, but as far as this is concerned, I just think that sometimes people may come in over that, and even though it says that they may be prosecuted, I think that we should just remove that threat.

MR. LEWIS: Well, reported, not prosecuted.

MR. CHAPPELEAR: Aren't we already down the road to prosecution if law enforcement is stepping in?

MR. LEWIS: The point is well-taken.

MR. CHAPPELEAR: All right. Thank you.

Appreciate it.

Grow hemp, everybody.

MR. GOMEZ: Any additional questions?

I have first a question. I believe earlier Mr. Lewis mentioned that for personal use, it was going to be a $100 fee, but here, I saw that it was a $25 fee for the personal use.

Could you please clarify that?

MR. LEWIS: It should read "for a $100 cap."

MR. SENKE: A $100 cap for the fee. Could you explain that, please?

MR. LEWIS: That means we could go up, under this rule, to a $100 fee without going back in the rule to change it. If we wanted to go to a $101 fee, then we would have to come back into rule and change that. So it's a method -- caps are a method of protecting the industry from overzealous agencies charging whatever they want.

MR. SENKE: I see. Okay.

Now, it was suggested earlier that the personal production amount be increased beyond the 20-plant per location limit that's specified here.

Why -- it seems fairly obvious why, but I'd like you to explain, please, why the -- why such a restrictive limit for personal use when it's not really going to be sold, or it's not going to influence the commercial?
And specifically, the question that I have to ask is that my interest is really in the use of hemp for improving soil conditions in desert soils and things like this. If you have some property that you would like to use something like sunn hemp or something like this for, the 20-plant limit is going to be quite restrictive.

And if you have a few acres, it can take you 100 years to get some soil improvement; whereas, if you could expand the personal use for non-commercial-type of use, then the plants could be used to enhance desert soils, which I think would be useful to everyone.

MR. LEWIS: No, I understand, and part of that has to be in statute. The Department was not provided any additional funding to run this program. So it's a non-funded mandate to be operated out of fees. And so part of the internal discussions were to try to keep the fees as low as we can.

So you could have somebody that wants to do -- like you say, put in 200 acres, 100, 50 acres, or 25 acres of hemp for personal use for soil building or some other option like that.

The Department still has an amount of money that those additional acres take up time within the Department to go over and watch over sampling of it and...
so forth on that.

So we felt that anybody that was growing hemp in those larger quantities, even though it was for personal use, would still have to collect a fee structure that would help pay for the program on that, if that makes sense on that.

No, I understand your point on that, but -- and we probably could have done something different, but then the rate structures would be changing in order to pay for the program.

MR. SENKE: Would there be a possibility of creating a mechanism within this for allowing people to apply for a higher limit for specific purposes?

Let's say you have three acres and you want to try and do that, well, again, even with three acres, 20 plants for three acres is going to be pretty -- it's not going to be very viable.

MR. LEWIS: Right.

MR. SENKE: And you're not going to be selling it or anything else like that, but it could be used for that, and that could also help stimulate the industry by providing information on how to improve soil conditions through that process.

MR. LEWIS: Correct. And hence, we put the exemption clause in there for the Secretary of Ag.
Write up your proposal, and all those -- and we will look at those.

    MR. SENKE: Thank you.

    MR. LEWIS: And a lot of it is going to come down to how much time the Department is going to have to spend on that project, to tell you the truth, without having to go into other programs. It starts dripping money from other existing programs.

    MR. SENKE: Thank you, Mr. Lewis.

    MR. GOMEZ: Thank you.

    Let's get Stephen first.

    MR. SISNEROS: Stephen Sisneros.

    In regard to exemptions, what's the correspondence with you guys? Would it be done through mail and then you guys would give an approval or denial stamp, or would we be required to drive to Las Cruces and sit at a hearing?

    Could you expand on that?

    MR. LEWIS: Right. The way we have handled it in our other regulatory programs is those come in the form of e-mail, or letter, or something like that. We will sit down, do it. If we have specific questions, we will call you, we will do all that, and we will prepare something for Deputy Director Parra or Secretary Witte to review with us and say, "Yes, this looks like
something that may be good."

MR. SISNEROS: Okay. Thank you.

MR. GOMEZ: Mark?

MR. NIEDERHAUS: Hello, again. Mark Niederhaus.

I just have a few more questions based upon the regulation and testing.

The first one, testing, is there going to be a time frame or deadline to have submitted a test, and if so -- or if it's going to be -- is it like a -- how often type thing?

Is it going to be multiple tests per year, or is that something still within --

MR. LEWIS: Yes.

MR. NIEDERHAUS: Yes, okay.

MR. LEWIS: I will tell you, what we did is we moved the testing requirements, the specifics of the testing requirements, into policy.

MR. NIEDERHAUS: Okay.

MR. LEWIS: Because I think the techniques and everything are going to be changing, and the requirements. Once we start learning the varieties, that gives us a little bit of freedom to start making changes with our policies with regard to the testing.

The specifics have still yet to be
developed. All of them have been -- will be in consultation with a number of growers in here that are growing in Colorado, or have been growing, and also with the labs to start looking at that, methodologies and so forth.

MR. NIEDERHAUS: Okay. Secondly, with the test, which may be also a policy thing, the amount of tests. Let's say a five-acre farm versus a ten-acre farm, is it going to be one test per acre, one test per farm?

MR. LEWIS: The internal discussions we have had with the industry members, and some of them are in here, is, you know, we get an estimated harvest date from you and try to get in there at some point in time that we have time, you have time, to get a sample into a lab, the lab has time to submit the results to us, we give you the okay-to-harvest-it type of thing on that, is what we are looking at.

So we are looking at that harvestable part of it to make sure that the .3 percent is roughly there. So, you know, we are not going -- if you are harvesting flower, or bud, or something like that, then, you know, you all may be testing all the way through the process, which is probably what you're going to do.

MR. NIEDERHAUS: Okay.
MR. LEWIS: We are only going to be interested in testing that bud or flower at some point in time before harvest.

MR. NIEDERHAUS: Okay. But with that said, then there is not a certain amount based upon the size of the farm?

MR. LEWIS: No. A lot of it, too, is going to depend, perhaps, on the growing criteria on that farm.

MR. NIEDERHAUS: Okay.

MR. LEWIS: You know, is that field split between a very heavy soil, light soil, what impact that would have on the THC requirements, those types of things. So those are almost going to be on an individual farm basis. Of course, if you have multiple cultivars, each cultivar will have to be tested.

MR. NIEDERHAUS: Okay. And then lastly, the seeds, the acquisition of seeds, are we going to be required to buy certified seeds by a certain source, or is it whatever we want to acquire as long as it's below the .3 percent?

MR. LEWIS: Right. I understand your question.

The intent within the Department would be to let industry regulate that in terms of seed sales.

MR. NIEDERHAUS: Okay.
MR. LEWIS: And part of that is if it got to the point that we had required you to obtain a specific cultivar, approved cultivar, there is some implied guarantee that those are going to come in under a .3 percent. And that's not something that, at this point in time, the State wants to be involved in, is providing some implied guarantee.

MR. NIEDERHAUS: Awesome.

Thank you.

MR. GOMEZ: Yes, sir?

MR. MARTINEZ: Tony Martinez.

I want to thank the Department of Agriculture for drafting the rules as they are. I know that a lot of thought has been put in, from the fee structure to the testing requirement.

And also to calm people's anxiety, we are going to want to be testing, as producers, far more than the Department is going to require us to test. Going in hot, these are realities that we are going to be needing to deal with.

So be proactive. If we are barely complying with their rules, then you're going to be running a really risky, you know, logic whenever you are operating your business. You know, your business model should be one of safety and precaution, because we are dealing --
and, you know, even if it becomes federal law, we are still going to be dealing in a new area, and none of us wants to ruin it for the group.

So take a lot of care, you know, selecting your cultivars, network with the people in the room, and then, you know, get to know your labs. And I am operating on the MJ side, and Kathleen is 100 percent correct, you know, they have samples back as quick as the technology allows them to come back.

Their administration is on point. And we are going to want to be, you know, sending in samples throughout the process to, you know -- if you need to make sure you have plants, all these types of things, potencies, throughout the whole process, you're going to want to stay on top of it yourself.

Don't rely on the entity here to regulate you, or otherwise you're going to probably wash out of the industry pretty quickly, just as food for thought.

And again, I just want to reiterate my thanks going into this. I feel like they are very fair regulations that are accessible for common people.

MR. LEWIS: Thank you very much.

MR. GOMEZ: Thank you.

Any other comments?

MS. BROWNING: Jill Browning.
B-r-o-w-n-i-n-g.

January 1st, 2019, is that a hard number?
Is that absolutely the date of initiation, and what does that mean exactly?

MR. LEWIS: Look in a crystal ball. Some of -- this date is beyond the Department of Agriculture's control. Okay. So that's the first thing on it. I think what Secretary Witte would like to have is everything in place by December 1st, is what we are trying to shoot for, if we could possibly get there.

MS. BROWNING: Then I have a question with that.

Does that mean having applications ready to be handed out December 1st, and then applications will be finalized, and the applicant will have a license on what date?

Can you kind of see what the time frame is?

MR. LEWIS: Our expectation is to try to handle it in a serve process, that if we get a bunch of licenses in at one time and it looks like we are backing up, we would like to get them turned around in a relatively short period of time, ten days, seven days, something like that. Then we bring in a group from other areas in the Department and try to process those as fast as we can.
MS. BROWNING: So once a real license is received, that person can then have plants in New Mexico?

MR. LEWIS: Right. Do whatever you want.

MS. BROWNING: Okay.

MR. LEWIS: I mean, there are all sorts of possibilities the Department could look at. If we get behind, we could, you know, maybe create -- you know, phone and -- call you and say, "Yes, you have been approved, but it's going to take five more days," if it becomes critical. Something like that.

MS. BROWNING: All right. Thank you.

MR. LEWIS: So yeah, the Secretary of Ag is pretty good about trying to make those type of things.

MS. WELLS: Valerie Wells. W-e-l-l-s.

My question would be, what are the parameters for licensure?

Okay. An individual with farmland, what are the parameters for actually getting a license through the Department?

MR. LEWIS: The application form will be on the web. You'll download it, it will probably be a PDF, fill it out, scan it, e-mail it back in, or you probably have to mail it in with a check rather than send it in through there.
The requirements on it, right offhand, if you're not a landowner, you'll have to have permission of the landowner to protect the landowner.

MS. WELLS: That would be myself.

MR. LEWIS: Right. GPS locations, the cultivars you're going to plant, acreage associated, or square feet associated with each cultivar, map of the farm, map of the location of the cultivars, those type of things.

MS. WELLS: Like a Google Earth maybe, that stuff?

MR. LEWIS: Right. Right. And then just pixel in where those cultivars are, those types of things.

MR. GOMEZ: Yes, sir.

MR. KNOLLS: Kenneth, K-e-n-n-e-t-h, Knolls, K-n-o-l-l-s.

Is there a limited number of licenses that we issue, or is it unlimited?

MR. LEWIS: It's unlimited.

MR. GOMEZ: Any others?

MR. VALDEZ: David Valdez.

I know it's been said before about trying to do some kind of waiver for the first year of small-scale farmers, or maybe then like a sliding scale, so the
five-, ten-acre farmers aren't paying the $900 fee like five-acre farmers are. I just want to reiterate it for the record.

MR. LEWIS: Thank you, David.

MR. GOMEZ: Thank you.

Any other questions?

MR. DELGADO: John Delgado.

I just want to know if there is anything in there addressing the manufacturing end.

MR. LEWIS: No, John. The statute that directs the Department of Agriculture, that kind of thing -- if that is something that industry feels it needs oversight on that end of it and help in that direction, that will be probably addressed by the organization, and it will be a legislative-type thing.

MR. DELGADO: Thank you.

MR. GOMEZ: Yes, sir?

MR. EDWARDS: J.L. Edwards. Just one more question regarding the research and development side of the bill.

Isn't that part of it? And I have not heard that be addressed at all, whether -- how does that fall into play?

I hear a lot of talk about production, but the other component was the research and development. What
actually can be researched, and what programs can
actually be developed?

MR. LEWIS: Good question.

The research and development can be handled by
anybody growing it and wants to publish their results.
The university, of course, will get involved through the
research and development on that end of it also. And so
they will be working with the industry, also, on the
means and criteria and so forth on that.

MR. EDWARDS: Now, would there be a separate
license requirement or structure regarding the research
and development, especially working in tandem with the
university?

MR. LEWIS: Not at this time. And that's just
because the Department has basic fixed costs that have
to be addressed.

MR. EDWARDS: Thank you.

MR. GOMEZ: Any more?

Seeing none, we will be closing this hearing
at 7:09 p.m.

(Proceedings concluded at 7:09 p.m.)
STATE OF NEW MEXICO  
)
COUNTY OF BERNALILLO  
)

I, DENISE KOPAN, the undersigned Court Reporter, HEREBY CERTIFY that the foregoing hearing was recorded by me by machine shorthand; that I later caused my notes to be transcribed under my personal supervision; and that the foregoing is a true and accurate record, to the best of my ability, of said proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

DATED this ______ day of ______, 2018.

DENISE KOPAN, NM CSR #124
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HEARING OFFICER GOMEZ: Good evening. My name is Joe Gomez. Today I will be serving as your hearing officer for the public hearing on the New Mexico Department of Agriculture Newly Proposed Cultivation Rule.

Please make sure that you have signed in for the record. I'm going to ask everyone to please silence or turn off your cell phones. Let's see if mine is off.

The date is October 16th, 2018, and the time now is 6:12 PM.

This hearing is being held at the River Walk Recreation Center, Powerhouse Room, located at 400 River Walk Drive, Carlsbad, New Mexico 88220.


The Notice of Hearing, as well as a copy of the rules has also been made available via the Department's website.

During today's hearing, all interested parties will be given the opportunity to give comment on the proposed rule only. And like Brad said, if there are other comments, NMDA staff or Brad will meet you after the hearing.

The hearing is being recorded and a summary of all testimony presented today will be prepared for Jeff M. Witte, Director/Secretary of the New Mexico Department of Agriculture, and will be submitted to the New Mexico State University Board of Regents.

With me today is Brad Lewis, the Division Director for Agriculture and Environmental Services at NMDA.

Brad, can you please explain the need for the new rule?

MR. LEWIS: Thank you, Joe.

During the 2017 legislative session, Senate Bill 6, Industrial Hemp Research Rule, was passed and chaptered into law. The statute delegates New Mexico Department of Agriculture the authority to develop an industrial hemp program and promulgate rules for the administration of that program which would complement federal law.

State statute also grants persons in institutions of higher education the ability to apply for an industrial hemp production license through New Mexico Department of Agriculture.
HEARING OFFICER GOMEZ: Yes?

MR. CAVITT: Mr. Gomez, Wade Cavitt, farmer in Lea County.

I don't have the statute in front of me, but in the statute, the law that was passed, was this just for research purposes or is this going to be for commercial?

I know when it was first looked at, that it would be up to the Department to issue the license for the growth, but is it for research or is this going to be open-ended, that anybody who applies may get a license?

MR. LEWIS: The statute says "persons" and "businesses" on that. The Department's interpretation was that that would be any person or any business.

Now, in order to comply with federal law, which has expired under the 2014 Farm Bill, we looked at the 2018 Farm Bill language with the amendment that was proposed by Senator McConnell for hemp. So we drafted language within this rule in anticipation of Senator McConnell's language passing in the 2018 Farm Bill.

And so to address both issues with respect to research, there is a research component that a grower will have to provide us. An example of research component would be that I'm growing two different cultivars to look at yield differences, or I'm growing cultivars and looking at the marketing potential in my area for hemp, or, I'm growing to look at total amount of extract of CBD I can get from these cultivars.

So we feel that that should fulfill the research requirement that was in the old bill, the intent of the legislatures and McConnell's language.

MR. CAVITT: Wade Cavitt again. So that being said, will there be a limit on license? Has the Department looked at that, a limit on license that they will issue, or if the person or business that applies qualifies, will a license be given on that basis?

MR. LEWIS: There is no cap on the number of licenses to be issued at this point in time.

MR. CAVITT: So this language was written in court in conjunction with the 2018 Farm Bill on a federal level. Due to the fact that we're having problems in DC right now agreeing on anything, if that farm bill is not passed by January 1st when these rules and statutes go into effect, what will be the position of the Department at that time?

MR. LEWIS: If the farm bill doesn't pass, or McConnell's amendment does not pass within that farm bill, this will still be what you'll operate on until --
1 if there's significant changes that requires states to change language, it'll be what we continue to operate on until we come back, do the rule amendments and changes to come into compliance with that federal law. But for now, this will be what you all will operate on.
2
3 MR. CAVITT: One final question. Since we're on this side of the state and labs are hard to find, does a lab have to be within the boundary of New Mexico, or can a lab, such as Lubbock, Texas, be used out of state as long as it qualifies?
4
5 MR. LEWIS: I'll answer during this, and then afterwards, I'll give the scope of things that's going on.
6
7 It will have to be an approved lab and probably in New Mexico, because there has to be some oversight at that laboratory some way or another. So until we start developing reciprocity laws and regulations with other states, then that will be the issue there. Okay?
8
9 MR. CAVITT: Thank you.
10
11 MR. PETERSON: I have a question along those lines, and it's in regards to the legality of receiving seed or clone from, say, Colorado or New Mexico, or can a lab, such as Lubbock, Texas, be used out of state as long as it qualifies?
12
13 MR. LEWIS: Yeah, excellent question. The Department does not have within its rule a requirement for you to tell us where you buy the seed, nor whether you get the clones or anything else.
14
15 The interstate traffic of cannabis is a federal issue, not necessarily a state issue on that. So at this point in time, we do not have a requirement to where those starts come from.
16
17 HEARING OFFICER GOMEZ: Any other questions?
18
19 Seeing none, no other comments, we will close the hearing. The time is 6:23 PM. Thank you all for participating.
20
21 Written comments must be received no later than -- it's passed already -- 5:00 PM on October 16th, 2018. The official record of hearing will be submitted to the Director/Secretary. Thank you.
22
23 whole state starts their program, medical or otherwise.
24
25
HEARING OFFICER GOMEZ: Good afternoon. My name is Joe Gomez. Today I'll be serving as your hearing officer for the public hearing of the New Mexico Department of Agriculture's Newly Proposed Hemp Cultivation Rule.

Please make sure that you have signed in for the record. And I'm going to ask everybody to please silence or turn off your phone. I better be a good example of that, too.

The time now is 12:34 PM. This hearing is being held at the Portales Chamber of Commerce, Basement Classroom, located at 100 South Avenue A, Portales, New Mexico 88130.

The Notice of Hearing for 21.17.XX NMAC was published in the September 11th issue of the New Mexico Register, Volume 29, Issue 17, and in the Las Cruces Sun News, the Albuquerque Journal, the Carlsbad Current-Argus, the Eastern New Mexico News, the Santa Fe New Mexican, and Espanola Sun News during the week of October 8th, 2018.

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During today's hearing, all interested parties will be given an opportunity to give comment on the proposed rule only. And like Brad indicated, if there are other comments, NMDA staff will meet with you after the hearing. So again, we want to concentrate all our questions just to the current rule.

This hearing is being recorded and a summary of all testimony presented today will be prepared for Jeff M. Witte, Director/Secretary of the New Mexico Department of Agriculture, and will be submitted to the New Mexico State University Board of Regents.

With me today is Brad Lewis, the Division Director for Agriculture and Environmental Services at NMDA.

Brad, can you please explain the need for the new rule?

MR. LEWIS: During the 2017 legislative session, Senate Bill 6, Industrial Hemp Research Rule was passed and chaptered into law. The statute delegates New Mexico Department of Agriculture the authority to develop an industrial hemp program and promulgate rules for the administration of that program which would complement federal law.

State statute also grants persons and institutions of higher education the ability to apply for an industrial hemp production license through...
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<td>1 New Mexico Department of Agriculture.</td>
<td>1 Agriculture in order to determine THC content within the lab.</td>
<td>1 MR. LEWIS: No, it is not.</td>
<td>1 The $900 is per location. And then there is an acreage increase charge per location. So if you have 50 acres or something like that, there's a modest increase in acreage for that. Or, if you're growing in a greenhouse, there's an acreage or square-foot increase for greenhouse production.</td>
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<td>2 The proposed rule establishes licensure requirements, fee cap, inspection/sampling requirements, defines hemp, addresses noncompliant hemp varieties and penalties. It provides for exemptions and defines recordkeeping requirements.</td>
<td>2 This disposition of noncompliant plants in fields have been addressed in the rule. Those will be destroyed. And violations within the rule includes suspension or denial of licenses for violations of elements within the rule.</td>
<td>2 MR. WOODS: So that is for another discussion after the...</td>
<td>2 MR. WOODS: The personal location has to deal with a limit of 25 plants at a residence is what we saw for personal use license, and with a fee cap of $100 to register that location.</td>
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<td>3 are three licensed categories that the rule addresses: an annual, a continuous and a personal license. Fee caps are also established in the rule.</td>
<td>3 MR. LEWIS: You bet. Fee caps established $900 per location for annual and continuous, $100 per location for personal. So all are on a location basis.</td>
<td>3 MR. LEWIS: We can visit with that afterwards. Okay?</td>
<td>3 MR. LEWIS: The way the fee schedule is written out -- again, these are caps. So they don't necessarily represent what those license fees will cost.</td>
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<td>4 an annual, a continuous and a personal license. Fee caps are also established in the rule. Fee caps are $900 per location for an annual and continuous license, and $100 per location for a personal production license.</td>
<td>4 MR. LEWIS: Let me check.</td>
<td>4 MR. LEWIS: Okay.</td>
<td>4 MR. HARRISON: Mark Harrison. You're saying per location, and 25 plants on a personal level.</td>
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<td>5 MR. GRIDER: Can you repeat that, please, Brad?</td>
<td>5 MR. LEWIS: Oh, the amount on the fee thing?</td>
<td>5 MR. LEWIS: The personal location has to do with a limit of 25 plants at a residence is what we saw for personal use license, and with a fee cap of $100 to register that location.</td>
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<td>7 MR. LEWIS: Yes, sir?</td>
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<td>8 MR. GRIDER: Growers are directed with regard to sampling and transporting samples themselves with oversight from a New Mexico Department of Agriculture staff member. Growers are responsible for shipping those samples, or transporting those samples to a lab that's been approved by the New Mexico Department of Agriculture in order to determine THC content within the lab.</td>
<td>8 MR. WOODS: Oh, I understand. Brad.</td>
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<td>10 MR. WOODS: Let me check.</td>
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<td>11 MR. LEWIS: Right.</td>
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<td>11 MR. LEWIS: Right.</td>
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<td>12 MR. WOODS: Well, you know, if I just wanted to -- say I was going to have one location here, how many acres can I have in that one location?</td>
<td>12 MR. HARRISON: Okay.</td>
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1 amount at 100 acres, 500 acres you're growing? What's the State say about the number of plants?
2 MR. LEWIS: The number of plants -- we don't look at the plants when we look at acreage. So the additional fee charge for acreage is -- let me find it in our rule. Outdoor production is $6 per acre, minimum of $6. So within that acre of $6, we are not counting plants. We're just looking at acres. Is that --
3 MR. AINSWORTH: Six dollars an acre. So if I had 1,000 acres, that's $6,000. What's the first fee you've got to pay?
4 MR. LEWIS: The first fee is a basic licensure fee, and that won't exceed $900 per location. And then after that, there's a $6 per-acre fee for the amount of acres that you're growing.
5 MR. AINSWORTH: If I had acres, say, over by Carlsbad and some up north of Clovis, is that within the program with one license, or are you going to have to go through this every time?
6 MR. LEWIS: No. That would be separate locations. Okay?
7 MR. AINSWORTH: That makes it pretty pricey, don't it?
8 MR. LEWIS: And we could start talking about price after we close this out. We could look at exactly what some of these things are going to cost on those.
9 HEARING OFFICER GOMEZ: Go ahead, sir.
10 MR. ROSE: Jack Rose. I've got a question kind of as a follow-up to the Senator's. The rulemaking process does not have any kind of rule for a research and development, say, to develop seeds specifically for the State of New Mexico. Is there going to be an addition?
11 MR. LEWIS: If I -- let me see if I can understand your question, or interpret your question. So for research and development?
12 MR. ROSE: Yes, sir.
13 MR. LEWIS: Okay. There -- MR. ROSE: For breeding new varieties that are developed for the State of New Mexico, within the state.
14 MR. LEWIS: Right. There would still be a charge, a licensure fee charge in the square foot or acreage charge.
15 MR. ROSE: I understand that. I just didn't know if there was going to be some sort of a licensure called a research and development fee, or if that was going to be included under one of the other --
16 people that are going to be producing clones, or for people who are producing hemp in greenhouses.
17 MR. HARRISON: Okay.
18 MR. LEWIS: The addition -- the separation is because those are going to be required frequent inspections by the State, and, therefore, an additional charge to the State for the inspections of those types of production places.
19 MR. HARRISON: So if you're growing in a greenhouse continuous, it means for --
20 MR. LEWIS: For a year.
21 MR. HARRISON: For one year? Okay.
22 MR. LEWIS: For one year. And then be re-licensed at the end of the licensing period.
23 MR. HARRISON: Okay.
24 HEARING OFFICER GOMEZ: Yes, sir?
25 MR. AINSWORTH: Where does all the fees and caps and all this go? Where are these funds going with this license?
26 MR. LEWIS: Good question. The statute says that they will go to the fund created at New Mexico Agriculture will pay for the expense of this program out of that account.
HEARING OFFICER GOMEZ: Any other comment?

MR. GRIDER: Heath Grider.

HEARING OFFICER GOMEZ: Thank you.

Yes, sir?

MR. WOODS: One more question. Have we pretty well covered all the questions that you had in other areas, in other...

MR. LEWIS: I will tell you, regarding the official portion of it, they have asked the rule regarding the fees and so forth on it. Testing procedures, they've gone over that. There have been comments regarding that they thought the fees were too high regarding that. We could get into this afterwards. I'm trying to think of what else was relevant in the other things that they --

HEARING OFFICER GOMEZ: Labs?

MR. LEWIS: Oh, the number of labs in the state have been a constant question to the groups, where those labs are on that. We've had comments regarding point 3 percent THC, and that they felt that there is little or no deviation regarding destruction of the crop for those that exceed point 3 THC percent.

I'm trying to think. What else?

MS. BRUCE: Vicky Bruce. For destruction and by the -- allotted on the THC, what form of destruction is allowed? I mean, are you allowed to compost the plants?

MR. LEWIS: For field crops, we have been looking at discing. Discing and burning tend to be the...

MS. BRUCE: Okay.

HEARING OFFICER GOMEZ: Yes?

MR. HARRISON: Mitch Harrison. If a crop tests over the threshold, can I ask for a retest, or is there some policy for me to have another lab test it before I have to destroy my crop?

MR. LEWIS: No. There's provisions for retest. Good question.

MR. HARRISON: Okay.

HEARING OFFICER GOMEZ: Yes, sir?

MR. AINSWORTH: How much is the test? You guys are going to be running the test, right, out of Cruces?

MR. LEWIS: No, sir.

MR. AINSWORTH: Where can we test it at?

MR. LEWIS: There are three labs that we're working with that are already approved for testing THC in the state. So those will be the three labs that we'll start off with.

MR. AINSWORTH: How would you get a lab license if you owned hemp?

MR. LEWIS: If you wanted to start your own lab?

MR. AINSWORTH: Yes.

MR. LEWIS: Because you're in a very gray area, whether -- and this is one of the questions we've had with the District Attorney. I don't think there's anything in law that precludes an individual for setting up a testing laboratory for hemp. Now, if you're testing for medical marijuana, that's under the Department of Health regulates all that stuff.

The Department of Health is then looking at their umbrella to see if they should be covering testing requirements for health in the -- or for hemp in the state now. But you can -- I think there's nothing that precludes somebody if they're only testing hemp, buying the equipment and setting up and going with it.

MR. AINSWORTH: With these labs, are they backed somehow on the prices? If so, what is their price if I took hemp in and said, "Test this"?

MR. LEWIS: One of the people that has been participating in drafting the rules and has participated in these meetings owns one of the labs in the state.
1. Her estimate is it's probably going to run about $40 a
2. sample to run for THC. They think they can do a two-day
3. turnaround, but you have to get your sample to Santa Fe.
4. MR. AINSWORTH: And when do you test the
5. plant, after it comes up or...
6. MR. LEWIS: Can we address this -- because
7. your question is much broader, and it entails a lot of
8. things that aren't specific in this. They're more of an
9. industry-type question and cultivation/production
10. question. So if we can address it afterwards, but keep
11. it in your thought regarding testing and so forth on
12. that.
13. MR. ROSE: I've got another question.
14. HEARING OFFICER GOMEZ: Let me get him
15. first.
16. MR. HARRISON: Mark Harrison. The other
17. question I have -- and it may fall into what you just
18. said. But let's just say, for instance, you've got
19. 5 acres of hemp growing out there, how many plants in
20. that 5 acres are you going to have to consider
21. destroying the whole crop? You know, if you go -- how
22. many plants do you have to test above the point 3?
23. MR. LEWIS: That's a good question. When
24. we start looking at designing the policies for sampling
25. within the field, there's going to be a little bit of
26. room in there. It's going to depend on the cultivars.
27. So every cultivar you plant is going to have to be
28. tested. And then there will be a representative sample
29. of that cultivar that's going to be -- so if we're
30. cutting the top three or four inches of bud off of those
31. head plants, those will go into a bucket, go through the
32. field, and that will be mixed around.
33. An aliquot will be drawn out of it, and
34. then that's what will probably be shipped, one or
35. aliquots that the grower will have to be responsible for
36. getting to Santa Fe for testing on that.
37. The exact number of it, part of that is
38. going to depend on the field. If you have a field
39. that's sandy, one side that's clay or something, that's
40. going to increase the number of samples. All of this
41. impacts the THC contents in hemp plants. So any
42. deviation in those fields all impacts those things.
43. So a person that is overseeing a grower
44. that is sampling, he'll look at that field. And if that
45. field -- like if you look over a corn field or sorghum
46. field, you'll see those dips and so forth in there, then
47. that sampling will have to be adjusted -- a number of
48. samples will have to be adjusted for those fields.
49. MR. HARRISON: So then it's basically taken
50. off of an average, then, if they come in there and --
handle samples at this point in time. So it's going to be -- the State employee is going to have oversee a grower handle State samples. But we cannot handle samples, we can't put them in State vehicles at this time.

MR. AINSWORTH: Just put the tax money in the University down there, correct?

MR. LEWIS: No. There will be oversight of everything.

MR. AINSWORTH: Okay.

MR. LEWIS: Yeah, that's --

MR. GRIDER: They talk about inspections in the bill, Ross, the number of inspections and when.

MR. LEWIS: Yeah.

HEARING OFFICER GOMEZ: Any other questions?

Seeing that there's none, we will close this hearing. It's 12:58 PM. Thank you for participating.

Written comments must be received no later than 5:00 PM on October 16th. The official record of hearing will be submitted to the Secretary/Director.

Thank you for coming. Now, I think with we can open it up to just any questions for Brad.

---

STATE OF NEW MEXICO
COUNTY OF DONA ANA

CERTIFICATE OF COURT REPORTER

I, DEBRA ANN FRIETZE, New Mexico Certified Court Reporter No. 251, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings that were reduced to printed form by me to the best of my ability. I FURTHER CERTIFY that the Reporter's Record of the proceedings truly and accurately reflect the exhibits, if any, offered by the respective parties. I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

DEBRA ANN FRIETZE
Certified Court Reporter
New Mexico CCR No. 251
Date of CCR Expiration: 12/31/2018
NEWLY PROPOSED HEMP CULTIVATION RULE
October 12, 2018

BEFORE THE NEW MEXICO DEPARTMENT OF AGRICULTURE

PUBLIC HEARING FOR THE
NEWLY PROPOSED HEMP CULTIVATION RULE

October 12, 2018
3190 South Espina
Las Cruces, New Mexico 88003

BEFORE:
JOE GOMEZ, Hearing Officer
BRAD LEWIS, Division Director, Agricultural
Environmental Services

REPORTED BY:  Debra Ann Fretz, CCR #251
RUSSIN REPORTING, LLC
340 N. Water Street
Las Cruces, New Mexico 88001

SPEAKERS:
Gloria Castillo
John Stovell
Zeke Rodriguez
Stephen Sisneros
Bealquin Gomez
Jerry Fuentes
MJ Balizan
Rich Richins
Maxine Levy
Daniel Manuchia
David Valdez
Gabe Martinez

HEARING OFFICER GOMEZ: Good afternoon. My
name is Joe Gomez. Today I will be serving as your
hearing officer for the public hearing on the New Mexico
Department of Agriculture's Newly Proposed Hemp
Cultivation Rule.

Please make sure that you have signed in
for the record. I'm going to ask everyone to please
silence or turn off your cell phones. Thank you.

The date is October 12th, 2018, and the
time now is 2:06 PM.

This hearing is being held at the
New Mexico Department of Agriculture located at
3190 South Espina, Las Cruces, New Mexico 88001.
The Notice of Hearing for 21.17.XX NMAC was
published in the September 11th edition of the
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the Las Cruces Sun News, Albuquerque Journal,
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during the week of October 8th, 2018.
The Notice of Hearing, as well as a copy of
the rules, has also been made available via the
Department's website.

During today's hearing, all interested
parties will be given an opportunity to give comment on
the proposed rules only. If there are any other
comments other than pertaining to the rule, there will
be NMDA staff that will be made available after the
meeting to talk to you.

This hearing is being recorded and the
summary of all testimony presented today will be
prepared for Jeff M. Witte, Director/Secretary of the
New Mexico Department of Agriculture, and will be
submitted to the New Mexico State University Board of
Regents.

With me today is Brad Lewis, the Division
Director for Agricultural and Environmental Services at
New Mexico Department of Agriculture.

Brad, can you please explain the need for
the new rule and its components?

MR. LEWIS: Thank you, Joe.

During the 2017 legislative session,
Senate Bill 6, Industrial Hemp Research Rules, was
passed and chaptered into law in April of this year.
The statute delegates the NMDA the authority to develop
an industrial hemp program and promulgate rules for the
administration of that program which would complement
federal law. State statute also grants persons and
institutions of higher education the ability to apply
for an industrial hemp production license through
New Mexico Department of Agriculture.
The proposed rule, which we present to you today, establishes licensure requirements, fee caps, inspection/sampling requirements, identifies the definition of hemp, addresses noncompliant varieties and penalties, provides for exemptions and defines the recordkeeping requirements. More specifically, there are three licensed categories under the rule: annual, continuous and personal.

Application details will be found in policy rather than in the rule itself. Fee caps have been established in the rules at $900 per location for annual and continuous, and $100 per location for personal.

Again, that's a fee cap. Inspection and sampling details will be found in policy rather than in the rule. Growers' responsibility for sampling -- growers will be responsible for sampling and transporting samples to an approved laboratory for THC testing. We propose to use existing THC testing laboratories for this process.

Noncompliant fields will be destroyed in accordance to the rule, and violations to the rule can result in suspension, revocation or deny a license for violations.

HEARING OFFICER GOMEZ: Thank you, Brad.

We will now open the floor for comments.

Please address yourself to the Chair, to myself, by stating your name and affiliation for the record.

Any comments?

MS. CASTILLO: Hi. My name is Gloria Castillo, and I'm with the New Mexico Industrial Hemp Coalition.

I want to know how these rules -- what's going to happen if the federal farm bill passes with the Mitch McConnell amendment attached to it? I just -- I mean, I have no information. I'm just asking.

HEARING OFFICER GOMEZ: That one is not really pertaining to the rule right now. We could wait till after this meeting. And again, we could meet with Brad, and he'll go over any of the other questions.

Okay?

MS. CASTILLO: You don't think the federal farm bill and the rules and regulations that they come up with are going to affect the State rules?

MR. LEWIS: I think they will. I think that the purpose right now for the first part of this meeting will be just for the component of this rule. And then after we close out this official session, I'll sit here and address all of the other questions that are interrelated with this rule.

MS. CASTILLO: Thanks, Brad.
Relief Cannabis Health and Wellness Center established since 2010. Have you guys had any thoughts about maintaining the laws or whatever you want. So I just plots is going to be important for your ability to drive by and assess these fields and these lab owners. So I just want to say we'll be hitting you up.

MR. LEWIS: Thank you. Yeah, we've only begun our discussions with Denise and some of the other former president of the Industrial Hemp Technical Strategy, Compa de Oro, LLC.

MS. BALIZAN: MJ Balizan, Native Root Analytics.

I understand the comment about the GC Mass Spec. GC is very robust, but I'd like the people discussing that policy to consider that, you know, FID on a good quality GC can absolutely nail THC from CBD, and those are the two characters that you guys are interested in being able to distinguish. But there's no, no mistake at all between those two. I don't know that you need to have the stringency of a mass spectrum for every one of these. It's a very expensive toy to own.

MR. LEWIS: Thank you. Yeah, we've only begun our discussions with Denise and some of the other lab owners. So I just want to say we'll be hitting you up.

MR. RICHINS: Okay. Come on by for a visit.

HEARING OFFICER GOMEZ: Any other questions?

MS. LEVY: My name is Maxine Levy. I'm a resident of Dona Ana County, and I'm here on my personal behalf. I used to live in Iowa. They have a lot of ditch weed in Iowa, which is the stuff you're talking about growing. It was remarkable in cutting down all the weeds that ran along the highways and in other places. And I would sincerely encourage the State and the County of Dona Ana to do it because we spend time on ravaging our citizens with pesticides and herbicides to keep that down. We can do a good job for ourselves doing that. Thank you.

HEARING OFFICER GOMEZ: Thank you.

Yes, sir?

MR. MANUCHIA: Daniel Manuchia. I'm the former president of the Industrial Hemp Technical Committee that Jeff Witte formed a few years ago. This is less about regulations but more about your ability to control them in that, because of the high genetic plasticity in that plant, I think we could help you in breeding phenotypes of this plant. So that in addition to doing bio assays and GC analyses, you could do a quick drive-by and find certain color or structural characteristics the same way you might drive by and distinguish field corn from silage corn, but it would really help.

It's not a trivial concern, because your ability to drive by and assess these fields and these plots is going to be important for your ability to maintain the laws or whatever you want. So I just wanted to bring that to your attention.

HEARING OFFICER GOMEZ: Thank you, Daniel.

Yes, sir?

MR. VALDEZ: David Valdez from NM Brief Relief Cannabis Health and Wellness Center established since 2010.

Have you guys had any thoughts about ensuring that the hemp farms won't be near any like
HEARING OFFICER GOMEZ: Thank you.

MR. MARTINEZ: Thank you.

HEARING OFFICER GOMEZ: Anybody else?

Seeing none, we'll be closing this hearing.

The time is 2:20 PM. Thank you all for participating.

We have also received a number of written comments, and we must receive other comments no later than 5:00 PM on October 16th, 2018.

The official record of hearing will be submitted to the Director/Secretary.

Now, I guess, we could open up another meeting for the other questions that weren't related to this rule.

MR. LEWIS: Let's look at that after we consider the Vermont option for actually testing, the Vermont method?

Yes, sir?

MR. SISNEROS: When we were talking about destruction of crop, is composting or burning the crop considered a viable option for destroying that crop?

MR. LEWIS: We'll consider that.

MR. SISNEROS: Okay, thank you.

MR. LEWIS: Thank you.

HEARING OFFICER GOMEZ: Ma'am, your name?

MS. BALIZAN: MJ Balizan, from Rooted Earth Strategy, Campo de Oro, LLC.

I was just wondering if the agency has considered the Vermont option for actually testing, the Vermont method?

MR. LEWIS: Let's look at that after we close this hearing. Thank you.

HEARING OFFICER GOMEZ: Yes, sir?

MR. MARTINEZ: I'm Gabe Martinez.

Does this rule mimic anything on the federal level?

MR. LEWIS: There is language in there and certain sections on proposed federal language that's going to be a requirement within the applications, so that's a federal portion of it. And then the current language is expiring, and so the -- federal expiring in the farm bill. So the new proposed language is what we've also been looking at.

MR. MARTINEZ: And also, are there any other states that have a program that has actually started?

MR. LEWIS: Yes. There's dozens of other states that have similar programs that have started. And the rules that regulate them are as different as they can be between states.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

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I, DEBRA ANN FRIETZE, New Mexico Certified Court Reporter No. 251, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings that were reduced to printed form by me to the best of my ability.

I FURTHER CERTIFY that the Reporter's Record of the proceedings truly and accurately reflect the exhibits, if any, offered by the respective parties.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

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SEC. 7606. LEGITIMACY OF INDUSTRIAL HEMP RESEARCH.

(a) IN GENERAL.—Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.), chapter 81 of title 41, United States Code, or any other Federal law, an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a State department of agriculture may grow or cultivate industrial hemp if—

(1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and

(2) the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs.

(b) DEFINITIONS.—In this section:

(1) AGRICULTURAL PILOT PROGRAM.—The term “agricultural pilot program” means a pilot program to study the growth, cultivation, or marketing of industrial hemp— (A) in States that permit the growth or cultivation of industrial hemp under the laws of the State; and (B) in a manner that— (i) ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp; (ii) requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture; and (iii) authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of this section.

(2) INDUSTRIAL HEMP.—The term “industrial hemp” means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(3) STATE DEPARTMENT OF AGRICULTURE.—The term “State department of agriculture” means the agency, commission, or department of a State government responsible for agriculture within the State.
AMENDMENT NO.______ Calendar No.______

Purpose: To modify provisions relating to State and Tribal regulation of hemp production.


S.___________

To provide for the reform and continuation of agricultural and other programs of the Department of Agriculture through fiscal year 2023, and for other purposes.

Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by ________________

Viz:

1 In section 7415, strike subsection (b) and insert the following:

3 (b) REPEAL.—Effective on the date that is 1 year after the date on which the Secretary establishes a plan under section 297C of the Agricultural Marketing Act of 1946, section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) is repealed.

8 Strike section 10111 and insert the following:
SEC. 10111. HEMP PRODUCTION.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) is amended by adding at the end the following:

"Subtitle G—Hemp Production"

"SEC. 297A. DEFINITIONS."

"In this subtitle:

"(1) HEMP.—The term 'hemp' means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

"(2) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

"(3) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

"(4) STATE.—The term 'State' means—

"(A) a State;

"(B) the District of Columbia;

"(C) the Commonwealth of Puerto Rico; and
"(D) any other territory or possession of
the United States.

"(5) STATE DEPARTMENT OF AGRICULTURE.—
The term "State department of agriculture" means
the agency, commission, or department of a State
government responsible for agriculture in the State.

"(6) TRIBAL GOVERNMENT.—The term "Tribal
government" means the governing body of an Indian
tribe.

"SEC. 297B. STATE AND TRIBAL PLANS.

"(a) SUBMISSION.—

"(1) IN GENERAL.—A State or Indian tribe de-
siring to have primary regulatory authority over the
production of hemp in the State or territory of the
Indian tribe shall submit to the Secretary, through
the State department of agriculture (in consultation
with the (governor and chief law enforcement officer
of the State) or the Tribal government, as applica-
able, a plan under which the State or Indian tribe
monitors and regulates that production as described
in paragraph (2).

"(2) CONTENTS.—A State or Tribal plan re-
ferred to in paragraph (1)—

"(A) shall only be required to include—
“(i) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

“(ii) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;

“(iii) a procedure for the effective disposal of products that are produced in violation of this subtitle;

“(iv) a procedure to comply with the enforcement procedures under subsection (d);

“(v) a procedure for conducting annual inspections of a random sample of hemp producers—

“(I) to verify that hemp is not produced in violation of this subtitle; and
"(II) in a manner that ensures that a hemp producer is subject to not more than 1 inspection each year; and

"(vi) a certification that the State or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (v); and

"(B) may include any other practice or procedure established by a State or Indian tribe, as applicable, to the extent that the practice or procedure is consistent with this subtitle.

"(3) Relation to state and tribal law.—

"(A) No preemption.—Nothing in this subsection preempts or limits any law of a State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.

"(B) References in plans.—A State or Tribal plan referred to in paragraph (1) may include a reference to a law of the State or Indian tribe regulating the production of hemp, to the extent that law is consistent with this subtitle.

"(b) Approval.—
"(1) In general.—Not later than 60 days after receipt of a State or Tribal plan under subsection (a), the Secretary shall—

"(A) approve the State or Tribal plan if the State or Tribal plan complies with subsection (a); or

"(B) disapprove the State or Tribal plan only if the State or Tribal plan does not comply with subsection (a).

"(2) Amended Plans.—If the Secretary disapproves a State or Tribal plan under paragraph (1)(B), the State, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, may submit to the Secretary an amended State or Tribal plan that complies with subsection (a).

"(3) Consultation.—The Secretary may consult with the Attorney General in carrying out this subsection.

"(e) Technical Assistance.—The Secretary may provide technical assistance to a State or Indian tribe in the development of a State or Tribal plan under subsection (a).

"(d) Violations.—
"(1) IN GENERAL.—A violation of a State or Tribal plan approved under subsection (b) shall be subject to enforcement solely in accordance with this subsection.

"(2) NEGLIGENT VIOLATIONS.—

"(A) IN GENERAL.—A hemp producer in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b) shall be subject to subparagraph (B) of this paragraph if the State department of agriculture or Tribal government, as applicable, determines that the hemp producer has negligently violated the State or Tribal plan, including by negligently—

"(i) failing to provide a legal description of land on which the producer produces hemp;

"(ii) failing to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

"(iii) producing Cannabis sativa L. with a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry weight basis."
“(B) CORRECTIVE ACTION PLAN.—A hemp producer described in subparagraph (A) shall comply with a plan established by the State department of agriculture or Tribal government, as applicable, to correct the negligent violation, including—

“(i) a reasonable date by which the hemp producer shall correct the negligent violation; and

“(ii) a requirement that the hemp producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on the compliance of the hemp producer with the State or Tribal plan for a period of not less than the next 2 calendar years.

“(C) RESULT OF NEGLIGENT VIOLATION.—Except as provided in subparagraph (D), a hemp producer that negligently violates a State or Tribal plan under subparagraph (A) shall not as a result of that violation be subject to any criminal or civil enforcement action by the Federal Government or any State government, Tribal government, or local government
other than the enforcement action authorized under subparagraph (B).

"(D) REPEAT VIOLATIONS.—A hemp producer that negligently violates a State or Tribal plan under subparagraph (A) 3 times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

"(3) OTHER VIOLATIONS.—

"(A) IN GENERAL.—If the State department of agriculture or Tribal government in a State or the territory of an Indian tribe for which a State or Tribal plan is approved under subsection (b), as applicable, determines that a hemp producer in the State or territory has violated the State or Tribal plan with a culpable mental state greater than negligence—

"(i) the State department of agriculture or Tribal government, as applicable, shall immediately report the hemp producer to—

"(I) the Attorney General; and

"(II) in the case of a State department of agriculture, the chief law enforcement officer of the State; and
"(ii) paragraph (1) of this subsection shall not apply to the violation.

"(B) FELONY.—Any person convicted of a felony relating to a controlled substance under State or Federal law shall be ineligible—

"(i) to participate in the program established under this section; and

"(ii) to produce hemp under any regulations or guidelines issued under section 297D(a).

"(C) FALSE STATEMENT.—Any person who materially falsifies any information contained in an application to participate in the program established under this section shall be ineligible to participate in that program.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

"(f) EFFECT.—Nothing in this section prohibits the production of hemp in a State or the territory of an Indian tribe for which a State or Tribal plan is not approved under this section in accordance with section 297C or other Federal laws (including regulations).

"SEC. 297C. DEPARTMENT OF AGRICULTURE.

"(a) DEPARTMENT OF AGRICULTURE PLAN.—
“(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian tribe shall be subject to a plan established by the Secretary to monitor and regulate that production in accordance with paragraph (2).

“(2) CONTENT.—A plan established by the Secretary under paragraph (1) shall include—

“(A) a practice to maintain relevant information regarding land on which hemp is produced in the State or territory of the Indian tribe, including a legal description of the land, for a period of not less than 3 calendar years;

“(B) a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian tribe;

“(C) a procedure for the effective disposal of products that are produced in violation of this subtitle;

“(D) a procedure to comply with the enforcement procedures under subsection (c)(2);
“(E) a procedure for conducting annual inspections of a random sample of hemp producers—

“(i) to verify that hemp is not produced in violation of this subtitle; and

“(ii) in a manner that ensures that a hemp producer is subject to not more than 1 inspection each year; and

“(F) such other practices or procedures as the Secretary considers to be appropriate, to the extent that the practice or procedure is consistent with this subtitle.

“(b) LICENSING.—The Secretary shall establish a procedure to issue licenses to hemp producers in accordance with a plan established under subsection (a).

“(c) VIOLATIONS.—

“(1) IN GENERAL.—In the case of a State or Indian tribe for which a State or Tribal plan is not approved under section 297B, it shall be unlawful to produce hemp in that State or the territory of that Indian tribe without a license issued by the Secretary under subsection (b).

“(2) NEGLIGENT AND OTHER VIOLATIONS.—A violation of a plan established under subsection (a) shall be subject to enforcement in accordance with
paragraphs (2) and (3) of section 297B(d), except
that the Secretary shall carry out that enforcement
instead of a State department of agriculture or Trib-
al government.

"(3) REPORTING TO ATTORNEY GENERAL.—In
the case of a State or Indian tribe covered by para-
graph (1), the Secretary shall report the production
of hemp without a license issued by the Secretary
under subsection (b) to the Attorney General.

"SEC. 297D. AUTHORITY TO ISSUE REGULATIONS AND
GUIDELINES; EFFECT ON OTHER LAW.

"(a) AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall have
sole authority to issue Federal regulations and
guidelines that relate to the production of hemp, in-
cluding Federal regulations and guidelines that re-
late to the implementation of sections 297B and
279C.

"(2) CONSULTATION WITH ATTORNEY GEN-
ERAL.—The Secretary may consult with the Attor-
ney General before issuing regulations and guide-
lines under paragraph (1).

"(b) EFFECT ON OTHER LAW.—Nothing in this sub-
title shall affect or modify—
“(1) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); or
“(2) the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services under that Act.”
## 2014 Farm Bill

Allow state departments or institutions of higher education to grow or cultivate industrial hemp. Must be grown or cultivated for purposes of research conducted under a pilot program or agricultural or academic research. Growing hemp must be allowed under state law.

## NMDA Program

NMDA will require a research component be described in the application.

## 2018 Farm Bill

State or Indian tribe must submit to the US secretary of agriculture a plan under which the state or Indian tribe monitors and regulates hemp production in their state.

## NMDA Program

NMDA will submit the state plan and accompanying state legislation, rule, and policy documents to USDA for consideration.

## Requires sites used for growing or cultivation be certified by state department of agriculture

NMDA Application requirement

Establishes plan components. Plan should include:
- Practice to maintain records regarding land on which hemp is produced (for no less than 3 years)
- Procedure for testing THC concentrations
- Procedure for disposal of products in violation
- Procedure for conducting inspections (no more than one annually)

USDA to approve or deny plan no later than 60 days after receipt

USDA may provide technical assistance for plan development.

This will all be encompassed in NMDA’s rule and policy for administering the program.

## Authorizes state departments of agriculture the authority to administer rules and regulations for the administration of the program

NMDA Rule establishes licensing fees, inspecting and sampling protocol, defines noncompliant varieties, establishes violations and penalties, provides for exemptions, and set record keeping requirements.

Defines negligent violations as:
- Failing to provide legal description of land where production or cultivation occurs
- Failing to obtain a license
- Producing hemp with a THC higher than 0.3 on a dry weight basis

Violations are defined in NMDA’s policy with a producer acknowledgement included in application.
| Defines hemp as: the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. | Mirrors state legislation | State department of agriculture or Indian tribe to establish a corrective action plan for violations including:  
- A reasonable date for correction of violation  
- Periodic reports required for the next two calendar years | NMDA’s program policy will include a corrective action plan |
|---|---|---|---|
| | | Producers with 3 repeat violations during a 5 year period will have their license suspended for a period of 5 years beginning on the date of the 3rd violation.  
Requires state department of agriculture or Indian tribe to report violations greater than negligence to the attorney general, and the chief law enforcement officer in the state.  
Denies any person convicted of a felony relating to controlled substances to participate in the program | Included in NMDA’s application and policy, this will require producer acknowledgement. |
<p>| | | Defines hemp as: the plant cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. | Slightly different than state legislation definition. |</p>
<table>
<thead>
<tr>
<th>STATE</th>
<th>Fees</th>
<th>AMOUNT</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>Application fee per application</td>
<td>$100.00</td>
<td>Notes: New legislation was enacted 4/2018. The previous version of the legislation did not grant the department power to charge fees, the updated legislation allows for the dept. to charges fees to cover its cost.</td>
</tr>
<tr>
<td></td>
<td>Grower participation fee per acre</td>
<td>$100.00</td>
<td>Per statute the commissioner does not have to adopt rules until hemp is legal at the federal level.</td>
</tr>
<tr>
<td></td>
<td>Pre-harvest sample fee</td>
<td>$100.00</td>
<td>Notes: The cost of any regulatory sampling and testing shall be borne by the authorized license holder.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: For officials working to determine the THC content of the hemp crop, the Department may charge a fee for each additional field more than 10 miles from the initial and or each additional 100 acres.</td>
</tr>
<tr>
<td></td>
<td>Prior application fee</td>
<td>$100.00</td>
<td>Notes: New legislation was enacted 4/2018. The previous version of the legislation did not grant the department power to charge fees, the updated legislation allows for the dept. to charges fees to cover its cost.</td>
</tr>
<tr>
<td>California</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The California Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The amount of any fees charged growers and handlers by the state seed commissioner under this chapter must be sufficient to cover the cost of the administration of this chapter, including the cost of conducting audits and testing.</td>
</tr>
<tr>
<td></td>
<td>Administration charged at actual cost</td>
<td>$500.00</td>
<td>Notes: The California Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Inspection and sampling or hour basis</td>
<td>$45.00</td>
<td>Notes: The California Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Nevada</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site verification charge at actual cost</td>
<td>$300.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Nevada</td>
<td>Licensor Application fee</td>
<td>$100.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Annual participation fee for growing the grain component of hemp</td>
<td>$100.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Annual participation fee for growing the fiber component of hemp</td>
<td>$100.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Annual participation fee for handling hemp at a seed manager or processor</td>
<td>$100.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Nevada Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Idaho</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The Idaho Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The Idaho Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Idaho Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Missouri</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Missouri</td>
<td>Licensor Application fee</td>
<td>$100.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
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<tr>
<td></td>
<td>Annual participation fee for growing the grain component of hemp</td>
<td>$100.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
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<tr>
<td></td>
<td>Annual participation fee for growing the fiber component of hemp</td>
<td>$100.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Annual participation fee for handling hemp at a seed manager or processor</td>
<td>$100.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Missouri Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Montana</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Transaction fee</td>
<td>$1,000.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Montana</td>
<td>Mileage</td>
<td>$0.50 per mile</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Montana</td>
<td>Administration charged at actual cost</td>
<td>$500.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Montana</td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Montana</td>
<td>Fee for late payments, submissions or seed pick up</td>
<td>$100.00</td>
<td>Notes: The Montana Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Licensor Application fee</td>
<td>$100.00</td>
<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
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<td></td>
<td>Annual participation fee for growing the grain component of hemp</td>
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<td></td>
<td>Annual participation fee for growing the fiber component of hemp</td>
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<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Annual participation fee for handling hemp at a seed manager or processor</td>
<td>$100.00</td>
<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The Maryland Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>New York</td>
<td>Application fee</td>
<td>$100.00</td>
<td>Notes: The New York Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Renewal fee</td>
<td>$100.00</td>
<td>Notes: The New York Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td></td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The New York Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>New York</td>
<td>Administration charged at actual cost</td>
<td>$500.00</td>
<td>Notes: The New York Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>New York</td>
<td>Site modification surcharge</td>
<td>$75.00</td>
<td>Notes: The New York Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>New York</td>
<td>Fee for late payments, submissions or seed pick up</td>
<td>$100.00</td>
<td>Notes: The New York Industrial Hemp Advisory Board is currently working on establishing a program and rules to accompany it.</td>
</tr>
<tr>
<td>Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inspection (site approval visit, growing site inspection- sampling/decommissioning, assessing risks)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seed testing germination</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seed testing purity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seed testing combined</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plant material for testing THC levels</td>
<td>$150 / per sample</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport permit fee</td>
<td>$25/each transport permit required</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Tennessee**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees:</td>
</tr>
<tr>
<td>less than 5 acres</td>
</tr>
<tr>
<td>5 - 20 acres</td>
</tr>
<tr>
<td>20 or more acres</td>
</tr>
<tr>
<td>Additional acre</td>
</tr>
<tr>
<td>Certified seed license</td>
</tr>
<tr>
<td>University license</td>
</tr>
<tr>
<td>Inspection</td>
</tr>
</tbody>
</table>

**Virginia**

<table>
<thead>
<tr>
<th>Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees:</td>
</tr>
<tr>
<td>application fee</td>
</tr>
<tr>
<td>renewal fee</td>
</tr>
<tr>
<td>THC Testing</td>
</tr>
</tbody>
</table>

NOTES: New legislation was signed into law in April 2018, it now allows anyone in Virginia to produce hemp without being attached to a research project. The new legislation is effective July 1, 2018.

http://www.vdacs.virginia.gov/plant-industry-services-hemp.shtml
http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0689

NOTES: We’ve only had to destroy crops three times so far. We have cut and burned them. Cut and brought them here to be incinerated. That one didn’t work out too well, they somehow jammed the incinerator door, it was quite the fiasco! Last time we had the grower mow the field down. It was really a poor stand and very weedy. So, I guess you could say we use a case by case basis.
Attached you will find the final version of the NMDA Hemp Cultivation Rule for consideration at the November 29, 2018 Board of Regents Meeting. We have evaluated input from the hearing comments and have made clarifications based on comments from the public during this process and from the work session. We look forward to the implementation of the hemp program at the New Mexico Department of Agriculture and thank you for your support.
TITLE 21  AGRICULTURE AND RANCHING
CHAPTER 17  PEST, DISEASE, AND WEED CONTROL
PART XX  HEMP CULTIVATION RULE

21.17.XX.1  ISSUING AGENCY:  New Mexico State University, New Mexico Department of Agriculture, MSC 3189, Box 30005, Las Cruces, New Mexico 88003, Telephone No. (575) 646-3007.
[21.17 NMAC-]

21.17.XX.2  SCOPE: All individuals, businesses, agencies, institutions, or other entities engaged in the production of hemp in New Mexico.
[21.17 NMAC-]

21.17.XX.3  STATUTORY AUTHORITY: Granted to the Board of Regents of New Mexico State University under the Industrial Hemp Research and Development Program Act, Chapter 76, Article 24, Section 2, NMSA 1978 Compilation.
[21.17 NMAC-]

21.17.XX.4  EFFECTIVE DATE: January 1, 2019
[21.17 NMAC-]

21.17.XX.5  DURATION: Permanent.
[21.17 NMAC-]

21.17.XX.6  OBJECTIVE: Establishes rules regulating the licensing of growers producing hemp in New Mexico and the establishment of testing processes to ensure uniformity to the definition of hemp.
[21.17 NMAC-]

21.17.XX.7  DEFINITIONS:

1. “Annual Production License” means license issued for the production of a single crop that is destroyed within two hundred and forty days (240 days) of planting.
2. “Applicant” means individuals, businesses, agencies, institutions, or other entities that have submitted an application to the department.
3. “Application” means documents submitted to the department by an applicant as part of the process for obtaining a hemp production license for a single location.
4. “Business Day” means normal business hours and days as defined by New Mexico State University policy.
5. “Cannabis” means a plant of the genus cannabis.
6. “Continuous Production License” means license issued for the production of hemp as part of a plant nursery, greenhouse or similar operation in which viable hemp plant(s) are produced or present throughout the year in a location.
7. “Crop” means planting of one or more hemp varieties within a two week (2 week) contiguous period within a location. Cannabis varieties, not planted within a two week period within a location, shall be subject to a separate license and license fee.

8. “Department” means the New Mexico Department of Agriculture.

9. “Destroy(ed)” meaning method approved by the department to ensure non-viability of a cannabis plant. Methods may include shredding, diskng, burning, or other methods as prescribed by the director.

10. “Director” means the director/secretary of New Mexico Department of Agriculture or designee.

11. “Hemp” means the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent (.3 %) on a dry weight basis.

12. “License” means document issued to an applicant by the department authorizing a licensee to produce hemp at a location.

13. “Licensee” means individuals, businesses, agencies, institutions, or other entities that possess a valid hemp production license.

14. “Location” means one contiguous growing area of any size, or multiple non-contiguous growing areas, totaling no more than 10 acres, within a 2.5 mile radius. Non-contiguous growing areas must be owned or leased by a single licensee.

15. “THC” means delta-9 tetrahydrocannabinol.

16. “Variety” means cannabis cultivar or strain with known or unknown THC levels.

[21.17 NMAC-]

21.17.XX.8 APPLICATION/LICENSE:

Annual Production License:

Applicants cultivating hemp for annual production shall apply for an annual hemp production license no less than 25 business days prior to planting of each crop at each location. The effective date of a renewal application received by the department shall be the date postmarked on a properly completed application received by mail. The effective date of application for documents submitted in person shall be the actual calendar date the applicant presents a properly completed application. Incomplete or improperly completed applications will be identified as invalid by the department and returned to the applicant for completion or correction. A separate application and application fee are required prior to planting of each new crop at each location. An annual hemp production license is valid for 240 days after date of issuance or crop destruction, whichever occurs first, for specified cannabis varieties grown annually at the specified location identified in the application.

Continuous Production License:

Applicants cultivating hemp for continuous production and propagation purposes shall apply for a continuous production license no less 25 business days prior to planting or prior to other propagative activities. Applicants producing hemp in continuous production shall apply for a
renewal of their continuous production license prior to February 1 of each year as defined by department policy. A separate application and application fee are required for each licensed location. Incomplete or improperly completed renewal applications will be identified as invalid by the department and returned to the applicant for completion or correction. The effective date of a renewal application received by the department shall be the date postmarked on a properly completed application received by mail. The effective date of application for renewal application, submitted in person, shall be the actual calendar date the applicant presents a properly completed application. A continuous production license expires January 31 of each year.
[21.17 NMAC-]

21.17.XX.9 LICENSEE REQUIREMENTS:

Licensee shall:

1. submit all required documents by due dates specified by the department;
2. not reassign or transfer to another business, location, individual, or other entity a license;
3. destroy cannabis varieties covered under this rule and found not to be in compliance with requirements set forth in this rule or department policy;
4. not sell, transport, process, or utilize a cannabis variety in any manner without a valid document issued by the department demonstrating compliance with requirements set forth in regulations or department policies;
5. remit payment to the department for fees associated with enforcement of this rule within 20 calendar days of receipt of notice;
6. follow all state and federal requirements relevant to hemp production.
[21.17 NMAC-]

21.17.XX.10 FEES: Fees associated with the application for a license shall include but not exceed the following stated amounts for each license:

1. Annual production license: $800 per location
2. Continuous production license: $900 per location
3. Additional $100 late fee for continuous production license renewal application received after February 1
4. Annual inspection fees for continuous and annual licenses per location:
   a. Outdoor production: $6.00 per acre; minimum $6.00
   b. Indoor production: $0.75 per 1,000 square feet; minimum $5.00
   c. Additional varietal fee: $25 per variety in excess of one variety

Annual inspection fees include only the cost of routine inspections and sampling visits as defined by department policy. Licensee shall be financially responsible for additional staff time and or fees directed at noncompliance issues, or additional sampling requirements, or other expenditures as required by the department and related to compliance requirements found in this rule and department policy. Reimbursable staff time or fees may be associated with mileage, per
diem, and staff hours, as allowed by department rule or policy.

[21.17 NMAC-]

21.17.XX.11 INSPECTION/SAMPLING/TESTING: All locations are subject to inspections by department staff or its authorized agents, without prior notification, to verify application information and compliance with rule requirements.

Unless directed otherwise by the department, all cannabis variety samples collected in support of obtaining a THC determination, shall be collected by the licensee at the direction and supervision of department staff. Licensee shall be responsible for delivery of cannabis variety samples to a department-approved laboratory, within five (5) calendar days of sampling, to determine THC content using quantification methods approved by the department. It is the responsibility of each licensee to ensure the department receives THC quantification results for each sample prior to harvest, processing, or utilization of a cannabis variety in any manner. Licensee shall be financially responsible for costs associated with delivery and testing of samples. Sampling methodology shall be defined in department policy.

[21.17 NMAC-]

21.17.XX.12 NONCOMPLIANT VARIETIES: A sample test result containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent (.3 percent) on a dry weight basis (post decarboxylation) shall constitute evidence that at least one cannabis variety, plant or part of a plant in a location does not meet the THC requirements for hemp. Cannabis varieties, within a location, exhibiting THC levels greater than three-tenths of one percent (0.3 percent) shall be destroyed by a date determined by the department. The licensee is responsible for all costs related to crop destruction. Licensee may be provided the opportunity to resample and retest, pursuant to department policy.

[21.17 NMAC-]

21.17.XX.13 VIOLATIONS/PENALTIES: It is a violation of state and federal law to produce hemp without a valid hemp production license. Individuals, businesses, agencies, institutions, or other entities responsible for locations producing hemp, without a valid license will be provided five business days, after receipt of notification by the department, to submit a valid application or destroy the crop/plant.

In accordance with state or federal law, the department may suspend or deny a license. [21.17 NMAC-]

21.17.XX.14 EXEMPTIONS: The director shall have authority to review and grant exceptions to rule requirements and rule violations.

21.17.XX.15 RECORD RETENTION: The department shall retain applicant records including legal descriptions of hemp production locations for a period of no less than three years and in compliance with state records retention schedules.

[21.17 NMAC-]

HISTORY OF 21.17.XX NMAC: [RESERVED]
Agenda Item: Repeal of NMAC 21.9.2 Agriculture and Ranching Soil and Water Conservation Districts Conducting a Referendum and NMAC 21.9.3 Agriculture and Ranching Soil and Water Conservation Districts Conducting an Election of District Supervisors

Requested Action of the Board of Regents:
Repeal of two rules 21.9.2 NMAC Conducting an election of district supervisors and 21.9.3 NMAC Conducting a referendum

Executive Summary:
The NMDA is proposing the repeal of 21.9.2 NMAC Conducting an election of district supervisors and 21.9.3 NMAC Conducting a referendum in order to bring election protocol for soil and water conservation districts (SWCD) into compliance with the requirements of the recently chaptered Local Election Act. The Soil and Water Conservation District Act (SWCDA) grants the soil and water conservation commission (SWCC) the authority to promulgate rules to carry out the provisions of the SWCDA. The commission promulgated 21.9.2 NMAC Conducting an election of district supervisors and 21.9.3 NMAC Conducting a referendum, in order to provide the districts with protocol for pursuing an election or referendum. During the 2018 legislative session the local election act was passed and chaptered into law. The local election act provides for a single election day and uniform process for certain local government elections (including SWCD’s). The local election act now establishes election protocol making 21.9.2 NMAC and 21.9.3 NMAC unnecessary. The NMDA proposes the repeals of the two rules.

References:
Soil and Water Conservation District Act 73-20-1
Local Election Act

Prior Approvals: N/A

Agenda Item Approved By:

________________________________________________________________________
Jeff Witte
Cabinet Secretary & Director, NMDA
Agricultural Programs and Resources
Repeals:
21.9.2 NMAC Conducting an Election of District Supervisors
21.9.3 Conducting a Referendum
2018 Rulemaking
BOR Packet Material

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TO:       Chairwoman Hicks and Board of Regent Members
FROM:    Jeff M. Witte, Director, NMDA
SUBJECT: NMDA Rule Hearing Repeal – Recommendation

The New Mexico Department of Agriculture (NMDA) held a hearing to obtain public comment on the repeal of 21.9.2 NMAC, Conducting an election of district supervisors, and 21.9.3 NMAC, Conducting a referendum.

The hearing was held on Friday October 12, 2018 at 1:00 p.m., at the New Mexico Department of Agriculture, located at 3190 S. Espina Las Cruces, NM.

New standards have been set by the local election act for the administration of elections in the state. The two rules under consideration for repeal are no longer needed as the new statutory framework makes them unnecessary.

After review of the hearing record, public input, and the hearing officer’s report, I recommend the New Mexico State University Board of Regents repeal of 21.9.2 NMAC, Conducting an election of district supervisors, and 21.9.3 NMAC, Conducting a referendum.
NEWLY PROPOSED REPEALS OF 21.9.2 NMAC CONDUCTING AN ELECTION OF DISTRICT SUPERVISORS, AND 21.9.3. NMAC CONDUCTING A REFERENDUM

To: Jeff M. Witte, New Mexico Department of Agriculture Director/Secretary

From: Joe E. Gomez, Hearing Officer

CC: Anthony Parra, New Mexico Department of Agriculture Deputy Director

CC: Tiffany Rivera, New Mexico Department of Agriculture, Government Relations Specialist

Re: Repeals of 21.9.2 NMAC and 21.9.3 – Recommendation

Date: October 31, 2018

A public hearing was held October 12, 2018 in Las Cruces to gather input into the Repeals of 21.9.2 NMAC Conducting an Election of District Supervisors, and 21.9.3. NMAC Conducting a Referendum.

The notice of hearing for 21.9.2 NMAC and 21.9.3 was published in the September 11th edition of the New Mexico Register, Volume 29, Issue No. 17; and in the Las Cruces Sun News and Albuquerque Journal during the week of October 8, 2018. The notice of hearing as well as a copy of the proposed repeal was also made available via the department’s website.

The New Mexico Department of Agriculture (NMDA) proposed the repeal of 21.9.2 NMAC Conducting an Election of District Supervisors, and 21.9.3. NMAC Conducting a Referendum. In order to bring election protocol for soil and water conservation districts (SWCD) into compliance with the requirements of the recently chaptered Local Election Act. The Soil and Water Conservation Act (SWCDA) grants the soil and water conservation commission (SWCC) the authority to promulgate rules to carry out the provisions of the SWCDA. The commission promulgated 21.9.2 NMAC Conducting an Election of District Supervisors, and 21.9.3. NMAC Conducting a Referendum, in order to provide the districts with protocol for pursuing an election or referendum. During the 2018 legislative session the local election act was passed and chaptered into law. The local election act provides for a single election day and a uniform process for certain local government elections (including SWCD). The local election act now establishes election protocol making 21.9.2 NMAC and 21.9.3 NMAC unnecessary.

At the hearing Julie Maitland, Agriculture Programs and Resources Division Director-NMDA, gave an explanation of the proposed repeal and the rationale behind it. The local election act now establishes election protocol making 21.9.2 NMAC and 21.9.3 NMAC unnecessary.
At the hearing, I opened the floor for public comments.

During the Las Cruces hearing, there were seven in attendance, and two people spoke in support of the repeal.

One written testimony was received from Ms. Debbie Hughes, Executive Director of the New Mexico Association of Conservation Districts. Stating she supports the repeal of the two rules tied to the SWCD Act. Due to the passage of the local election act which standardizes election protocol.

It is my recommendation that you present the Newly Proposed Repeals of 21.9.2 NMAC Conducting an Election of District Supervisors, and 21.9.3. NMAC Conducting a Referendum to the New Mexico State University Board of Regents for their adoption of the repeal.

Respectfully,

Joe E. Gomez
Hearing Officer
NOTICE OF RULEMAKING HEARINGS

The New Mexico Department of Agriculture (NMDA) has scheduled a rule hearing for Friday October 12, 2018 at 1 p.m. the New Mexico Department of Agriculture, located at 3190 S. Espina, Las Cruces, NM. The purpose of the proposed public hearing is to receive public input on the repeals of 21.9.2 NMAC Conducting an election of district supervisors and 21.9.3 NMAC Conducting a referendum.

Purpose:
The NMDA is proposing the repeal of 21.9.2 NMAC Conducting an election of district supervisors and 21.9.3 NMAC Conducting a referendum in order to bring election protocol for soil and water conservation districts (SWCD) into compliance with the requirements of the recently chaptered Local Election Act. The Soil and Water Conservation District Act (SWCDA) grants the soil and water conservation commission (SWCC) the authority to promulgate rules to carry out the provisions of the SWCDA. The commission promulgated 21.9.2 NMAC Conducting an election of district supervisors and 21.9.3 NMAC Conducting a referendum, in order to provide the districts with protocol for pursuing an election or referendum. With the recent passage of the local election act which standardizes elections throughout the state, the two previously mentioned rules are no longer necessary nor applicable. The NMDA proposes the repeals of the two rules.

Rule Summary:
21.9.2 NMAC Conducting an election of district supervisors – provides standard procedures for the election of supervisors in accordance with law.

21.9.3 NMAC Conducting a referendum – provides standards to provide for referenda to be conducted in accordance with law.

Legal authority: Granted to the board of regents of New Mexico State University under the Soil and Water Conservation District Act, Sections 73-20-25 NMSA 1978.

Interested individuals may provide comments regarding the proposed rulemaking repeals at the rule hearing and/or submit written comments via email at comments@nmda.nmsu.edu. Written comments must be received no later than 5:00 p.m. on October 12, 2018. The submission of written comments as soon as possible is encouraged. Persons offering written comments at the meeting must have 2 copies for the hearing officer.

The full text of the rules are available on the webpage at www.nmda.nmsu.edu and available at the New Mexico Department of Agriculture located at 3190 S. Espina, Las Cruces, NM 88003.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (575) 646-3702 at least one week prior to the meeting or as soon as possible.
21.9.2.1 ISSUING AGENCY: New Mexico Soil and Water Conservation Commission
[21.9.2.1 NMAC - Rp, 21.9.2.1 NMAC, 9-30-05]

21.9.2.2 SCOPE: This part applies to supervisor elections in all soil and water conservation districts.
[21.9.2.2 NMAC - Rp, 21.9.2.2 NMAC, 9-30-05]

21.9.2.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Soil and Water Conservation District Act, Sections 73-20-25, et. seq. NMSA 1978.
[21.9.2.3 NMAC - Rp, 21.9.2.3 NMAC, 9-30-05]

21.9.2.4 DURATION: Permanent
[21.9.2.4 NMAC - Rp, 21.9.2.4 NMAC, 9-30-05]

21.9.2.5 EFFECTIVE DATE: September 30, 2005 unless a later date is cited at the end of a section.
[21.9.2.5 NMAC - Rp, 21.9.2.5 NMAC, 9-30-05]

21.9.2.6 OBJECTIVE: The objective of Part 2 of Chapter 9 is to provide standard procedures for the election of supervisors in accordance with law.
[21.9.2.6 NMAC - Rp, 21.9.2.6 NMAC, 9-30-05]

21.9.2.7 DEFINITIONS: Terms defined in Section 73-20-27 NMSA 1978 have the same definition in this part. Terms not defined in Section 73-20-27 NMSA 1978 are defined below:
   A. “Eligible voter” shall mean a person who, at least 32 days prior to the election, is registered to vote in New Mexico pursuant to the provisions of the election code, and whose address of record on the voter registration is within the soil and water conservation district for which the election is being conducted.
   B. “Election” shall mean an election held at one or more designated polling places which will be open a minimum of eight hours. Due notice must be given. Absentee voting as provided in these rules is permitted.
   C. “Election superintendent” shall mean the person appointed to conduct the election of supervisors.
   D. “Canvassing board” shall mean the persons appointed in accordance with these rules to certify and publish the election results, and give the commission notice of their canvass.
[21.9.2.7 NMAC - Rp, 21.9.2.7 NMAC, 9-30-05]

21.9.2.8 DEADLINES:
   A. Deadlines associated with supervisor elections that fall on a weekend or holiday shall be carried over until the next business day.
   B. The New Mexico soil and water conservation commission shall create and distribute an official election timeline by October 1 preceding the election.
[21.9.2.8 NMAC - N, 9-30-05]

21.9.2.9 DUTIES OF COMMISSION OR BOARD OF SUPERVISORS:
   A. Conduct a supervisor election on the first Tuesday in May of odd-numbered years to fill positions designated by the soil and water conservation commission as being eligible for election.
   B. Notify the county clerks of all counties located within the district boundaries of the election by January 1, preceding the election. Each county clerk must be provided the following:
      (1) district boundary description;
      (2) district boundary map;
      (3) date of the election;
      (4) the official election timeline;
      (5) a copy of the supervisor election rules.
C. Provide for “due notice” of the election. There must be two notices: the first notice between 51 and 65 days before the election and the second notice between 23 and 37 days before the election. The notice shall include but is not limited to:

1. geographical area affected, including zone within the district if applicable;
2. declare which terms expire by name of incumbent and position number, and zone represented if the district is zoned. [Supervisors serving positions #1, #2, #3 and #4, or candidates for those positions, must be resident owners of land within the district, and within the zone if the district is zoned. Position #5 is the supervisor-at-large who does not have to be an owner of land but must be resident within the district.]
3. instructions on how to file a declaration of candidacy, including:
   a. dates, times and address where declarations of candidacy and declarations of intent to be a write-in candidate may be obtained,
   b. the date on which declarations of candidacy must be filed, and
   c. the date on which declarations of intent to be a write-in candidate must be filed;
4. date, time and place ballots may be cast;
5. instructions for absentee balloting, including the hours and days of the week that absentee ballot applications will be available;
6. documentation required by the election officials to confirm eligibility to vote (voter registration card, utility bill or other proof of residency within the district);
7. questions to be submitted to voters on the same ballot, if any; and
8. name and telephone number of a person to contact in case of questions about the election.

D. Prepare and make available declaration of candidacy forms to persons who request them.

Declarations of candidacy must be delivered in person by the candidate to the designated place 49 days before the election, and shall take substantially the following form:

“Declaration of Candidacy
Name of candidate (as it should appear on the ballot): _______________________________________________
Candidate’s residence physical address: _________________________________________________________
Candidate’s mailing address: ___________________________________________________________________
Candidate’s phone number: _____________________________________________
Description of land owned within the ___________________________ soil and water conservation district, if
different from physical address above: _____________________________________________________________

I desire to become a candidate for the office of supervisor, position number ___, at the election of supervisors to be
held on the date set by law. I will be eligible to hold this office at the beginning of its term. I make the foregoing
affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws
of New Mexico.

Declarant’s signature: _________________________________________

Witness signature: ____________________________________________

Received by (signature, date, time): _____________________________________”

E. Prepare ballots for the election. The names of persons for whom a declaration of candidacy was
successfully completed shall appear on the ballot. The ballot must provide for write-in votes if any persons have declared their intent to be a write-in candidate on the appropriate declaration form filed 42 days prior to the election. Such persons shall not be entitled to have their name printed on the ballot.

F. In the event that no more than one candidate has filed a declaration of candidacy for each position
to be filled, the board of supervisors shall certify such facts to the canvassing board. If there are no other questions on the ballot the canvassing board shall cancel the election as provided by these rules. The election superintendent shall notify applicants for absentee ballots of the cancellation. Unopposed candidates will assume the office of supervisor according to the Soil and Water Conservation District Act. In the case that there are no candidates for a position, incumbent supervisors continue in office until their successors are elected or appointed as in the case of any other vacancy.

G. At least 60 days prior to the election, appoint an election superintendent who must take the
following oath of office before performing the required duties: “I, (name of person), do solemnly swear (or affirm)
that I will support the constitution of the United States, and the constitution of the state of New Mexico, and I will faithfully discharge the duties of the office of election superintendent for the (name of district) soil and water conservation district.”

H. Assure that candidates for office do not serve as election superintendent or on the canvassing board.
I. Assure that all polling places are staffed with at least two polling officials during the entire voting period. At least one of the officials must not be a district supervisor, district employee, candidate, or immediate family member of any of the aforementioned. Arrange for substitutes if necessary. Polling officials and substitutes must take an oath of office similar to that of the election superintendent before assuming their duties.

J. Maintain a file of all records pertaining to the election in compliance with the applicable records retention schedule. [See 1.19.11 NMAC] [21.9.2.9 NMAC - Rp, 21.9.2.9 NMAC, 9-30-05; A, 12-30-10]

21.9.2.10 ABSENTEE BALLOTING: Eligible voters wishing to vote absentee must fill out an absentee ballot application. Applications for absentee ballots must be requested by mail, by phone, and in person only, beginning 30 days before the election until 20 days before the election. Only one absentee ballot application may be issued per eligible voter.

A. Upon receipt of the completed application and determination of the voter’s eligibility an absentee ballot will be furnished.

B. The district must mail out requested absentee ballots at least 15 days before the election.

C. Absentee ballots must be distributed by the district with two envelopes, with a serial number and voter certification information on the outside of the larger envelope. Districts shall maintain an absentee ballot register by serial number.

D. Absentee ballots returned by mail and received by the district by closing of the polls on election day or before will be counted. Absentee ballots received after election day will not be opened or counted, but will be kept with the election records.

E. All unused absentee ballots shall be destroyed immediately following the close of the absentee ballot period. The destruction shall be certified by the election superintendent and one polling official.

F. Absentee ballots will not be issued if the election is cancelled pursuant to these rules. [21.9.2.10 NMAC - Rp, 21.9.2.10 NMAC, 9-30-05]

21.9.2.11 ELECTION SUPERINTENDENT DUTIES:

A. Assure that all absentee ballots requested by eligible voters in writing are sent as indicated in the election notice, unless the election is cancelled, in which case eligible voters shall be notified. All applications will be compared with the absentee ballot register.

B. Conduct the voting during the period stated in the election notice.

C. If paper ballots are used, place all ballots in a sealed ballot box.

D. Prepare a complete list of all persons voting and those applying for a ballot and determined ineligible to vote.

E. Prepare documentation regarding all challenges of voter ineligibility.

F. Assist the canvassing board in properly securing, transporting, and storing ballot boxes, and cooperate fully with the canvassing board to determine voting results in a timely manner.

G. Prepare a list of eligible voters 28 days prior to the election, and make it available for inspection. [21.9.2.11 NMAC - Rp, 21.9.2.11 NMAC, 9-30-05]

21.9.2.12 PROVISIONAL BALLOTS: Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a provisional ballot.

A. A provisional ballot shall consist of a paper ballot, a plain envelope, and a voter certification form printed on a larger envelope.

B. Marked ballots must be sealed in the plain envelope. The plain envelope must be sealed in the larger envelope. Voters are determined to be eligible or ineligible using the voter certification information on the larger envelope, and supporting documentation provided by the voter.

C. The larger envelopes shall be opened only after all ineligible voters are given an opportunity to prove eligibility. The larger envelope of ineligible voters shall not be opened. All of the larger envelopes of eligible voters shall be opened and the plain envelopes placed in the ballot box. The plain envelopes are then removed from the ballot box and ballots are counted. The plain envelopes may be destroyed after the vote is counted, but the larger envelopes and the ballots must be maintained with the election records.

D. Persons who are determined to be ineligible to vote by polling officials must be notified by the polling officials using the most expedient means of communication. When contacted, ineligible voters must be informed of their right to challenge. Challenges must be in writing and be delivered to the contact person shown on the election notice no later than four days following the election.
**Voter Certification:**
I am a registered voter of precinct no. _____________ of the county of _____________, state of New Mexico. I reside at __________________________, within the boundaries of the __________________________________________________ soil and water conservation district; I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

(Voter) Printed name and signature

(Mailing Address)

(Residence Address)

Telephone number (if voter wishes to be notified of ineligibility to vote)

NOTE: print the above information on a number 12-business size envelope. Use separate envelope for each voter. Use number 10 envelopes for ballots, only one ballot per envelope.

**Canvassing Board:**
A. The canvassing board shall be composed of a minimum of three members:
   (1) an owner of land within the district who is not a supervisor or employee of the district or members of their immediate family; and
   (2) a supervisor of the district [See Subsection H of 21.9.2.9 NMAC.]; and
   (3) a local elected official or his/her designee.

B. The canvassing board will:
   (1) cancel the election upon being notified by the board of supervisors that no more than one candidate has filed a declaration of candidacy for each position to be filled, and there are no other questions on the ballot, and give due notice of such cancellation;
   (2) establish appropriate procedures for securing, transporting, storing and tallying ballots;
   (3) resolve any challenges of voter eligibility or conduct of election; and
   (4) certify election results and report results to the soil and water conservation commission in Las Cruces within seven calendar days following completion of their canvass; a canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board; for each question, the highest number of votes shall decide the question without a runoff vote; a tie vote will be broken by lot.

**History of 21.9.2 NMAC:**
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:
SSCC-200, Outline of Instructions for Conducting District Elections, filed 8/11/69.
SWCD 85-2, Procedures for Conducting an Election of Supervisors in Soil and Water Conservation Districts, filed 7/1/85.
SWCC 90-I, Rules for Conducting an Election of District Supervisors in Soil and Water Conservation Districts, filed 7/2/90.

**History of Repealed Material:**
TITLE 21  AGRICULTURE AND RANCHING
CHAPTER 9  SOIL AND WATER CONSERVATION DISTRICTS
PART 3  CONDUCTING A REFERENDUM

21.9.3.1 ISSUING AGENCY: New Mexico Soil and Water Conservation Commission
[21.9.3.1 NMAC - Rp, 21.9.3.1 NMAC, 9-30-05]

21.9.3.2 SCOPE: This part applies to soil and water conservation districts seeking voter approval for
authority to levy taxes and the soil and water conservation commission when in the process of establishing new
districts or modifying the boundaries of existing districts.
[21.9.3.2 NMAC - Rp, 21.9.3.2 NMAC, 9-30-05]

21.9.3.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Soil and Water Conservation
[21.9.3.3 NMAC - Rp, 21.9.3.3 NMAC, 9-30-05]

21.9.3.4 DURATION: Permanent.
[21.9.3.4 NMAC - Rp, 21.9.3.4 NMAC, 9-30-05]

21.9.3.5 EFFECTIVE DATE: September 30, 2005 unless a later date is cited at the end of a section.
[21.9.3.5 NMAC - Rp, 21.9.3.5 NMAC, 9-30-05]

21.9.3.6 OBJECTIVE: The objective of Part 3 of Chapter 9 is to provide for referenda to be conducted in
accordance with law.
[21.9.3.6 NMAC - Rp, 21.9.3.6 NMAC, 9-30-05]

21.9.3.7 DEFINITIONS: Terms defined in Section 73-20-27 NMSA 1978 have the same definition in this
part. Terms not defined in Section 73-20-27 NMSA 1978 are defined below:
A. “Eligible voter” shall mean a person who, at least 32 days prior to a referendum, is registered to
vote in New Mexico pursuant to the provisions of the election code, and whose address of record on the voter
registration is within the area affected by the referendum.
B. “Referendum superintendent” shall mean the person appointed to conduct the referendum.
C. “Referendum” shall mean an election to decide a question, which may be held at one or more
designated polling places which will be open a minimum of eight hours, or conducted solely by mailed ballots as
provided in these rules. Due notice must be given. Absentee voting as provided in these rules is permitted.
D. “Canvassing board” shall mean the persons appointed in accordance with these rules to certify
and publish the election results, and give the commission notice of their canvass.
[21.9.3.7 NMAC - Rp, 21.9.3.7 NMAC, 9-30-05]

21.9.3.8 SCHEDULING A REFERENDUM: A referendum shall be held on the next succeeding first
Tuesday in May, if practicable. A referendum shall not be held within 42 days prior to a statewide election. A
referendum may be held in conjunction with election of supervisors.
[21.9.3.8 NMAC - Rp, 21.9.3.8 NMAC, 9-30-05]

21.9.3.9 DUTIES OF BOARD OF SUPERVISORS OR COMMISSION:
A. Provide for “due notice” of the referendum. There must be two notices: the first between 51 and
65 days before the referendum and the second between 23 and 37 days before the referendum. The notice shall
include but is not limited to:
(1) geographical area affected;
(2) location of polling place(s), if any;
(3) date and time when ballots may be cast, or date by which mailed ballots must be received;
(4) the resolution of the board of supervisors or commission to hold the referendum;
(5) a statement that the commission has approved the referendum (only for mill levy referendum of a district); and
(6) instructions for absentee balloting, including the hours and days of the week that absentee ballot applications will
be available.
B. Notify the county clerks of all counties located within the district boundaries of the referendum at least 120 days preceding the referendum. Each county clerk must be provided the following:
(1) district boundary description;
(2) district boundary map;
(3) date of the referendum;
(4) the referendum timeline; and
(5) a copy of the referendum rules.
C. At least 60 days prior to the referendum appoint a referendum superintendent who must take the following oath of office before performing the required duties: “I, (name of person) do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of New Mexico, and I will faithfully discharge the duties of the office of (referendum superintendent or polling officer) for the (name of district) soil and water conservation district.
D. Assure that all polling places are staffed with at least two polling officials during the entire voting period. At least one of the officials must not be a district supervisor, district employee, or immediate family member of any of the aforementioned. Arrange for substitutes if necessary. Polling officials and substitutes must take an oath of office similar to that of the election superintendent before assuming their duties.
E. Maintain a file of all records pertaining to the election in compliance with the state records retention schedule. [See 1.19.11 NMAC]
F. Prepare ballots for the election.

21.9.3.10 REFERENDUM SUPERINTENDENT DUTIES:
A. Assure that all absentee ballots requested by eligible voters in writing were sent as indicated in the referendum notice. All applications will be compared with the absentee ballot register.
B. Conduct the voting during the period stated in the “due notice”.
C. If paper ballots are used, place all ballots in a sealed ballot box.
D. Prepare documentation regarding all challenges of voter eligibility.
E. Assist the canvassing board in properly securing, transporting, and storing ballot boxes, and cooperate fully with the canvassing board to determine voting results in a timely manner.
F. Prepare a list of eligible voters 28 days prior to the election. The eligible voter list must be completed and available for inspection at least five days before the election.
G. Determine eligibility of voters. Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a provisional ballot.
H. Prepare a complete list of all persons voting, and those applying for a ballot and determined ineligible to vote.

21.9.3.11 ABSENTEE BALLOTING: Eligible voters wishing to vote absentee must fill out an absentee ballot application. Applications for absentee ballots must be requested by mail, by phone, and in person only, beginning 30 days before the election until 20 days before the election. Only one absentee ballot application may be issued per eligible voter.
A. Upon receipt of the completed application and determination of the voters’ eligibility an absentee ballot will be furnished.
B. The district must mail out requested absentee ballots at least 15 days before the election.
C. Absentee ballots must be distributed by the district with two envelopes, with a serial number and voter certification information on the outside of the larger envelope. Districts shall maintain an absentee ballot register by serial number.
D. Absentee ballots returned by mail and received by the district by closing of the polls on election day or before will be counted. Absentee ballots received after election day will not be opened or counted, but will be kept with the election records.
E. All unused absentee ballots shall be destroyed immediately following the close of the absentee balloting period. The destruction shall be certified by the election superintendent and one polling official.

21.9.3.12 PROVISIONAL BALLOTS: Persons who are not on the eligible voter list and cannot show proof of eligibility must complete a provisional ballot.
A. A provisional ballot shall consist of a paper ballot, a plain envelope, and a voter certification form printed on a larger envelope.

B. Marked ballots must be sealed in the plain envelope. The plain envelope must be sealed in the larger envelope. Voters are determined to be eligible or ineligible using the voter certification information on the larger envelope, and supporting documentation provided by the voter.

C. The larger envelopes shall be opened only after all ineligible voters are given an opportunity to prove eligibility. The larger envelope of ineligible voters shall not be opened. All of the larger envelopes of eligible voters shall be opened and the plain envelopes placed in the ballot box. The plain envelopes are then removed from the ballot box and ballots are counted. The plain envelopes may be destroyed after the vote is counted, but the larger envelopes and the ballots must be maintained with the election records.

D. Persons who are determined to be ineligible to vote by polling officials must be notified by the polling officials using the most expedient means of communication. When contacted, ineligible voters must be informed of their right to challenge. Challenges must be in writing and be delivered to the contact person shown on the election notice no later than four days following the election.

21.9.3.13 VOTER CERTIFICATION:
I am a registered voter of Precinct No. __________ of the county of __________, state of New Mexico. I reside at ___________________________, within the boundaries of the ___________________ soil and water conservation district;
I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

(Voter) Printed name and signature

(Mailing address)

(Residence address)

Telephone number (if voter wishes to be notified of ineligibility to vote)

NOTE: print the above information on a business size envelope. Use separate envelope for each voter. Use smaller envelopes for ballots, only one ballot per envelope.

21.9.3.14 CANVASSING BOARD:
A. The canvassing board shall be composed of a minimum of three members, who may not also serve as referendum superintendent or poll worker:
(1) an owner of land within the district who is not a supervisor or employee of the district or members of their immediate family; and
(2) a member of the governing body of the district; and
(3) a local elected public official or their designee.

B. The canvassing board will:
(1) establish appropriate procedures for securing, transporting, storing and opening ballot boxes;
(2) resolve any challenges of voter eligibility or conduct of election; and
(3) certify election results and report results to the soil and water conservation commission in Las Cruces within seven calendar days following completion of their canvass; a canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board; for each question, the highest number of votes shall decide the question without a runoff vote; a tie vote will be broken by lot.

21.9.3.15 MAIL BALLOT REFERENDUM: Upon the adoption of a resolution by the commission or board of supervisors to conduct an election by an all-mailed ballot, each registered voter who would be eligible to vote in a polling place referendum shall be mailed an absentee ballot along with a statement that there will be no polling place for the referendum. The voter shall not be required to file an application for the absentee ballot. The
ballot shall be mailed to each voter no earlier than the thirty-fifth day prior to the election, and the mailing shall be completed by the fifth day before the election.

A. The referendum superintendent may include in the mailing a printed notice to the voters informing the voters that they shall return the voted ballot by mail.

B. The referendum superintendent shall prepare a checklist of eligible voters. The checklist of registered voters shall be marked indicating that the voter has returned his all-mail ballot immediately upon receipt.

C. A referendum conducted solely by mailed ballot shall not include names of candidates to be nominated for or elected to office.

[21.9.3.15 NMAC - Rp, 21.9.3.15 NMAC, 9-30-05]

21.9.3.16 DEADLINES: Deadlines in these rules which fall on a weekend or holiday shall be carried over until the next business day.

[21.9.3.16 NMAC - N, 9-30-05]

HISTORY OF 21.9.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
SWCD 84-1, Procedures for Conducting a Referendum for Soil and Water Conservation Districts, filed 7/26/84.
SWCC Rule 90-II, Rule for Conducting a Referendum by the Soil and Water Conservation Districts or by the Soil and Water Conservation Commission, filed 7/2/90.

History of Repealed Material:
SWCD 84-1, Procedures for Conducting a Referendum for Soil and Water Conservation Districts, filed 7/26/84 - Repealed 12/20/89.

Sections 73-20-25 through 73-20-48 NMSA 1978 may be cited as the "Soil and Water Conservation District Act".


The 2003 amendment, effective June 20, 2003, substituted "73-20-25 through 73-20-48 NMSA 1978" for "45-5-42 through 45-5-64 NMAA 1953, as amended by this and subsequent amendments" near the beginning of the section.

73-20-26. Legislative determination; purpose of act.

A. Considered and resolved by legislative determination, it is declared that:

(1) the land, waters and other natural resources are the basic physical assets of New Mexico, and their preservation and development are necessary to protect and promote the health and general welfare of the people of the state;

(2) the improper use of land and related natural resources, soil erosion and water loss result in economic waste in New Mexico through the deterioration of the state's natural resources; and

(3) appropriate corrective and conservation practices and programs must be encouraged and executed in New Mexico to conserve and develop beneficially the soil, water and other natural resources of the state.

B. It is declared to be the policy of the legislature and the purpose of the Soil and Water Conservation District Act [73-20-25 NMSA 1978] to:

(1) control and prevent soil erosion;

(2) prevent floodwater and sediment damage;

(3) further the conservation, development, beneficial application and proper disposal of water;

(4) promote the use of impounded water for recreation, propagation of fish and wildlife, irrigation and for urban and industrial needs; and

(5) by the application of these measures, conserve and develop the natural resources of the state, provide for flood control, preserve wildlife, protect the tax base and promote the health, safety and general welfare of the people of New Mexico.


As used in the Soil and Water Conservation District Act [73-20-25 NMSA 1978]:

A. "district" means a soil and water conservation district as described in Section 73-20-44 NMSA 1978;
B. "supervisor" means a member of the governing body of a district;
C. "commission" means the soil and water conservation commission;
D. "agencies of the United States" includes the natural resources conservation service of the United States department of agriculture;
E. "landowner" includes resident and nonresident owners of natural resources;
F. "due notice" means the publication or broadcasting of the appropriate information by newspapers of general circulation and, if appropriate, broadcast stations licensed by the federal communications commission, or by other means that meet the requirements of the Open Meetings Act [10-15-1.1 NMSA 1978]. If print or broadcast media do not service the affected geographical area, due notice may be given by posting the appropriate information in notice form in six conspicuous public places where it is customary to post notices concerning county or municipal affairs within the affected geographical area;
G. "department" means the New Mexico department of agriculture;
H. "director" means the director of the department;
I. "natural resources" includes land, except for the oil, gas and other minerals underlying the land; soil; water; air; vegetation; trees; wildlife; natural beauty; scenery; open space; and human resources, when appropriate;
J. "board of regents" means the board of regents of New Mexico state university; and
K. "registered voter" means a person who is registered to vote in New Mexico pursuant to the provisions of the Election Code [1-1-1 NMSA 1978].


The 1987 amendment, effective July 1, 1987, in Subsection G, substituted "the forestry division of the energy, minerals and natural resources department" for "the soil and water conservation division"; added Subsection I; and made a minor language change in Subsection H.

The 1997 amendment, effective July 1, 1997, in Subsection A, inserted "which is"; in Subsection D, substituted "natural resources conservation service" for "soil and conservation service"; rewrote Subsection G; added Subsection H; redesignated former Subsection H as Subsection I; deleted former Subsection I, defining "Secretary"; and added Subsection J.

The 2003 amendment, effective June 20, 2003, substituted "as described in Section 73-20-44 NMSA
1978" for "which is a governmental subdivision of the state, a public body corporate and politic; organized for the purposes, granted the powers and subject to the restrictions of the Soil and Water Conservation District Act" at the end of Subsection A; deleted "committee' or" at the beginning of Subsection C; deleted "as defined in the Soil and Water Conservation District Act" at the end of Subsection E; in Subsection F, inserted "or broadcasting" following "publication" near the beginning, substituted "by newspapers of general circulation and, if appropriate, broadcast stations licensed by the federal communications commission, or by other means that meet the requirements of the Open Meetings Act. If print of broadcast media do" for "in notice form in a newspaper or other written medium of general circulation within the affected geographical area at least twice, with a period of ten or more days intervening between the first and last publication. If a newspaper of general circulation or other written medium of general circulation does" near the middle; in Subsection I, inserted "air" following "water" and "wildlife" following "trees" near the middle and substituted "when" for "are included where" near the end; inserted "of regents" following "board" near the beginning of Subsection J; and inserted present Subsection K.

73-20-28. Soil and water conservation commission members.

There is created a "soil and water conservation commission" to be composed of seven appointed members and five ex-officio members. The seven appointed members shall be selected by and serve at the pleasure of the governor. Six of the appointed members shall be supervisors and shall be selected and appointed from a panel of three candidates from each region, compiled by the districts of each region and presented by the president of the New Mexico association of conservation districts. One appointed member shall be selected at large and shall be a person interested and active in the conservation or development of natural resources in New Mexico. The five ex-officio members shall serve without vote and shall include:

A. the governor or his designee;
B. the associate director of the cooperative extension service of New Mexico state university or his designee;
C. the associate director of the agricultural experiment station of New Mexico state university or his designee;
D. the state conservationist of the natural resources conservation service of the United States department of agriculture or his designee; and
E. the president of the New Mexico association of conservation districts or his designee.


The 2003 amendment, effective June 20, 2003, in the first paragraph substituted "appointed" for "continuing" in the first sentence, substituted "appointed" for "continuing commission" in the second sentence, substituted "of the appointed" for "continuing committee" following "Six", deleted "district" following "members shall be", substituted "New Mexico" for "state" following "president of the", and deleted "soil and water" following "association of" in the third sentence, substituted "appointed" for "continuing commission" in the fourth sentence, and deleted "commission" following "ex-officio" in the fifth sentence; deleted "state" following "director of the" near the middle of Subsection B; deleted "state"
following "director of the" near the middle of Subsection C; substituted "of the natural resources" for "soil" following "conservationist" near the beginning of Subsection D; and, in Subsection E, substituted "New Mexico" for "state" near the beginning, and deleted "soil and water" following "association of" near the middle.

**Appropriations.** — Laws 2003, ch. 319, § 1, effective June 20, 2003, authorizes the secretary of finance and administration to draw from the general fund operating reserve up to $972,000 as necessary in fiscal year 2004 to match federal funds for water conservation and natural resource restoration technical assistance in accordance with an agreement entered into between the United States department of agriculture's natural resources conservation service and the soil and water conservation commission. Upon certification by the soil and water conservation commission that federal money has been made available to the state for the purposes specified in the agreement and that state money is ready for expenditure, the secretary of finance and administration shall release the money to the board of regents of New Mexico state university for expenditure in fiscal year 2004 for the soil and water conservation districts. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund operating reserve.

73-20-29. Selection of commission chairman; quorum; compensation; function.

A. Upon the appointment of seven members by the governor, the commission shall organize and designate a chairman, who shall serve at the pleasure of the commission.

B. In the performance of commission functions, a majority of the appointed members shall constitute a quorum; the concurrence of a quorum majority shall be required to carry or to determine any matter of commission business.

C. Members of the commission shall receive no compensation for their services but shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978].


The 2003 amendment, effective June 20, 2003, in Subsection A deleted "continuing commission" following "seven" near the beginning, and deleted "shall select and" following "majority of the" near the middle; substituted "appointed" for "continuing commission" near the middle of Subsection B; and deleted "for actual expenses incurred" following "to be reimbursed" near the middle of Subsection C.

**ANNOTATIONS**

**Determination of quorum.** — The rule generally is to the effect that a quorum is a certain number of the members of a body who are entitled to vote. The determination of the number for a quorum should be made on the basis of the ex-officio membership as well as the regular membership. 1959-60 Op. Att'y Gen. No. 60-13.


94 C.J.S. Waters § 320.
73-20-30. Repealed.


73-20-31. Powers and duties of department and commission.

A. The supervising officer of any state agency or post-secondary educational institution shall, within the limitations of his budget and the demands of his agency or institution, assign staff or personnel, render special reports and undertake surveys or studies pertaining to soil and water conservation for the commission and the department as requested.

B. The department, with the advice of the commission, shall:
   (1) assist districts in the development of district soil and water conservation programs and, from such programs, develop a soil and water conservation program for the state;
   (2) provide information for supervisors concerning the experience and activities of all districts and facilitate the exchange of experience and advice among districts;
   (3) promote cooperation between districts and, by advice and consultation, assist in the coordination of district programs;
   (4) secure and maintain the cooperation and assistance of state and federal agencies and seek to secure and maintain the cooperation and assistance of national, state and local organizations and groups interested or active in natural resources conservation and development;
   (5) disseminate information throughout the state concerning district activities and programs; and
   (6) encourage and, within budget limitations, render assistance to district activities and facilitate and encourage the formation of new districts in areas where district organization is desirable.

C. The commission may:
   (1) advise the department and the board of regents concerning any matter that in its opinion has a significant impact on or otherwise substantially affects soil and water conservation; and
   (2) promulgate rules to carry out the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978].


Repeals and reenactments. — Laws 1977, ch. 254, § 61, repealed a former 45-5-47, 1953 Comp.,
relating to the powers and duties of the former soil and water conservation commission, and enacted former § 45-5-47, 1953 Comp.

Laws 1978, ch. 175, § 1, repealed former 45-5-47, 1953 Comp. (former 73-20-31 NMSA 1978), relating to powers and duties of the soil and water conservation division, and enacted a new 73-20-31 NMSA 1978.

The 1987 amendment, effective July 1, 1987, deleted former Subsections A and B, concerning adoption of the seal, keeping of records, personnel, surety bonds and delegation of authority relating to the soil and water conservation division; redesignated former Subsection C as present Subsection A; in Subsection A, inserted "soil and water conservation bureau of the" preceding "division"; deleted former Subsection D, concerning rules and regulations; redesignated former Subsection E as present Subsection B; in Subsection B, in the opening clause substituted "secretary, with the advice of the commission shall" for "division shall as directed by the commission"; deleted former Subsection F, relating to the purchase and leasing of equipment and other personal property; added present Subsection C; and made minor language changes throughout the section.

The 1997 amendment, effective July 1, 1997, in Subsection A, substituted "studies pertaining to soil and water conservation for the commission and the department" for "studies for the soil and water conservation bureau of the division and for the commission"; in Subsection B, substituted "department" for "secretary" in the introductory language; and, in Subsection C, substituted "department and the board" for "secretary".

The 2003 amendment, effective June 20, 2003, in Subsection A inserted "post-secondary educational" following "agency or" near the beginning, deleted "of learning" following "institution" near the beginning, and deleted "or detail" following "assign" near the middle; deleted "district" following "information for" near the beginning of Paragraph B(2); deleted "aid and" following "render" near the beginning of Paragraph B(6); and rewrote Subsection C.

ANNOTATIONS

Sale of personal property of district. — Unless the provisions of 13-6-2 NMSA 1978 are complied with, personal property of a soil conservation district (now soil and water conservation district) cannot be sold, regardless of how or from whom acquired, without first obtaining approval of the state board of finance. 1963-64 Op. Att'y Gen. No. 63-125.

Financial aid to districts by division limited. — If the commission directs the division to assist the districts in paying for their audits, then the division must, within its budgetary limits, render financial aid to the districts; in the absence of a commission directive, the division may not provide financial assistance to the districts for the audits. 1980 Op. Att'y Gen. No. 80-19.


73-20-32. Additional duties of department.

In addition to all other powers and duties of the department, it shall:

A. upon request and within budget limitations, provide land-use planning assistance in the areas of terrain management consisting of flood control, drainage, erosion and measures required for adapting proposed development to existing soil characteristics and topography; and
B. with the advice of the commission, divide the state into six soil and water conservation regions and assign each of the currently created soil and water conservation districts or those created in the future to one of the six geographical regions. Division and assignment may be amended from time to time with the advice of the commission as the boundaries of the districts alter or other conditions warrant.


The 1997 amendment, effective July 1, 1997, substituted "department" for "division" in the section heading and in the introductory language and, in Subsection B, substituted "advice" for "approval" and "currently" for "presently" in the first sentence and "advice" for "consent" in the second sentence.

73-20-33. Soil and water conservation districts; creation.

A. Twenty-five landowners whose land lies within the exterior limits of a geographical area proposed to be organized into a district may petition the commission for the organization of a district. The petition shall state:

1. the proposed district name;
2. the need for the proposed district and the manner in which it would be in the interest of the public health, safety and welfare;
3. by accurate description, supplemented and depicted by an accurate map, the geographical area proposed to be organized into a district; and
4. a request that:
   (a) the commission define the boundaries of the proposed district;
   (b) a referendum be held within the boundaries submitting to the voters' determination the question of creating the district; and
   (c) if a majority of votes cast are in favor of creating the district, the commission subsequently declare the proposed district be created.

B. If any portion of the same geographical area is described in more than one petition, the commission may consolidate petitions in the manner it deems expedient.

C. In the event of a challenge to the validity of signatures on a petition, the burden of proof shall be on the sponsors of the petition.

D. Within thirty days next succeeding the filing of a petition, the commission shall cause due notice to be given to all affected persons of a hearing scheduled to determine the necessity and desirability of the proposed district and to determine district boundaries, the propriety of the petition and any other relevant questions. All affected or interested persons may attend a commission hearing and shall have the right to be heard. If, upon hearing, it is determined to be desirable to include in a proposed district lands not contemplated by the petition, the hearing
shall adjourn, an amended petition shall be required and due notice shall be given to all affected persons.

E. The commission shall determine, at the conclusion of a hearing, whether a proposed district is necessary and desirable. In making its determination of the necessity of a proposed district and in defining district boundaries, the commission shall consider:

1. the need for the proposed district and its probable effect upon the public health, safety and welfare;

2. the topography and composition of soils comprising the area of the proposed district;

3. the distribution of erosion within the proposed district and within surrounding lands;

4. the prevailing land-use practices; and

5. the probable effect of the proposed district upon, and its relation to, watersheds, agriculturally productive lands and other extant or proposed districts.

F. The findings of the commission and its final determination shall not be limited solely to an evaluation of the facts adduced at the hearing or those set forth in a petition, but shall be predicated upon all reliable information available to the commission, including reports, studies and other authoritative publications.

G. If the commission finds that a proposed district is necessary and desirable, it shall approve the petition, enter and record its final determination and define the district by legal description. If the commission finds no need for a proposed district, it shall deny the petition and enter and record its final determination. A geographical area or a substantial portion of it may not be the subject of a petition submitted for consideration by the commission more than one time in any calendar year.


The 2003 amendment, effective June 20, 2003, deleted "soil and water conservation" following "organized into a" near the middle of Subsection A; inserted "if a majority of votes cast are in favor of creating the district" at the beginning of Subparagraph A(4)(c); added present Subsection C and redesignated the subsequent paragraphs accordingly; in present Subsection D deleted "Owners of land lying within the geographical area described for the proposed district and owners of land which is being considered for addition to or inclusion in a proposed or extant district shall be given due notice of hearing; and" near the middle, and substituted "affected person" for "owners of land proposed to be included in the new district" at the end; substituted "of the proposed district" for "to be affected" at the end of present Paragraph E(2); and substituted "the proposed district" for "land to be affected" near the end of present Paragraph E(3).
Separate political subdivision. — Soil conservation district (now soil and water conservation district) properly organized under laws of state is separate political subdivision thereof. 1955-56 Op. Att'y Gen. No. 6465.

Benefits available to all landowners. — Landowner does not join soil and conservation district; upon its formation, benefits thereof are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.


73-20-34. Soil and water conservation districts; creation; referendum.

A. When a final determination of the commission that a proposed district is necessary and desirable has been entered and recorded, the commission shall then determine whether the operation of the district is administratively practicable. To assist in this determination, the commission shall call for a referendum on the proposed district within the geographical boundaries of the district as defined by the commission, to be conducted on the next succeeding first Tuesday in May, if practicable. All registered voters residing within the proposed district shall be eligible to vote.

B. The commission shall:
   (1) provide for due notice of a referendum within a proposed district;
   (2) confirm eligibility of registered voters; and
   (3) adopt and publish rules to govern the orderly conduct of a referendum.

C. A referendum may not be held during an interval when valid rules adopted and published by the commission are not in effect.

D. The proposal shall be presented to the voters on ballots that define, in general terms and by legal description, the area encompassed within the proposed district.

E. Informalities or irregularities in the conduct of a referendum shall have no effect upon its result if due notice requirements have been substantially complied with and balloting has been fairly conducted in substantial compliance with the rules adopted and published by the commission.

F. The commission shall publish referendum results and make a final determination of whether the proposed district is administratively practicable; provided, however, in the event that approval of the proposed district is not carried by a majority of votes cast in a referendum, the commission shall deny the petition and shall enter and record its order.


The 2003 amendment, effective June 20, 2003, in Subsection A deleted "within a reasonable time" following "the commission shall" near the beginning of the second sentence, inserted "to be conducted on
the next succeeding first Tuesday in February if practicable" at the end of the second sentence, and substituted "registered voters residing" for "owners of land lying" near the beginning of the third sentence; rewrote the provisions of former Subsection B describing the ballot to be presented to the voters and designated those provisions as present Subsection D and redesignated subsequent paragraphs accordingly and inserted present Subsection C; deleted former Subsection D regarding considerations for the commission in determining the administrative practicability of proposed districts; and deleted "of referendum" following "due notice" near the middle of present Subsection E.

The 2005 amendment, effective July 1, 2005, changed the date of the referendum of a proposed district from February to May in Subsection A.

ANNOTATIONS

Benefits available to all landowners. — Landowner does not join soil and conservation district; upon formation thereof, benefits of soil and water conservation district are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.


73-20-35. Soil and water conservation districts; organization.

A. Upon the determination that a proposed district is necessary and administratively practicable, the commission shall appoint two interim supervisors who reside within the district who shall be the governing body of the district until an election of supervisors is held. The two interim supervisors shall present to the secretary of state their verified application, stating:

1. a recital of the proceedings conducted;
2. that all proceedings were undertaken lawfully and in accordance with the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978];
3. the name of the proposed district and its geographical boundaries;
4. the name and official residence of each applicant together with a certified copy of each appointment evidencing the applicant's right to office; and
5. the designation of the principal office of the supervisors of the district.

B. The verified application of the two district interim supervisors shall be accompanied by certified copies of the commission's recorded orders of determination that the proposed district is necessary and is administratively practicable.

C. The secretary of state, upon finding the application and its supporting attachments are in substantial compliance with the provisions of this section, shall receive, file and record the application in an appropriate book of record and issue to the applicants, under state seal, a certificate of organization of the district. From the date of issuance of the certificate of organization by the secretary of state, the district shall be a governmental subdivision of the state. In any action or proceeding relating to a district or an act of the district, the certificate of
organization of the district shall be admissible in evidence as proof of its contents.

D. If the secretary of state finds the name of a proposed district to be the same as or substantially similar to the name of an existing organized district, he shall certify the fact to the commission. The commission shall, with the assistance of the interim supervisors, select and submit a new name to the secretary of state.


The 2003 amendment, effective June 20, 2003, inserted "who reside" following "interim supervisors" near the middle of Subsection A; designated the former last paragraph of Subsection A as present Subsection B and redesignated the subsequent paragraphs accordingly; in present Subsection C, deleted "he shall make and" following "record and" near the middle and substituted "a governmental" for "an agency and" following "district shall be" near the middle; and deleted "appointed district" following "assistance of the" near the end of Subsection D.

ANNOTATIONS


Benefits available to all landowners. — Landowner does not join soil and conservation district upon formation thereof; benefits of soil and water conservation district are available to all owners of land located within boundaries of district, whether such owners have joined said district or not. 1966 Op. Att'y Gen. No. 66-48.

District not subject to licensing. — Former contractor's license board had no authority to license water or soil conservation district in New Mexico. 1966 Op. Att'y Gen. No. 66-48.


73-20-36. Soil and water conservation districts; modification of existing districts.

A. Unless otherwise provided by this section, petitions to modify the boundaries of an existing district shall be subject to the same requirements for notice, hearing, determination of necessity and desirability, referendum and determination of administrative practicability as are required for petitions for the organization of a district pursuant to the Soil and Water Conservation District Act [73-20-25 to NMSA 1978].

B. Petitions for including additional land within an existing organized district, signed by twenty-five registered voters residing in the district or within the boundaries of the additional land proposed to be included or signed by two thirds of the owners of the additional land proposed to be included, whichever is less, may be filed with the commission. If the petition is signed by two thirds or more of the owners of the additional land proposed to be included in the district, the commission may enter its determinations without hearing or referendum. The
commission shall advise the department of all petitions filed pursuant to this section.

C. Petitions for severing land from the defined geographical area of an existing organized district, or for its severance and inclusion within another existing organized district, signed by twenty-five registered voters residing in the district or within the boundaries of the land proposed to be severed or signed by two thirds of the owners of the land proposed to be severed, whichever is greater, may be filed with the commission. If the petition is signed by two thirds or more of the owners of the land to be severed or is submitted by the board of supervisors of each district affected, the commission may enter its determinations without hearing or referendum.

D. Petitions for consolidating two or more districts or for separating an existing district into two or more districts may be filed with the commission by the board of supervisors of each district affected. After due notice, a public hearing shall be held in each district affected. If petitions have been filed pursuant to this subsection and approved as provided in the Soil and Water Conservation District Act [73-20-25 to NMSA 1978], it shall not be necessary to obtain the consent of the registered voters within the districts prior to the consolidation or division.

E. The commission shall give written notice to the secretary of state of any modification in the defined geographical area of an existing district; the notice of modification shall describe and portray by map the modified geographical area. The secretary of state shall note, file and record each modification and shall issue, under state seal, a certificate of reorganization to each district affected. Certificates of reorganization shall have the same effect as the certificates they supersede.

F. The commission shall supervise reorganization of the affairs of the district when boundaries are modified.

G. In the event a supervisor of a district is disqualified from holding office by the modification of the district, the supervisor shall be deemed to have resigned and a successor shall be appointed to serve the unexpired term by the commission.


The 1997 amendment, effective July 1, 1997, substituted "department" for "division" throughout the section; in Subsection A, added the last sentence; in Subsection C, substituted "as provided in the Soil and Water Conservation District Act" for "as herein provided" in the last sentence; in Subsection E, substituted "board" for "commission" at the end of the last sentence; and made a minor stylistic change.

The 2003 amendment, effective June 20, 2003, inserted present Subsection A and redesignated the subsequent paragraphs accordingly; in Subsection B, inserted "signed by twenty-five registered voters residing in the district or within the boundaries of the additional land proposed to be included or signed by two thirds of the owners of the additional land proposed to be included, whichever is less" following "organized district" near the beginning and substituted "commission" for "department and shall be treated
in the same manner as petitions for the creation of a proposed district" at the end of the first sentence; in Subsection C, inserted "signed by twenty-five registered voters residing in the district or within the boundaries of the land proposed to be severed, whichever is greater" following "organized district" near the middle, and substituted "commission" for "department and may be treated in the same manner as petitions for the creation of a proposed district" at the end of the first sentence; in Subsection D, deleted "and no action can be taken without the majority approval of the voters present at the hearing" at the end of the first sentence, and substituted "registered voters" for "landowners" near the end of the second sentence; deleted "organized" following "existing" near the beginning of Subsection E; added Subsection F and redesignated former Subsection E as present Subsection G; and substituted "commission" for "remaining supervisors of the district. In the event two or more supervisors are disqualified from holding office by the modification of a district, their successors shall be appointed to serve the unexpired terms by the board" at the end of Subsection G.

73-20-37. District supervisors; election and appointment; new districts.

A. The governing body of a district shall be composed of five supervisors who shall be residents of the district and shall be elected; provided, however, two additional supervisors may be appointed to the governing body of each district by the commission in accordance with the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978]. Four elected supervisor positions of each district shall be filled by landowners within the defined geographical area of their district. One elected supervisor position shall be designated supervisor-at-large and the supervisor filling that position may serve the district without landowner qualification.

B. Unless a different time is prescribed by the commission, within thirty days following the issuance of a certificate of organization to the two interim supervisors of a district, declarations of candidacy for supervisors of the district may be filed with the commission. The commission shall give due notice of election for the offices of five district supervisors. All registered voters residing within the district shall be eligible to vote. The commission shall adopt and prescribe regulations governing the conduct of the election, shall determine voter eligibility and shall supervise the election and publish its results. The districts shall bear the expenses of elections; however, the commission shall bear the expenses of the first election of a newly organized district.

C. In the first election of supervisors to serve a newly organized district, two supervisors shall be elected for terms of four years and three supervisors shall be elected for terms of two years. Thereafter, each elected supervisor shall serve a term of four years and shall continue in office until his successor has been elected or appointed and has completed an oath of office. Oaths of office may not be completed prior to July 1 after an election. A vacant unexpired term of the office of an elected supervisor shall be filled by appointment by the remaining supervisors of the district. Two or more vacant unexpired terms occurring simultaneously in the same district shall be filled by appointment by the commission.

D. Appointed interim supervisors may continue to serve as appointed supervisors at the pleasure of the commission or until their successors are otherwise appointed.

The 1997 amendment, effective July 1, 1997, substituted "board" for "commission" throughout the section; in Subsection A, substituted "four of whom" for "who" and deleted "one from each zone" following "shall be elected" in the first sentence, added the second and third sentences, deleted the former last two sentences, which read "Four elected supervisors of each district shall be owners of land within the defined geographical area of their district. One elected supervisor shall be designated supervisor at large and may serve without qualification"; in Subsection B, substituted "department" for "division" in the first sentence and for "commission" in the third sentence, inserted "with the advice of the commission" and deleted "shall bear the expense of the election" following "supervise the election" in the next-to-last sentence, and added the last sentence; and made minor stylistic changes.

The 2003 amendment, effective June 20, 2003, in Subsection A, inserted "residents of the district and shall be" following "who shall be" near the beginning, inserted "the supervisor filling that position" following "supervisor-at-large and" near the middle of the third sentence and redesignated the fourth and fifth sentences as part of Subsection C; in Subsection B, substituted "declarations of candidacy" for "nominating petitions proposing candidates" near the beginning, substituted "commission" for "department. Nominating petitions shall be signed by no fewer than ten owners of land situate within the district; landowners shall not be restricted in the number of nominating petitions they may subscribe" following "filed with the" near the middle, substituted "registered voters residing" for "owners of land situate" near the beginning of the fourth sentence, deleted "board, with the advice of the" near the beginning of the fifth sentence, and inserted "however, the commission shall bear the expenses of the first election of a newly organized district" at the end; in Subsection C, substituted "four years and three" for "one year; two" following "terms of" near the middle of the first sentence, deleted "and the supervisor-at-large shall be elected for a term of three years" at the end of the first sentence and substituted "four" for "three" following "a term of" near the beginning of the second sentence.


73-20-38. District supervisors; election and appointment; organized districts.

A. Successors to supervisors whose terms end in a calendar year shall be elected on the first Tuesday in May of that year. Elections shall be called, conducted and returned in accordance with rules adopted and prescribed by the commission.

B. A canvassing board appointed by the commission shall determine the results of a district election, shall certify and publish the results and shall give the commission notice of its canvass within seven days of its completion. A canvass is considered complete when all challenges have been resolved to the satisfaction of the canvassing board.

C. Rules adopted and published by the commission and the election provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978] shall be exclusive in the conduct of district elections. The commission may adopt and publish rules to carry out the provisions of the Soil and Water Conservation District Act.

D. By June 15 of each year, the district supervisors may submit to the commission a list of persons interested in the district and who by experience or training are qualified to serve as
supervisors. The commission may appoint from the list submitted, or at will, two persons to serve as supervisors if it is the determination of the commission that the appointments are necessary or desirable and would benefit or facilitate the work and functions of the district. In the event a list is not submitted to the commission by the supervisors by June 15, the commission may appoint at will two supervisors qualified to serve by training or experience. Appointed supervisors shall serve at the pleasure of the commission and shall have the same powers and perform the same duties as elected supervisors. Successors to appointed supervisors, or replacement-appointed supervisors in the event of vacancy, shall be appointed by the commission from a list of candidates or at will in accordance with the provisions of this subsection.


The 1997 amendment, effective July 1, 1997, in Subsection A, substituted "December 15" for "November 1" in the first sentence and "board" for "commission" in the last sentence; in Subsection B, substituted "department" for "commission" in the second sentence; in Subsection D, substituted "by the board, with the advice of the commission" for "by the soil and water conservation commission" in the first sentence and rewrote the second sentence; and, in Subsection E, substituted "department" for "division" in two places and "board" for "commission" in two places and inserted "board, with the advice of the" in three places.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2005 amendment, effective July 1, 2005, changed the date of election of supervisors from February to May in Subsection A.


In adopting and publishing rules for the election of supervisors and the registration of district voters, the commission may, to ensure proper representation of district voters and to facilitate district functions, provide for the geographic zoning of a district. The commission shall provide for the proper and equitable representation for each faction geographically zoned in the district. If a district is divided, or if two or more districts are consolidated, the commission shall provide for the geographic zoning of the resulting district or districts within thirty days after the secretary of state issues the certificate of organization for each new district.


The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; substituted "publishing" for "promulgating" near the beginning of the section, deleted "district" following "election of" near the beginning of the section and substituted "voters" for "landowners" near the middle of the section.
73-20-40. Selection of supervisor chairman; quorum; compensation.

Within a reasonable time after each district election and after newly elected supervisors have completed the oath of office, the supervisors of a district shall organize and shall designate a chairman who shall be a supervisor and who shall serve at the pleasure of the supervisors. In the performance of district functions, a majority of supervisors shall constitute a quorum; the concurrence of the quorum majority shall be required to carry or to determine any matter of district business. Supervisors shall not receive compensation for their services but shall be entitled to be reimbursed in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978]. Supervisors may purchase group health insurance benefits for themselves and their dependents pursuant to the Group Benefits Act [10-7B-1 NMSA 1978] and pursuant to the rules and procedures set forth by that act and the risk management division of the general services department.


The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; substituted "district" for "annual" near the beginning of the section, inserted "and after newly elected supervisors have completed the oath of office" following "election" near the beginning of the section and deleted "for actual expenses incurred" following "reimbursed" near the end of the section.

The 2006 amendment, effective July 1, 2006, added the last sentence of the section to provide that supervisors may purchase group health insurance for themselves and their dependents.

73-20-41. Powers and duties of supervisors.

A. Supervisors may employ a secretary and other agents, employees and technical or professional experts as they require and may determine qualifications, compensation and duties applicable to any agent, employee or expert engaged.

B. Supervisors shall require and provide for the execution of a corporate surety bond in suitable penal sum for and to cover any person entrusted with the care or disposition of district funds or property.

C. Supervisors may delegate their powers to one or more supervisors or to one or more district employees, agents or experts.

D. Supervisors shall call upon the county clerk of a county within which all or a part of the district lands are located for advice and assistance with conduct of elections and referenda.

E. Supervisors may call upon the district attorney of the judicial district within which all or a part of the district lands may be situate for legal services required by the district. Supervisors may invite the legislative body of any municipality or county within, near or comprising a part of
the district to designate a representative to advise and consult with the supervisors on matters affecting property, water distribution or other matters of interest to the municipality or county.

F. Supervisors are authorized to adopt and publish rules necessary for the proper execution of district duties and activities. The supervisors shall:

1. keep a full and accurate record of all district proceedings and of all resolutions, rules and orders issued or adopted;

2. provide for and submit to an annual financial audit pursuant to the Audit Act [12-6-1 NMSA 1978] if the district's annual revenue is five hundred thousand dollars ($500,000) or more;

3. provide for a financial report, according to rules for financial reporting that are established by the state auditor, in lieu of the requirement to submit to an annual financial audit pursuant to the Audit Act if the district's annual revenue is less than five hundred thousand dollars ($500,000);

4. furnish to the commission a complete report of district proceedings and activities during each fiscal year, including a financial report;

5. furnish or make available to the commission, upon request, district files and copies of rules, orders, contracts, forms and other documents adopted or employed in conducting district activities; and

6. call and give due notice of at least one regular meeting of the supervisors each month of the calendar year, unless otherwise approved by the commission.

G. Supervisors and district employees are public employees for the purposes of the Tort Claims Act [41-4-1 NMSA 1978] and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department.


The 1997 amendment, effective July 1, 1997, in Subsection C, substituted "department" for "division" in Paragraphs (3) and (4) and "December 15" for "November 1" in Paragraph (5).

The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; deleted "District" preceding "Supervisor" throughout the section; rewrote former Subsection A to create present Subsections A, B and C; added present Subsection D and redesignated former Subsections B and C as present Subsections E and F; and added present Subsection G.

The 2009 amendment, effective June 19, 2009, in Paragraph (2) of Subsection F, after "provide for", deleted "and submit to an annual audit of district accounts and receipts and disbursements, in the event district receipts total more than five thousand dollars ($5,000) annually" and added the remainder of the sentence; and added Paragraph (3) of Subsection F.

ANNOTATIONS
State auditor and conservation district supervisors have statutory duty to audit district. —
Both the state auditor and the soil and water conservation district supervisors have an express statutory
duty to have district financial affairs audited; the primary responsibility for having the audits performed
should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who
is responsible for ensuring that every agency's financial records are examined and audited. 1980 Op.
Att'y Gen. No. 80-19.


73-20-42. Removal of supervisors.

A supervisor may be removed from office by the commission if it appears to the commission,
after reasonable notice and impartial hearing, that the supervisor is guilty of misfeasance or
malfeasance in office. The office of a supervisor who has missed three consecutive regular
meetings of the supervisors may be declared vacant by majority vote of the remaining
supervisors. The office of a supervisor who has missed four consecutive regular meetings of the
supervisors shall be declared vacant and his successor shall be elected or appointed as in [the]
case of any other vacancy.

History: 1953 Comp., § 45-5-57, enacted by Laws 1965, ch. 137, § 16; 1977, ch. 254, § 71;
2003, ch. 88, § 15.

Bracketed material. — The bracketed material was inserted by the compiler. It was not enacted by
the legislature and is not part of the law.

The 2003 amendment, effective June 20, 2003, deleted "district" from the section heading; deleted
"district" following "A" at the beginning of the section; substituted "The office of a supervisor who has
missed three consecutive regular meetings of the supervisors may be declared vacant by majority vote of
the remaining supervisors. The office of a supervisor who has missed four consecutive regular meetings
of the supervisors shall be declared vacant" for "A district supervisor who fails to attend three consecutive
meetings of district supervisors without reasonable or acceptable excuse shall be deemed to have
resigned" following "malfeasance in office." near the end of the section.


73-20-43. Perpetuation of districts; continuity of commission and supervisors.

Soil conservation districts created and organized under the provisions of the Soil
Conservation District Law [repealed], and continued as soil and water conservation districts
created and delineated by the Soil and Water Conservation District Act [73-20-25 NMSA 1978],
and continued as natural resource districts created and delineated by the Natural Resource
Conservation District Act are perpetuated and shall continue to exist as soil and water
conservation districts created and delineated by the Soil and Water Conservation District Act.
Members of the state soil conservation committee and supervisors of state soil conservation
districts which were perpetuated in office and continued to serve as members of the state soil and
water conservation committee and as supervisors of soil and water conservation districts,
respectively, until their successors were elected and appointed in accordance with the provisions of the Soil and Water Conservation District Act, and were perpetuated in office and continued to serve as members of the state natural resource conservation commission and as supervisors of natural resource conservation districts respectively, until their successors were elected and appointed in accordance with the provisions of the Natural Resource Conservation District Act, are perpetuated in office and shall continue to serve as members of the soil and water conservation commission and as supervisors of soil and water conservation districts, respectively, until their successors are elected and appointed in accordance with the provisions of the Soil and Water Conservation District Act.

**History:** 1953 Comp., § 45-5-58, enacted by Laws 1965, ch. 137, § 17; 1973, ch. 324, § 10; 1977, ch. 254, § 72.

**Soil Conservation District Law.** — The Soil Conservation District Law, referred to in this section, was repealed by Laws 1965, Chapter 137, which enacted a "Soil and Water Conservation District Act."

### 73-20-44. Districts; description; general powers of districts.

A "soil and water conservation district", organized under or perpetuated by the provisions of the Soil and Water Conservation District Act [73-20-25 NMSA 1978], is a governmental subdivision of the state, a public body politic and corporate. By and through its supervisors, a district may:

A. conduct research, investigations and surveys treating soil erosion and floodwater and sediment damage, concerning the conservation, development, utilization and disposal of all waters and relating to control programs and public works necessary to facilitate conservation and development. To prevent duplication of research activities, district investigative programs shall be initiated in cooperation with a governmental unit, if any, conducting or charged with the conduct of research in the same or similar scientific field;

B. publish and disseminate research findings and preventive and control measures relating to resource conservation and development;

C. with the consent and cooperation of the landowner or the state or federal agency administering the land, conduct projects upon land within the district to demonstrate by example the methods by which soil and other natural resources may be conserved, by which soil erosion in the form of blowing and washing may be controlled or prevented and by which flood prevention and the conservation, development, utilization and disposal of water may be carried out; the projects may include, but shall not be limited to, engineering operations, methods of cultivation and variations in land use;

D. assist, contract with and render financial aid to district landowners and state or federal agencies administering land within the district that are engaged in erosion control and prevention projects, flood prevention works or the conservation, development, utilization and disposal of water within the district;
E. make available to district landowners, on such terms as the supervisors may prescribe, tools, machinery, equipment, fertilizer, seeds and other materials to assist the landowners in initiating and developing natural resource conservation and development projects;

F. develop comprehensive plans for natural resource conservation, development and utilization, including flood prevention, control and prevention of soil erosion and the development, utilization and disposal of water; the plans shall be detailed and shall specify as completely as possible the necessary or desirable acts, procedures, performances and avoidances to implement the plan, including engineering specifications, methods of cultivation, cropping programs, tilling practices and land use changes;

G. foster, publish and promote district natural resource development plans and their adoption and development by landowners within the district;

H. acquire or administer the project of any other governmental agency undertaken to provide for the conservation, development and utilization of natural resources within the district;

I. act as agent for any instrumentality or agency of the state or of the federal government in the acquisition, construction, operation or administration of a natural resource conservation, utilization or development project or program within the district; and

J. construct, improve, operate or maintain physical projects and structures necessary or convenient for the performance of any authorized district function.


The 2003 amendment, effective June 20, 2003, changed "Districts defined; general" to read "Districts; description; general" in the section heading; inserted "or federal" following "the state" near the beginning of Subsection C; inserted "or federal" following "the state" near the beginning of Subsection D; inserted "and utilization" following "development" near the beginning of Subsection F; and in Subsection H, deleted "soil conservation, erosion control, erosion prevention, flood prevention or" following "provide for" near the middle and substituted "of natural resources" for "or disposal of water" near the end.

ANNOTATIONS


Borrowing funds. — Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which interstate stream commission can lend money, and such district is authorized to borrow funds from the commission. 1972 Op. Att'y Gen. No. 72-54.

Lending to members. — Soil and water conservation district may lend funds borrowed from interstate stream commission to its members. 1972 Op. Att'y Gen. No. 72-54.

Licensing law inapplicable. — Water or soil conservation district located anywhere in state may undertake any type of work authorized under Soil and Water Conservation District Act; former contractors' license board had no authority to license a water or soil conservation district. 1966 Op. Att'y


73-20-45. Specific powers of districts.

A district, by and through its supervisors, is authorized to:

A. sue and be sued in the name of the district;
B. adopt an official seal;
C. contract, convey and make and execute other instruments and documents necessary or convenient to the exercise of district powers;
D. borrow money and otherwise contract indebtedness for the purposes of the district and, without limitation of the generality of the foregoing, borrow money and accept grants from the United States or from a corporation or agency created or designated by the United States and, in connection with any such loan or grant, enter into agreements as the United States or the corporation or agency may require; and issue its notes or obligations therefor and secure the payment thereof by mortgage, pledge or deed of trust of all or any of its property, assets, rights, privileges, licenses, rights-of-way, easements, revenues or income;
E. option, as optionee and optioner, and acquire, in any manner, real and personal property or any right or interest in it;
F. improve, rent, lease and sell district property or any interest in it;
G. receive, invest and reinvest rents and income from district property and expend rents and income for district purposes; and
H. accept contributions, gifts and donations and expend and utilize them to further district purposes.


The 2003 amendment, effective June 20, 2003, deleted "soil and water conservation" following "A" at the beginning of the section; and deleted "Neither the State Purchasing Act nor any other statute, except the Soil and Water Conservation District Act, shall apply to the acquisition, use or disposition of district property." at the end of Subsection H.

ANNOTATIONS


Repeal by implication. — Former Subsection H of this section is repealed by implication by the Public Purchases Act (now Procurement Code, 13-1-28 to 13-1-199 NMSA 1978) insofar as the two are repugnant. 1967 Op. Att'y Gen. No. 67-110.
Borrowing authorized. — Since soil and water conservation districts are political subdivisions of this state they qualify as entities to which interstate stream commission can lend money, and such district is authorized to borrow funds from the commission. 1972 Op. Att'y Gen. No. 72-54.

Soil and water conservation district may lend funds borrowed from interstate stream commission to its members. 1972 Op. Att'y Gen. No. 72-54.

Suit by subcontractors not authorized. — There was no statutory consent by state to suit against former soil conservation district by laborers or materialmen dealing with prime contractor rather than directly with district, and no such liability could be implied. 1957-58 Op. Att'y Gen. No. 58-148.


Collection for work done. — District attorney was required to represent former soil conservation district in collecting for work done by district for members thereof. 1959-60 Op. Att'y Gen. No. 59-47.

73-20-46. District assessments.

A. In the event a district is unable to meet or bear the expense of the duties imposed upon it by the Soil and Water Conservation District Act [73-20-25 NMSA 1978], the supervisors may adopt a resolution that, to be effective, shall be approved by referendum in the district and that shall provide for an annual levy for a stated period of up to ten years in a stated amount not exceeding one dollar ($1.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code [7-35-1 NMSA 1978], of real property within the district, except that real property within incorporated cities and towns in the district may be excluded. The referendum held to approve or reject the resolution of the supervisors shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district. After the initial authorization is approved by referendum, the supervisors shall adopt a resolution in each following year authorizing the levy. To extend an assessment beyond the period of time originally authorized and approved by referendum, the supervisors shall adopt a new resolution and the district voters shall approve it in a referendum. The extension shall be for the same period of time as originally approved, but the rate of the tax may be different as long as it does not exceed one dollar ($1.00) on each one thousand dollars ($1,000) of net taxable value of real property within the district, except that real property within incorporated municipalities in the district may be excluded. If the district is indebted to the United States or the state or any of their respective agencies or instrumentalities, including the New Mexico finance authority, at the time of the expiration of the original authorization, the supervisors may renew the assessment by resolution for a period not to exceed the maturity date of the indebtedness, and no referendum for that renewal is necessary.

B. A resolution authorized under Subsection A of this section shall not be effective, and neither a referendum nor a levy is authorized, unless the resolution is submitted to and approved in writing by the commission.

C. In the event a resolution of the supervisors is adopted and approved in accordance with
the provisions of Subsection A of this section, the supervisors of the district shall certify by the fifteenth of July of each year to the county assessor of each county in which there is situate land subject to the district assessment:

(1) a copy of the resolution of the supervisors;
(2) the results of any referendum held in the year the certification is made; and
(3) a list of landowners of the district and a description of the land owned by each that is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, compute the assessment and present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same time that county ad valorem taxes are levied. The conditions, penalties and rates of interest applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District funds, regardless of origin, shall be transferred to and held by the supervisors and shall be expended for district obligations and functions. The supervisors shall prepare an annual budget and submit it for approval to the commission and to the local government division of the department of finance and administration. All district funds shall be expended in accordance with the approved budgets.

G. In the event the supervisors of a district determine that there are or will be sufficient funds available for the operation of the district for any year for which an assessment is to be levied, they shall, by resolution, direct the assessor of each county in which taxable district land is situate, by July 15 of each year, to decrease the district assessment or to delete the district assessment reflected on the tax schedules.

H. Any levy authorized by the Soil and Water Conservation District Act and any loan or other indebtedness authorized by that act that will require a levy shall be based exclusively on or levied exclusively on the real property in the district, except that real property within incorporated cities and towns may be excluded.


Cross references. — For county assessor, see Chapter 4, Article 39 NMSA 1978.

For county treasurer, see Chapter 4, Article 43 NMSA 1978.

For local government division of the department of finance and administration, see 9-6-3 NMSA 1978.

For referendums creating soil and water conservation districts, see 73-20-34 NMSA 1978.
For the New Mexico finance authority, see 6-21-4 NMSA 1978.

The 1986 amendment, in Subsection A, substituted the language following "not exceeding" in the first sentence for "one mill per dollar of total taxable valuation of real property, except that real property within incorporated cities and towns in the district may be excluded" and inserted "by July 15 of each year" in the second sentence; in Subsection B, inserted "by the fifteenth of July of each year" in the introductory paragraph; in Subsections C, F, and G, substituted "tax schedules" for "tax rolls"; and, in Subsection F, substituted "by July 15 of each year" for "prior to that year's county ad valorem assessment".

1989 amendments. — Identical amendments to this section were enacted by Laws 1989, ch. 21, § 1 and Laws 1989, ch. 273, § 1, both effective June 16, 1989, which, in Subsection A, substituted "the supervisors may adopt a resolution which, to be effective, must be approved by referendum in the district, and which shall provide for annual levy for a stated period of up to ten years in a stated amount" for "the supervisors, by resolution, and the district by adoption of referendum, may levy an assessment" and substituted the last four sentences for "provided, however, an assessment shall not be levied unless, by July 15 of each year the resolution of the supervisors has been adopted and approved by a majority of the district landowners voting at the referendum"; added present Subsection B and redesignated subsequent subsections accordingly; and in Subsection C, substituted "approved in accordance with the provisions of Subsection A of this section" for "approved by the voters of the district at referendum" and present Paragraph (2) for the former paragraph, which read "the results of the referendum; and". The section is set out as amended by Laws 1989, ch. 273, § 1. See 12-1-8 NMSA 1978.

The 1999 amendment, effective March 16, 1999, inserted "including the New Mexico finance authority" in the last sentence of Subsection A; in Subsection B, deleted "soil and water conservation" following "writing by the" and deleted "created under Section 73-20-28 NMSA 1978" following "commission"; substituted "excluded" for "included" at the end of the first sentence in Subsection H; and made minor stylistic changes.

The 2003 amendment, effective June 20, 2003, deleted "district" following "resolution of the" near the end of Paragraph C(1); in Subsection F, deleted "assessment" following "District" at the beginning, deleted "district" preceding "supervisors" near the beginning and deleted "The supervisors shall prepare an annual budget and submit it for approval to the commission and to the local government division of the department of finance and administration." near the middle, inserted "the approved" following "in accordance with" near the end and deleted "approved by the commission and by the local government division of the department of finance and administration" at the end; and deleted "Owners of nonagricultural land may petition the district board of supervisors to delete their real property from the tax schedules, insofar as the district assessment is concerned; provided that these lands will not benefit from the operation of the district or the project for which the loan or levy is to be made." at the end of Subsection H.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "not exceeding one dollar ($1.00)", deleted "or any lower maximum amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the assessment authorized by this section".

ANNOTATIONS

Sale of personal property of district. — Unless the provisions of 13-6-2 NMSA 1978 are complied with, personal property of a soil conservation district (now soil and water conservation district) cannot be

Future levy. — Supervisors of district could adopt resolution calling for future assessment of a one mill tax to be levied in the event district was unable to repay money borrowed from interstate stream commission. 1972 Op. Att'y Gen. No. 72-54.

94 C.J.S. Waters §§ 332 to 337.

73-20-47. Cooperation between districts.

The supervisors of two or more soil and water conservation districts may cooperate with each other in the exercise of any district power.


73-20-48. State agencies to cooperate.

Agencies, instrumentalities and political subdivisions of this state having jurisdiction over or charged with the administration of public lands situate within the defined geographical area of any district shall cooperate to the fullest extent with the district's supervisors in effectuating district projects and programs. Supervisors shall have free access to enter and perform work upon state public lands lying within their districts; provided, however, supervisors shall not have unqualified access to state public lands that are subject to private dominion under lease or that are developed for, or devoted to, another public use. County clerks of the counties within which all or a part of the district lands are located shall provide advice and assistance with conduct of elections and referenda.


The 2003 amendment, effective June 20, 2003, deleted "district" preceding "supervisors" twice in the section; and inserted "County clerks of the counties within which all or a part of the district lands are located shall provide advice and assistance with conduct of elections and referenda." at the end of the section.

73-20-49. Repealed.

person is a candidate to represent. No declaration of
candidacy shall be accepted unless accompanied by such
petition, signed by electors."

SECTION 157. Section 73-18-35 NMSA 1978 (being Laws
1955, Chapter 281, Section 11) is amended to read:

"73-18-35. TERM OF OFFICE FOR DIRECTOR.--The regular
term of office for a director is four years, and the director
shall serve until a successor has been chosen and has
qualified. A director shall qualify by taking an oath of
office. Newly elected directors shall take office on the
date that their terms of office begin following the election
of the director."

SECTION 158. Section 73-18-41 NMSA 1978 (being Laws
1955, Chapter 281, Section 17) is amended to read:

"73-18-41. APPLICATION OF LOCAL ELECTION ACT.--In any
election held under Sections 73-18-25 through 73-18-43 NMSA
1978, the Local Election Act shall be applicable except as to
the requirement for registration and residence in state,
county or precinct as a qualification of an elector in
offering to vote."

SECTION 159. Section 73-20-1 NMSA 1978 (being Laws
1957, Chapter 210, Section 1) is amended to read:

"73-20-1. SHORT TITLE.--Sections 73-20-1 through
73-20-24 NMSA 1978 may be cited as the "Watershed District
Act"."
lands lying within the boundaries of the territory, as determined by the board, shall be eligible to vote in the referendum or in elections following formation of the district. The board shall compile and deliver to the appropriate county clerks a list of qualified electors one hundred eighty days prior to a district election, and update the list every thirty days until ninety days before an election, which list the county clerk shall use for the election."

SECTION 162. Section 73-20-11 NMSA 1978 (being Laws 1957, Chapter 210, Section 11, as amended) is amended to read:

"73-20-11. VOTES--RESULTS.--The votes shall be counted in accordance with the provisions of the Local Election Act. If a majority of the votes cast favors creation of the district, the county canvassing board shall certify the results to the county clerk in the county involved. Upon proper recording of the action, the watershed district shall be duly created. After recording, the certification shall be filed with the New Mexico department of agriculture."

SECTION 163. Section 73-20-12 NMSA 1978 (being Laws 1957, Chapter 210, Section 12, as amended) is amended to read:

"73-20-12. DIRECTORS--ELECTION.--

A. At the next regular local election held pursuant
years. Thereafter, their successors shall be elected for
terms of four years. The representatives of each of these
minority districts shall fill vacancies in the district's
membership for the unexpired term.

C. The board of directors shall annually elect from
its membership a chair, secretary and treasurer. The
treasurer shall execute an official bond for the faithful
performance of the duties of office to be approved by the
board of directors. The bond shall be executed with at least
three solvent personal sureties whose solvency shall exceed
the amount of the bond, or by a surety company authorized to
do business in this state, and shall be in an amount
determined by the board of directors. If the treasurer is
required to execute a surety company bond, the premium of the
bond shall be paid by the board of directors.

D. The board of directors shall prepare and submit
to the department of finance and administration such reports
as it may require from among those required to be submitted
by other political subdivisions.

E. Each person desiring to be a director of a
watershed district shall file a nominating petition with the
proper filing officer in accordance with the provisions of
the Local Election Act, signed by ten or more landowners
within the watershed districts of the county involved, or, if
less than fifty landowners are involved, a majority of such
submitted to the landowners of the district at an election held pursuant to the Local Election Act.

C. If two-thirds of the landowners voting favor the proposal, the bonds may be issued."

SECTION 165. Section 73-20-21 NMSA 1978 (being Laws 1957, Chapter 210, Section 20, as amended) is amended to read:

"73-20-21. ADDITION OF LAND.--

A. Any one or more owners of land may petition the board of supervisors to have their lands added to a watershed district. The petition shall define the boundaries of the land desired to be annexed, the number of acres of land involved and other information pertinent to the proposal. When the boundary described embraces lands of others than the petitioners, the petition shall so state and shall be signed by twenty-five or more of the landowners in the territory described, if fifty or more such owners are involved, or by a majority if less than fifty landowners are involved.

B. Within thirty days after the petition is filed, the board shall cause due notice to be given as provided in Section 73-20-8 NMSA 1978 of a hearing on the petition. All interested parties shall have a right to attend the hearing and be heard. The board shall determine whether the lands described in the petition or any portion of them shall be included in the district. If all the landowners in the
C. Within sixty days after petition is filed, a referendum shall be held pursuant to the provisions of the Local Election Act.

D. If a majority of the votes cast in the referendum favors the discontinuance of the district and it is found that all obligations have been met, the board of supervisors shall make a determination that the watershed district shall be discontinued. A copy of the determination shall be certified by the clerk of the county involved for recording. After recording, the certification shall be filed with the New Mexico department of agriculture."

SECTION 167. Section 73-20-37 NMSA 1978 (being Laws 1965, Chapter 137, Section 11, as amended) is amended to read:

"73-20-37. DISTRICT SUPERVISORS--ELECTION AND APPOINTMENT--NEW DISTRICTS.--

A. The governing body of a district shall be composed of five supervisors who shall be residents of the district and shall be elected pursuant to the provisions of the Local Election Act; provided, however, that two additional supervisors may be appointed to the governing body of each district by the commission in accordance with the provisions of the Soil and Water Conservation District Act.

Four elected supervisor positions of each district shall be filled by landowners within the defined geographical area of
A. Successors to supervisors whose terms end in a calendar year shall be elected pursuant to the Local Election Act. Elections shall be called, conducted and canvassed in accordance with the Local Election Act.

B. By June 15 of each year, the district supervisors may submit to the commission a list of persons interested in the district and who by experience or training are qualified to serve as supervisors. The commission may appoint from the list submitted two persons to serve as supervisors if it is the determination of the commission that the appointments are necessary or desirable and would benefit or facilitate the work and functions of the district. In the event a list is not submitted to the commission by the supervisors by June 15, the commission may appoint two supervisors qualified to serve by training or experience. Appointed supervisors shall serve a term of one year and shall have the same powers and perform the same duties as elected supervisors. Successors to appointed supervisors, or replacement-appointed supervisors in the event of vacancy, shall be appointed by the commission from a list of candidates in accordance with the provisions of this subsection."

SECTION 169. Section 73-20-46 NMSA 1978 (being Laws 1965, Chapter 137, Section 20, as amended) is amended to read:
subject to the district assessment:

(1) a copy of the resolution of the supervisors;

(2) the results of any referendum held in the year the certification is made; and

(3) a list of landowners of the district and a description of the land owned by each that is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, compute the assessment and present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same time that county ad valorem taxes are levied. The conditions, penalties and rates of interest applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District funds, regardless of origin, shall be transferred to and held by the supervisors and shall be expended for district obligations and functions. The supervisors shall prepare an annual budget and submit it for
demand the acquisition, construction, installation or 
completion of any works or other improvements or facilities, 
or the making of any contract with the United States or other 
persons or corporations, to carry out the objects or purposes 
of the district, requiring the creation of a general 
obligation indebtedness of five thousand dollars ($5,000) or 
more, secured by property tax revenue from within the 
district, the board shall order the submission of the 
proposition of issuing the obligations or bonds or creating 
other indebtedness to the qualified electors of the district 
at a district election held in accordance with the provisions 
of the Local Election Act. The declaration of public 
interest or necessity required in this section and the 
provision for the holding of the election may be included 
within one and the same resolution. The resolution, in 
addition to the declaration of public interest or necessity, 
shall recite the objects and purposes for which the 
indebtedness is proposed to be incurred, the estimated cost 
of the works or improvements, as the case may be, the amount 
of principal of the indebtedness to be incurred and the 
maximum rate of interest to be paid on the indebtedness. The 
resolution shall also announce the date upon which the 
election shall be held; provided that the date is not in 
conflict with the provisions of Section 1-12-71 NMSA 1978."

SECTION 172. TEMPORARY PROVISION.---
A. The term of an elected local government officer that was set to expire on or before June 30, 2020 pursuant to the governing statutes of that local government in effect before the effective date of this act shall expire on December 31, 2019, and that officer's successor shall be elected in the regular local election held on the first Tuesday after the first Monday of November 2019 for a term beginning on January 1, 2020.

B. The term of an elected local government officer that was set to expire on or after July 1, 2020 but on or before June 30, 2022 pursuant to the governing statutes of that local government in effect before the effective date of this act shall expire on December 31, 2021, and that officer's successor shall be elected in the regular local election held on the first Tuesday after the first Monday of November 2021 for a term beginning on January 1, 2022.

C. The term of an elected local government officer that was set to expire on or after July 1, 2022 pursuant to the governing statutes of that local government in effect before the effective date of this act shall expire on December 31, 2023, and that officer's successor shall be elected in the regular local election held on the first Tuesday after the first Monday of November 2023 for a term beginning on January 1, 2024.

D. The provisions of this section do not apply to
term beginning on January 1, 2026.

C. The term of a conservancy district or watershed
district board member that was set to expire on or after July
1, 2026 pursuant to the governing statutes of that district
in effect before July 1, 2022 shall expire on December 31,
2027, and that member's successor shall be elected in the
local election held on the first Tuesday after the first
Monday of November 2027 for a term beginning on January 1,
2028.

SECTION 174. TEMPORARY PROVISION.--References in law to
the Municipal Election Code and to the School Election Law
shall be deemed to be references to the Local Election Act.

SECTION 175. REPEAL.--

A. Sections 1-6-19, 1-22-5, 1-22-6, 1-22-12,
1-22-14, 1-23-1 through 1-23-7, 21-13-18.1, 21-13-18.2,
21-16-21, 21-16-22, 72-16-29 through 72-16-34, 72-17-29
through 72-17-34, 72-18-36 through 72-18-41, 72-19-29 through
72-19-34, 72-20-29 through 72-20-34, 73-21-29 and 73-21-30
NMSA 1978 (being Laws 1969, Chapter 54, Section 1, Laws 1985,
Chapter 168, Sections 7, 8, 14 and 16, Laws 1987, Chapter
160, Sections 1 through 6, Laws 1991, Chapter 105, Section
43, Laws 1987, Chapter 160, Section 7, Laws 1993, Chapter 75,
Sections 3 and 4, Laws 1964 (1st S.S.), Chapter 12, Sections
6 and 7, Laws 1963, Chapter 311, Sections 29 through 34, Laws
1967, Chapter 156, Sections 29 through 34, Laws 1981, Chapter
HLELC/HE 98
Chapter 244, Section 19, Laws 1973, Chapter 375, Sections 13 and 14 and Laws 1965, Chapter 300, Section 14-13-7, as amended) are repealed.


SEC. 177. EFFECTIVE DATE.--
A. The effective date of the provisions of Sections 1 through 138 and 167 through 176 of this act is July 1, 2018.
B. The effective date of the provisions of Sections 139 through 166 of this act is July 1, 2022.
BEFORE THE NEW MEXICO DEPARTMENT OF AGRICULTURE

PUBLIC HEARING

AGRICULTURE PROGRAMS AND RESOURCES REPEALS:

21.9.2 NMAC, CONDUCTING AN ELECTION OF
DISTRICT SUPERVISORS

21.9.3 NMAC, CONDUCTING A REFERENDUM

2018 RULEMAKING

October 12, 2018
1:16 PM
3190 South Espina
Las Cruces, New Mexico 88003

BEFORE:

JOE GOMEZ, Hearing Officer
JULIE MAITLAND, Division Director, Agriculture Programs
and Resources

REPORTED BY: Debra Ann Frietze, CCR #251
RUSSIN REPORTING, LLC
340 N. Water Street
Las Cruces, New Mexico 88001
SPEAKERS:

Dusty Hunt
Cheri Lujan
Debbie Hughes (letter attached)
HEARING OFFICER GOMEZ: Good afternoon. My name is Joe Gomez. Today I will be serving as your hearing officer for the public hearing on the New Mexico Department of Agriculture repeal of 21.9.2 NMAC, Conducting an Election of District Supervisors, and 21.9.3 NMAC, Conducting a Referendum.

Please make sure that you have signed in for the record.

I'm going to ask everyone to please silence or turn off your cell phones. Thank you.

The date is October 12th, 2018, and the time now is 1:16 PM.

The hearing is being held at the New Mexico Department of Agriculture main conference room, 3190 South Espina, Las Cruces, New Mexico, on the corner of Espina and Gregg.

The Notice of Hearing for 21.9.2, and 21.9.3 NMAC was published in the September 11th issue edition of the New Mexico Register, Volume 29, Issue Number 17, and in the Las Cruces Sun News and Albuquerque Journal during the week of October 8th, 2018.

The Notice of Hearing, as well as a copy of the rules has also been made available via the Department's website.
During today’s hearing, all interested parties will be given an opportunity to give comment on the proposed repeal of the rules.

This hearing is being recorded, and a summary of all testimony presented today will be presented for Jeff M. Witte, Director/Secretary of the New Mexico Department of Agriculture, and will be submitted to the New Mexico State University Board of Regents.

With me today is Julie Maitland, the Division Director of Agriculture Programs and Resources at NMDA.

Julie, can you please explain the need to repeal the rules?

MS. MAITLAND: Yes. Thank you, Joe, Mr. Gomez -- Hearing Officer.

The Soil and Water Conservation District Act works to protect and improve the land, water and natural resources in the state of New Mexico through the establishment of Soil and Water Conservation Districts.

Soil and Water Conservation Districts are political subdivisions of state government and are governed by a board of elected and appointed supervisors.

The Soil and Water Conservation District
Act also creates the Soil and Water Conservation Commission to oversee the state's 47 Soil and Water Conservation Districts.

The Soil and Water Conservation District Act grants the Soil and Water Conservation Commission specific powers and authorities. The Commission, through their authority under the Soil and Water Conversation District Act, adopted rules on conducting an election of district supervisors, as well as rules for conducting a referendum. These two rules have provided a standardized framework for Soil and Water Conservation District elections and referendums.

During the 2018 legislative session, the Local Election Act was passed and chaptered into law. The Local Election Act provides for a single election day and uniform process for certain local government elections including Soil and Water Conservation Districts.

The Local Election Act now establishes election protocol making 21.9.2 NMAC, and 21.9.3 NMAC unnecessary. NMDA proposes the repeal of the two rules.

HEARING OFFICER GOMEZ: Thank you, Julie. We will now open the floor for comments. Please address yourself to the Chair by stating your name and affiliation for the record.
MR. HUNT: Mr. Hearing Officer, my name is Dusty Hunt. I chair the Soil and Water Commission. The ground has obviously shifted beneath our feet regarding our election law. The two rules are no longer applicable, and the Commission supports the repeal of those rules.

HEARING OFFICER GOMEZ: Okay, thank you.

Any other comments?

MS. LUJAN: Cheri Lujan, District Manager of East Torrance Soil and Water Conservation District. Because of the same noted words from our commission chair, we also agree we need to repeal. These are no longer needed.

HEARING OFFICER GOMEZ: Okay, thank you. We received one electronic comment also in favor of it, and that will be entered into the record.

Anything else?

Seeing none, we will close the hearing, and the time is 1:20 PM.

Thank you for participating in today's open hearing. I appreciate it.

Thank you.
STATE OF NEW MEXICO
COUNTY OF BERNALILLO

CERTIFICATE OF COURT REPORTER

I, DEBRA ANN FRIETZE, New Mexico Certified Court Reporter No. 251, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings that were reduced to printed form by me to the best of my ability.

I FURTHER CERTIFY that the Reporter's Record of the proceedings truly and accurately reflect the exhibits, if any, offered by the respective parties.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

DEBRA ANN FRIETZE.
Certified Court Reporter
New Mexico CCR No. 251
Date of CCR Expiration: 12/31/2018
21.9.2 NMAC and 21.9.3 NMAC Agriculture Programs and Resource Repeals

Public Hearing October 12, 2018

Russin Reporting, LLC
575-202-4797
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- 21.9.3 | 1:10, 3:6  |
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- 251 | 1:22, 7:9, 7:24  |
- 29 | 3:19  |

### 3
- 3190 | 1:14, 3:15  |
- 340 | 1:23  |

### 4
- 47 | 5:2  |

### 8
- 88001 | 1:24  |
- 88003 | 1:14  |
- 8th | 3:22  |
On behalf of the New Mexico Association of Conservation Districts, I would like to support the repeal of the two rules tied to the SWCD Act. The two rules pertain to conducting an election of district supervisors as well as conducting a referendum relating to district activities.

Due to the passage of the local election act which standardizes election protocol, the two previously mentioned rules are no longer needed nor in compliance with statute, therefore NMACD supports repealing both rules.

Debbie Hughes, Executive Director
New Mexico Association of Conservation Districts
## NMDA Rulemaking Hearing
October 12, 2018 Las Cruces, NM

Proposed repeals: 21.9.2 NMAC Conducting an election of district supervisors & 21.9.3 NMAC Conducting a referendum

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<tr>
<td>Joe Gomez</td>
<td>NMDA</td>
<td>575-262-0424</td>
<td><a href="mailto:joe.gomez.46@hotmail.com">joe.gomez.46@hotmail.com</a></td>
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<td><a href="mailto:jmarshall@nmda.nmda.state.nm">jmarshall@nmda.nmda.state.nm</a></td>
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<tr>
<td>Dusty Hunt</td>
<td>SWCC</td>
<td>574-6302</td>
<td>huntc <a href="mailto:ranch@hotmail.com">ranch@hotmail.com</a></td>
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<tr>
<td>Patricia Depner</td>
<td>NMDA</td>
<td>646-264-2502</td>
<td><a href="mailto:pdeiner@nmda.nmda.state.nm">pdeiner@nmda.nmda.state.nm</a></td>
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<tr>
<td>Katie Kruthaupt</td>
<td>NMDA</td>
<td>646-2006</td>
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<tr>
<td>Cheri Lyman</td>
<td>NMDA</td>
<td>384-2274</td>
<td><a href="mailto:cheri.lyman@nmda.nmda.state.nm">cheri.lyman@nmda.nmda.state.nm</a></td>
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<tr>
<td>Michael Wilson</td>
<td>NMDA</td>
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Agenda Item # C-3

Meeting Date: November 29, 2018

Agenda Item: Approval of Employment Contract Addenda for Chancellor Dan Arvizu and President John Floros

Requested Action of the Board of Regents: Approval of Employment Contract Addenda for Chancellor Dan Arvizu and President John Floros

Executive Summary: The Performance Incentive Plan Addenda are submitted for Board consideration, in accordance with the terms of the employment agreements with Chancellor Dan Arvizu and President John Floros. The Addenda include additional specifications relating to the Annual Performance Evaluations as well as the Objective Statement (Matrix) establishing current performance metrics and the performance targets to be used in computing any performance incentive payment.

References: N/A

Prior Approvals:

- Approval of the executive search decision agenda item of MAY-11-2018
- Approval of employment agreement with Dr. Dan Arvizu to serve as NMSU system chancellor
- Approval of the employment agreement with Dr. John Floros to serve as NMSU president
- Approval of strategic direction conceptual design and performance evaluation elements 10-3-18
- Approval of authority of chair to negotiate with chancellor and president to extend time to fulfill contract terms 10-3-18

Agenda Item Approved By:

____________________________________
Debra P. Hicks
Chair, NMSU Board of Regents
2018-19 PERFORMANCE INCENTIVE PLAN ADDENDUM TO
CHANCELLOR EMPLOYMENT AGREEMENT

This 2018-19 Performance Incentive Plan Addendum (Addendum) is made and entered into by and between the Regents of the New Mexico State University (Regents or NMSU) and Dan E. Arvizu, as a supplement to the Chancellor Employment Agreement (Agreement), signed on or about May 22, 2018, and is effective upon ratification by a majority vote of the Regents in open public meeting.

RECITALS:

I. The parties acknowledge that they verbally agreed to extend the September 30 deadline provided in the Agreement for the finalization and approval of the Objective Statement with specific quantitative performance targets and goals, with such statement to be finalized no later than January of 2019.

II. The parties acknowledge that this 2018-19 Addendum, together with the Objective Statement Matrix – Academic Year 2018-19 (Matrix) attached hereto as Exhibit A, serves as the "Objective Statement" referenced in the Agreement.

III. The parties acknowledge that upon ratification of this 2018-19 Addendum, the process described in the Section 4.2 of the Agreement for establishing the Objective Statement has been satisfied for 2018-19, and that any deviations or variances from the terms of the Agreement defining this process have been accepted and agreed to by both parties.

IV. The Objective Statement Matrix (Matrix) attached to this 2018-19 Addendum serves to document the specific goals and quantitative targets established under this Addendum, and is incorporated by reference herein. The parties have each had an opportunity to review and analyze the Matrix and are satisfied with the methodology and assumptions used to calculate the data points contained within it.

NOW THEREFORE, the parties agree as follows:

1. **Methodology:** The methodology and assumptions used to compute the data points in the "Current Performance" column of the Matrix will also be used to compute the performance data points effective 2018-19 year end for the purpose of the annual performance evaluation, as well as the determination regarding the extent to which the performance targets have been achieved, and performance incentive compensation earned, with respect to Student Success (Matrix Part B), Research and Outreach Expenditures (Matrix Part C), Giving and Productivity (Matrix Part D) and Community College Performance (Matrix Part E). The specific dates used in calculating the data points will be consistent with the dates used to calculate the Current Performance metrics. The 2018-19 performance data point computations will be performed within the 90 day period following the close of NMSU’s fiscal year, or as soon as the relevant data becomes available.

2. **Annual Performance Evaluation:** The 2018-19 Annual Performance Evaluation required by Section 3.02 of the Agreement will include the performance evaluation categories and elements as set forth in Exhibit B which is incorporated as part of this Addendum. The determination regarding the extent to which the Performance Evaluation Elements have been achieved will be made by the Regents through the sound exercise of their collective judgment. The annual performance evaluation may include, in the sole discretion of the Regents, performance categories and elements in addition to those listed in Exhibit B.
3. **Performance Incentive Compensation Calculation**: For the purpose of calculating earned performance incentive compensation, only those metrics relating to Matrix rows B1 – Student Net Tuition Revenue, C1 – Research Expenditures, D1 – Donor Gifts, and E1 – Corporate Revenue will be utilized. For each of these components, the performance floor for the payment of incentive compensation is the Current Performance metric. The Maximum Incentive Payment (MIP) amount for each of these components, as shown on the Matrix, will be paid if the Stretch Performance Target is achieved. To the extent that the performance on a particular metric is better than the Current Performance number but less than the Stretch Performance Target, a portion of the MIP will be paid in an amount that is proportionate to the percentage improvement over the Current Performance. \[ \frac{\text{MIP} \times (\text{Actual Performance} - \text{Current Performance})}{(\text{Stretch Performance} - \text{Current Performance})} \]. Further, and as provided in the Agreement, the intent is that any and all performance incentives paid under the Agreement will be funded solely from a portion of the collective additional net revenue generated from the improvement in the relevant performance metrics. Therefore, regardless of the achievement of the stated metrics, the total performance incentive paid cannot exceed two percent (2%) of the total additional revenue realized by the institution as a result of the improvement in performance, as represented by the metrics.

4. **Payment Terms**: Performance incentives earned under the terms of this Addendum will be paid in accordance with the terms set forth in Section 4.02 of the Agreement.

5. **Relationship to Agreement**: To the extent that there is any conflict between the terms of this Addendum and the Agreement, the terms of this Addendum will be binding with respect to the calculation and award of performance incentive compensation for the 2018-19 fiscal year. All other terms set forth in the Agreement remain unchanged by this Addendum.

This Addendum is effective and binding only upon final approval by majority vote for ratification at an open public meeting of the Regents.

As evidence of their agreement to its terms, the Parties have placed their signatures upon this Addendum on the date(s) indicated below.

**Regents of New Mexico State University**

____________________________________
Debra Hicks, Chair

____________________________________
Dan E. Arvizu, Ph.D.

**Dan E. Arvizu, Ph.D.**

____________________________________
Date: ______________

____________________________________
Date: ______________
### NMSU Executive Performance Incentive Plan - Chancellor Dan Arvizu

#### Objective Statement Matrix - Academic Year 2018-19

**Exhibit A**

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<th>Student Success</th>
<th>Evaluation Element</th>
<th>Current Performance</th>
<th>Internal Performance Target</th>
<th>Stretch Performance Target</th>
<th>Stretch Revenue Increase</th>
<th>Maximum Incentive Payment</th>
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<td>$82.5M</td>
<td>$85.5M</td>
<td>$5M</td>
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</table>

Student Net Tuition Revenue is calculated as tuition and fee revenue, less institutional scholarships. Student monies paying tuition and fees such as lottery scholarship and Pell grants are included in tuition and fee dollars realized. Calculations made for the purpose of incentive pay are to be insulated from tuition rate increases. However, online enrollment is highly encouraged and all online revenues will be included in student net revenue targets.

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<td>73.8%</td>
<td>63.0%</td>
<td>55.6%</td>
<td>26.4%</td>
<td>41.7%</td>
<td>46.7%</td>
<td>59%</td>
<td>62%</td>
<td>77%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B3</th>
<th>Retention Rate</th>
<th>Fall-Spring</th>
<th>1 Year</th>
<th>2 Year</th>
<th>3 Year</th>
<th>4 Year</th>
<th>5 Year</th>
<th>6 Year</th>
<th>Bachelor</th>
<th>Master</th>
<th>Doctoral</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>86.9%</td>
<td>73.8%</td>
<td>63.0%</td>
<td>55.6%</td>
<td>26.4%</td>
<td>41.7%</td>
<td>46.7%</td>
<td>59%</td>
<td>62%</td>
<td>77%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B4</th>
<th>Graduation Rate</th>
<th>4 Year</th>
<th>5 Year</th>
<th>6 Year</th>
<th>Bachelor</th>
<th>Master</th>
<th>Doctoral</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>28.0%</td>
<td>43.0%</td>
<td>47.0%</td>
<td>60%</td>
<td>63%</td>
<td>77%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B5</th>
<th>Placement Rate</th>
<th>Bachelor</th>
<th>Master</th>
<th>Doctoral</th>
<th>4 Year</th>
<th>5 Year</th>
<th>6 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>59%</td>
<td>62%</td>
<td>77%</td>
<td>60%</td>
<td>63%</td>
<td>78%</td>
</tr>
</tbody>
</table>

| B6 | Progress on Diversity and Inclusion | Create baseline; increase diverse faculty, staff, administrators, enhance Hispanic serving mission. |

#### C Research and Outreach Expenditures

<table>
<thead>
<tr>
<th>C1</th>
<th>Research Expenditures</th>
<th>FY17-18 Estimated</th>
<th>Strategic Partnerships</th>
<th>Established</th>
<th>Research Expenditure estimates are based on the National Science Foundation methodology, the most widely used source for research. To realize $3M in investable revenue it is assumed $15M of research must be garnered due to NMSU's current average of approximate actual overhead return of 20%.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$102M</td>
<td>0 Cultivated</td>
<td>31.1M</td>
<td>$31.1M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C2</th>
<th>University Service</th>
<th>FY17-18 Estimated</th>
<th>$20.0M</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$20.0M</td>
<td>$20.0M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C3</th>
<th>Corporate and Foundation</th>
<th>FY17-18 Estimated</th>
<th>$31.1M</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$31.1M</td>
<td>$31.1M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C4</th>
<th>Strategic Partnerships</th>
<th>FY17-18 Estimated</th>
<th>$21.0M</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$21.0M</td>
<td>$21.0M</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C5</th>
<th>Established</th>
<th>FY17-18 Estimated</th>
<th>$10.2M</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$10.2M</td>
<td>$10.5M</td>
</tr>
</tbody>
</table>

#### D Fundraising and Productivity

<table>
<thead>
<tr>
<th>D1</th>
<th>Donor Gifts</th>
<th>FY17-18 Estimated</th>
<th>$8.6M</th>
<th>$9.6M</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$8.6M</td>
<td>$9.6M</td>
<td></td>
</tr>
</tbody>
</table>

**Las Cruces Campus**

<table>
<thead>
<tr>
<th>E</th>
<th>Community College Performance</th>
<th>Current Performance</th>
<th>Target Performance</th>
<th>Stretch Performance</th>
<th>Stretch Revenue Increase</th>
<th>Maximum Incentive Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>E1</td>
<td>Corporate Revenue</td>
<td>Current Total TBD</td>
<td>+$100,000</td>
<td>+$250,000</td>
<td>$250,000</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

Community College Corporate Revenue has been inconsistently measured to date. NMSU will gather and report a current summary of corporate revenue by campus by Dec-31-2018, determine a consistent methodology going forward, and has set a target of $250,000 greater than the total currently achieved.

<table>
<thead>
<tr>
<th>E2</th>
<th>Enrollment</th>
<th>Total</th>
<th>11,596</th>
<th>11,800</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Community College</td>
<td>Total</td>
<td>$250,000</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

| System | Potential Revenue | $10.25M | $150,000 |

Notes: All calculations are to be conformed across years, using the same methodology, estimation and assumptions (except as noted above).

Denotes Performance Floor
The Vision 2020 Six Pillars of Student Success have served as the driving force for change and remain at the heart of NMSU’s new strategic direction. As this new direction becomes more refined through constituent engagement the tenets will serve as the basis for executive performance evaluation, and the beginning basis for a comprehensive approach to performance evaluation across the system.

### I. Student Success

Effectively grows and shapes diverse enrollment, supports academic program demand, student retention and timely graduation, and produces highly qualified graduates with value added career outcomes.

**2018-19 Elements**

- A1 - Chart a course for student success.
  - Incorporate a strategic enrollment management plan into the 2025 plan.
  - Develop and implement a sustainable financial aid leveraging model and discount strategy.
  - Incorporate NMSU’s strategy, financial model and organization for online education.
  - Incorporate and implement a strategic marketing plan.
  - Establish 3 new student recruitment channels.
  - Achieve internal performance targets B1 through B6, and E2 (as shown on the Objective Statement Matrix).

### II. Research and Creativity

Identifies research and creativity strength, engages students and strategically builds capacity, funding and esteem.

**2018-19 Elements**

- A2 - Advance research and outreach, and address strategic global grand challenges in critical infrastructure, healthy borders and the education pipeline.
  - Incorporate a strategic initiatives and research plan into the 2025 plan.
  - Establish 3 strategic relationships in support of global grand challenges and advancing economic development.
  - Establish 2 new research / outreach contracts.
  - Secure a contract for PSL that will lead to ICD 705 security standard for PSL.
  - Achieve internal performance targets C1 through C5 (as shown on the Objective Statement Matrix).

Note: A brief report will be submitted by the administration to the board annually summarizing progress towards shared objectives.

Exhibit B – Performance Evaluation Elements

Proposed to NMSU BOR on Nov-29-2018
## IV. Financial Stewardship

Develops financial plans which align budgeting with strategic mission objectives and academic priorities, optimizes enrollment, and enhances compensation and productivity.

### 2018-19 Elements

- Incorporate a sustainable financial plan and aligned investment strategy into the 2025 plan.
- Realign and allocate budgets to support the objectives of the new organization.
- Implement performance management principles and financial reward mechanisms.
- Advance opportunities to incorporate the community colleges into the framework.
- Establish a template and protocol for a university dashboard.

### 2018-19 Elements

- Achieve internal performance targets B1, and D4 through D7 (as shown on the Objective Statement Matrix).

## V. Fundraising and Foundation Relations

Develops a mutually beneficial working relationship with the foundation aligned with the strategic goals of the institution, develops alumni networks and giving rate, and identifies and cultivates donors to realize increased levels of fundraising.

### 2018-19 Elements

- Renegotiate the NMSU Foundation MOU demonstrating clear alignment with NMSU’s strategic objectives.
- Enhance the alumni giving approach and cultivation methodology.
- Complete the current capital campaign.

### 2018-19 Elements

- Achieve internal performance targets D1 through D3 (as shown on the Objective Statement Matrix).
VII. Leadership and Organizational Effectiveness Self Assessment Board Evaluation

Engages the institution in a shared vision, inspires change, creates a culture of service and academic success, develops effective communication strategies, promotes the brand, eliminates barriers, optimizes resources and processes, and adopts performance based and enterprise risk management principles.

**2018-19 Elements**

A7 - Assemble a highly qualified leadership team which drives strategic performance outcomes and improves organizational effectiveness.
- Align and establish a highly effective and student centric student success unit.
- Align a highly effective strategic marketing unit and chief marketing officer.
- Align, organize and staff a strategic initiatives unit.
- Align, organize and staff an effective research and graduate education unit.
- Conduct searches for the key leadership team.
- Incorporate a culture of service and increased level of responsibility centered management principles.
- Advance multiple opportunities to leverage the community college relationship and assets of the system for greater effectiveness.

A8 - Develop a clearly differentiated and distinguished strategic direction for NMSU.
- Engage constituencies, obtain feedback, and bring the first iteration of the 2025 Strategic Plan to the Board.
- Integrate 6 pillar performance - enrollment, retention, graduation, placement and research.
- Define a concise set of key performance metrics with multi-year performance targets.
- Develop leading indicators and analytics which guide initiatives, strategies, investments and revenue streams.

---

VI. Athletics Self Assessment Board Evaluation

Effectively leverages athletics for higher visibility, student recruiting and student life, realizes enhanced athletic conference positioning and makes progress towards greater revenue self-sufficiency.

**2018-19 Elements**

A6 - Improve the athletics profile.
- Establish a conference positioning strategy.
- Reduce athletic subsidies.
- Achieve internal performance targets D7 (as shown on the Objective Statement Matrix).

---

VIII. Stakeholder Relations Self Assessment Board Evaluation

Directs the institution in concert with Board objectives and university mission, establishes a positive and constructive working relationship founded on trust, honesty and collaboration, keeps the Board timely and well informed, transparently provides information, and recommends actions and policies to benefit the institution.

---

**Exhibit B - Performance Evaluation Elements**
2018-19 PERFORMANCE INCENTIVE PLAN ADDENDUM TO
PRESIDENT EMPLOYMENT AGREEMENT

This 2018-19 Performance Incentive Plan Addendum (Addendum) is made and entered into by and between the Regents of the New Mexico State University (Regents or NMSU) and John Floros, as a supplement to the President Employment Agreement (Agreement), signed on or about May 22, 2018, and is effective upon ratification by a majority vote of the Regents in open public meeting.

RECITALS:

I. The parties acknowledge that they verbally agreed to extend the September 30 deadline provided in the Agreement for the finalization and approval of the Objective Statement with specific quantitative performance targets and goals, with such statement to be finalized no later than January of 2019.

II. The parties acknowledge that this 2018-19 Addendum, together with the Objective Statement Matrix – Academic Year 2018-19 (Matrix) attached hereto as Exhibit A, serves as the "Objective Statement" referenced in the Agreement.

III. The parties acknowledge that upon ratification of this 2018-19 Addendum, the process described in the Section 4.2 of the Agreement for establishing the Objective Statement has been satisfied for 2018-19, and that any deviations or variances from the terms of the Agreement defining this process have been accepted and agreed to by both parties.

IV. The Objective Statement Matrix (Matrix) attached to this 2018-19 Addendum serves to document the specific goals and quantitative targets established under this Addendum, and is incorporated by reference herein. The parties have each had an opportunity to review and analyze the Matrix and are satisfied with the methodology and assumptions used to calculate the data points contained within it.

NOW THEREFORE, the parties agree as follows:

1. Methodology: The methodology and assumptions used to compute the data points in the "Current Performance" column of the Matrix will also be used to compute the performance data points effective 2018-19 year end for the purpose of the annual performance evaluation, as well as the determination regarding the extent to which the performance targets have been achieved, and performance incentive compensation earned, with respect to Student Success (Matrix Part B), Research and Outreach Expenditures (Matrix Part C), and Giving and Productivity (Matrix Part D). The specific dates used in calculating the data points will be consistent with the dates used to calculate the Current Performance metrics. The 2018-19 performance data point computations will be performed within the 90 day period following the close of NMSU’s fiscal year, or as soon as the relevant data becomes available.

2. Annual Performance Evaluation: The 2018-19 Annual Performance Evaluation required by Section 3.02 of the Agreement will include the performance evaluation categories and elements as set forth in Exhibit B which is incorporated as part of this Addendum. The determination regarding the extent to which the Performance Evaluation Elements have been achieved will be made by the Regents through the sound exercise of their collective judgment. The annual performance evaluation may include, in the sole discretion of the Regents, performance categories and elements in addition to those listed in Exhibit B.
3. **Performance Incentive Compensation Calculation:** For the purpose of calculating earned performance incentive compensation, only those metrics relating to Matrix rows B1 – Student Net Tuition Revenue, C1 – Research Expenditures, and D1 – Donor Gifts will be utilized. For each of these components, the performance floor for the payment of incentive compensation is the Current Performance metric. The Maximum Incentive Payment (MIP) amount for each of these components, as shown on the Matrix, will be paid if the Stretch Performance Target is achieved. To the extent that the actual performance on a particular metric is better than the Current Performance number but less than the Stretch Performance Target, a portion of the MIP will be paid in an amount that is proportionate to the percentage improvement over the Current Performance. \( \text{MIP} \times \frac{(\text{Actual Performance} - \text{Current Performance})}{(\text{Stretch Performance} - \text{Current Performance})} \). Further, and as provided in the Agreement, the intent is that any and all performance incentives paid under the Agreement will be funded solely from a portion of the collective additional net revenue generated from the improvement in the relevant performance metrics. Therefore, regardless of the achievement of the stated metrics, the total performance incentive paid cannot exceed two percent (2%) of the total additional revenue realized by the institution as a result of the improvement in performance, as represented by the metrics.

4. **Payment Terms:** Performance incentives earned under the terms of this Addendum will be paid in accordance with the terms set forth in Section 4.02 of the Agreement.

5. **Relationship to Agreement:** To the extent that there is any conflict between the terms of this Addendum and the Agreement, the terms of this Addendum will be binding with respect to the calculation and award of performance incentive compensation for the 2018-19 fiscal year. All other terms set forth in the Agreement remain unchanged by this Addendum.

This Addendum is effective and binding only upon final approval by majority vote for ratification at an open public meeting of the Regents.

As evidence of their agreement to its terms, the Parties have placed their signatures upon this Addendum on the date(s) indicated below.

---

**Regents of New Mexico State University**

____________________________________  
Debra Hicks, Chair  
Date: __________

**John Floros, Ph.D.**

____________________________________  
John Floros, Ph.D.  
Date: __________
### Objective Statement Matrix - Academic Year 2018-19

#### B. Student Success

<table>
<thead>
<tr>
<th>Evaluation Element</th>
<th>Current Performance</th>
<th>Internal Performance Target</th>
<th>Stretch Performance Target</th>
<th>Stretch Revenue Increase</th>
<th>Maximum Incentive Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>B1</td>
<td>Student Net Tuition Revenue</td>
<td>$80.5M</td>
<td>$82.5M</td>
<td>$85.5M</td>
<td>$5M</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fall 2018</td>
<td>14,289</td>
<td>14,300</td>
<td>15,200</td>
</tr>
</tbody>
</table>

Note: Student Net Tuition Revenue is calculated as tuition and fee revenue, less institutional scholarships. Student monies paying tuition and fees such as lottery scholarship and Pell grants are included in tuition and fee dollars realized. Calculations made for the purpose of incentive pay are to be insulated from tuition rate increases. However, online enrollment is highly encouraged and all online revenues will be included in student net revenue targets.

### C. Research and Outreach Expenditures

<table>
<thead>
<tr>
<th>Evaluation Category</th>
<th>Current Performance</th>
<th>Internal Performance Target</th>
<th>Stretch Performance Target</th>
<th>Stretch Revenue Increase</th>
<th>Maximum Incentive Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>C1</td>
<td>Research Expenditures</td>
<td>$102M</td>
<td>$102M</td>
<td>$102M</td>
<td>$3M</td>
</tr>
</tbody>
</table>

Note: Research Expenditure estimates are based on the National Science Foundation methodology, the most widely used source for research. To realize $3M in investable revenue, it is assumed $15M of research must be garnered due to NMSU’s current average of approximate actual overhead return of 20%.

### D. Fundraising and Productivity

<table>
<thead>
<tr>
<th>Evaluation Category</th>
<th>Current Performance</th>
<th>Internal Performance Target</th>
<th>Stretch Performance Target</th>
<th>Stretch Revenue Increase</th>
<th>Maximum Incentive Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>D1</td>
<td>Donor Gifts</td>
<td>$8.6M</td>
<td>$9.6M</td>
<td>$10.6M</td>
<td>$2M</td>
</tr>
</tbody>
</table>

Note: Donor Gifts are based on donations received from, and pledges made by, individual donors. Donations received on previous pledges are excluded, as are estate and deferred gifts, and corporate and foundation related monies.

### Notes

- All calculations are to be conformed across years, using the same methodology, estimation and assumptions (except as noted above).
- Denotes Performance Floor
The Vision 2020 Six Pillars of Student Success have served as the driving force for change and remain at the heart of NMSU’s new strategic direction. As this new direction becomes more refined through constituent engagement the tenets will serve as the basis for executive performance evaluation, and the beginning basis for a comprehensive approach to performance evaluation across the system.

### I. Student Success

Effectively grows and shapes diverse enrollment, supports academic program demand, student retention and timely graduation, and produces highly qualified graduates with value added career outcomes.

#### 2018-19 Elements

<table>
<thead>
<tr>
<th>A1 - Chart a course for student success.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporate a strategic enrollment management plan into the 2025 plan.</td>
</tr>
<tr>
<td>Develop and implement a sustainable financial aid leveraging model and discount strategy.</td>
</tr>
<tr>
<td>Incorporate NMSU’s strategy, financial model and organization for online education.</td>
</tr>
<tr>
<td>Incorporate and implement a strategic marketing plan.</td>
</tr>
<tr>
<td>Establish 3 new student recruitment channels.</td>
</tr>
<tr>
<td>Achieve internal performance targets B1 through B6 (as shown on the Objective Statement Matrix).</td>
</tr>
</tbody>
</table>

### II. Research and Creativity

Identifies research and creativity strength, engages students and strategically builds capacity, funding and esteem.

#### 2018-19 Elements

<table>
<thead>
<tr>
<th>A2 - Advance research and outreach, and address strategic global grand challenges in critical infrastructure, healthy borders and the education pipeline.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporate a strategic initiatives and research plan into the 2025 plan.</td>
</tr>
<tr>
<td>Establish 3 strategic relationships in support of global grand challenges and advancing economic development.</td>
</tr>
<tr>
<td>Establish 2 new research / outreach contracts.</td>
</tr>
<tr>
<td>Secure a contract for PSL that will lead to ICD 705 security standard for PSL.</td>
</tr>
<tr>
<td>Achieve internal performance targets C1 through C5 (as shown on the Objective Statement Matrix).</td>
</tr>
</tbody>
</table>

Note: A brief report will be submitted by the administration to the board annually summarizing progress towards shared objectives. (5 point rating scale)
### Exhibit B - Performance Evaluation Elements

#### III. Outreach and Strategic Initiatives

Engages constituents in setting university direction, develops long-term strategic relationships, and acts opportunistically to solve complex problems, raise the profile of the institution, and generate new revenue streams.

**2018-19 Elements**

- A3 - Advance research and outreach, and address strategic global grand challenges in critical infrastructure, healthy borders and the education pipeline.
- Incorporate a strategic initiatives and research plan into the 2025 plan.
- Establish 3 strategic relationships in support of global grand challenges and advancing economic development.
- Establish 2 new research / outreach contracts.
- Advance a signature regional event.
- Achieve internal performance targets C2 through C5 (as shown on the Objective Statement Matrix).

<table>
<thead>
<tr>
<th>Self Assessment</th>
<th>Board Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### IV. Financial Stewardship

Develops financial plans which align budgeting with strategic mission objectives and academic priorities, optimizes enrollment, and enhances compensation and productivity.

**2018-19 Elements**

- A4 - Achieve greater financial stability and outcomes.
- Incorporate a sustainable financial plan and aligned investment strategy into the 2025 plan.
- Realign and allocate budgets to support the objectives of the new organization.
- Implement performance management principles and financial reward mechanisms.
- Advance opportunities to incorporate the community colleges into the framework.
- Establish a template and protocol for a university dashboard.
- Achieve internal performance targets B1, and D4 through D7 (as shown on the Objective Statement Matrix).

<table>
<thead>
<tr>
<th>Self Assessment</th>
<th>Board Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### V. Fundraising and Foundation Relations

Develops a mutually beneficial working relationship with the foundation aligned with the strategic goals of the institution, develops alumni networks and giving rate, and identifies and cultivates donors to realize increased levels of fundraising.

**2018-19 Elements**

- A5 - Advance fundraising outcomes, profile and engagement.
- Renegotiate the NMSU Foundation MOU demonstrating clear alignment with NMSU’s strategic objectives.
- Enhance the alumni giving approach and cultivation methodology.
- Complete the current capital campaign.
- Achieve internal performance targets D1 through D3 (as shown on the Objective Statement Matrix).

<table>
<thead>
<tr>
<th>Self Assessment</th>
<th>Board Evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Exhibit B - Performance Evaluation Elements

### VI. Athletics
Effectively leverages athletics for higher visibility, student recruiting and student life, realizes enhanced athletic conference positioning and makes progress towards greater revenue self-sufficiency.

#### 2018-19 Elements
- **A6** - Improve the athletics profile.
  - Establish a conference positioning strategy.
  - Reduce athletic subsidies.
  - Achieve internal performance targets D7 (as shown on the Objective Statement Matrix).

### VII. Leadership and Organizational Effectiveness
Engages the institution in a shared vision, inspires change, creates a culture of service and academic success, develops effective communication strategies, promotes the brand, eliminates barriers, optimizes resources and processes, and adopts performance based and enterprise risk management principles.

#### 2018-19 Elements
- **A7** - Assemble a highly qualified leadership team which drives strategic performance outcomes and improves organizational effectiveness.
  - Align and establish a highly effective and student centric student success unit.
  - Align a highly effective strategic marketing unit and chief marketing officer.
  - Align, organize and staff a strategic initiatives unit.
  - Align, organize and staff an effective research and graduate education unit.
  - Conduct searches for the key leadership team.
  - Incorporate a culture of service and increased level of responsibility centered management principles.
  - Advance multiple opportunities to leverage the community college relationship and assets of the system for greater effectiveness.

- **A8** - Develop a clearly differentiated and distinguished strategic direction for NMSU.
  - Engage constituencies, obtain feedback, and bring the first iteration of the 2025 Strategic Plan to the Board.
  - Integrate 6 pillar performance - enrollment, retention, graduation, placement and research.
  - Define a concise set of key performance metrics with multi-year performance targets.
  - Develop leading indicators and analytics which guide initiatives, strategies, investments and revenue streams.

### VIII. Stakeholder Relations
Directs the institution in concert with Board objectives and university mission, establishes a positive and constructive working relationship founded on trust, honesty and collaboration, keeps the Board timely and well informed, transparently provides information, and recommends actions and policies to benefit the institution.