

MINUTES – Ad Hoc Meeting

Rules Review Committee



Representative Jean Hunhoff, Chair
Senator Lance Russell, Vice Chair

Three hundred ninety-fourth meeting
Monday
December 7, 2020

Room 414
State Capitol
Pierre, South Dakota

The three hundred ninety-fourth meeting of the Rules Review Committee was called to order by Representative Jean Hunhoff, Chair, at 2:15 p.m. (CT) on December 7, 2020, via electronic conference and in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members present: Representatives Ryan Cwach, Jon Hansen, and Jean Hunhoff, Chair; and Senators Craig Kennedy, Lance Russell, Vice Chair, and Margaret Sutton. Staff members present were Justin Goetz, Code Counsel, Kelly Thompson, Senior Legislative Secretary, and Hilary Carruthers, IT Support Specialist.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Representative Hansen moved, seconded by Senator Sutton, that the November 10, 2020, meeting minutes be approved. Motion prevailed on a roll call vote with 5 ayes and 1 excused. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Sutton. Excused: Russell.

Rules Reviewed

Department of Agriculture and Department of Public Safety: Adopt rules to establish a program to license the growth, production, storage, processing, and transportation of industrial hemp in South Dakota in accordance with state law and the state industrial hemp plan as approved by the United States Department of Agriculture (USDA).

Ms. Taya Runyan, Department of Agriculture, and Mr. Dan Lusk, Department of Public Safety, reviewed the proposed rules. Both presenters thanked the committee members for their willingness to schedule a special ad hoc meeting to consider the industrial hemp rules.

Ms. Runyan reviewed the history of the industrial hemp laws that prompted the proposed rules changes. The [2018 federal Farm Bill](#) authorized the cultivation, production, sale, transport, and possession of hemp-derived products but left it up to the states to implement laws to license and regulate hemp in those areas. The 2020 South Dakota Legislature approved [House Bill 1008](#) which, among other things, directed the Department of Agriculture to work with the Office of the Attorney General and Department of Public Safety to develop a state hemp production plan for submission to the USDA.

Ms. Runyan said the state plan was submitted to the USDA in August of 2020 and received federal approval in October of this year. The [state plan](#) covers the following elements required by the federal government: a plan to maintain licensee and land information; a plan for sampling and testing of tetrahydrocannabinol (THC); a plan for disposal of any non-compliant plants; a plan for inspection and procedures for annual inspections; plans for information collection and sharing; a plan for enforcement; and certification of resources.

Of the rules being presented to the committee, the Department of Agriculture is responsible for ARSD 12:82:01 to 12:82:05, which establish licensing criteria and fees, application fees for growers and processors, the collection of data, and corrective actions for violations.

Mr. Lusk explained the remaining rules (ARSD 12:82:06 to 12:82:09) which implement inspection procedures and requirements to be administered by the Department of Public Safety.

Public Testimony

Ms. Katie Sieverding, Executive Director, South Dakota Industrial Hemp Association, testified her organization appreciates the work of the Departments of Agriculture and Public Safety in developing the state plan and promulgating the rules needed to get the program going in South Dakota. She said while the plan was going through the submission and approval process, the hemp industry in South Dakota focused on education by holding seminars and forums at which producers could learn more about the products than can be made from industrial hemp.

Mr. Ken Meyer, President, South Dakota Industrial Hemp Association, said South Dakota's emerging hemp industry had the opportunity to offer their input on the proposed rules and he is satisfied they represent a good work product. Mr. Meyer also serves as vice president of A.H. Meyer and Sons, Inc., and noted the company hopes to use its carbon dioxide (CO₂) facility to process hemp flowers for CBD oil.

Mr. Derrick Dohmann, Vice President, South Dakota Industrial Hemp Association, told members he has received numerous calls and emails from farmers who are excited to be able to grow hemp and are working on obtaining operating loans for the upcoming growing season. Mr. Dohmann said his company, Horizon Hemp Seeds, does business in a 10-state area and is planning to build a processing facility in Willow Lake. He said the industry will benefit the farming community by letting farmers diversify.

Representative Hunhoff asked if tribes are required to follow the same rules as the state in regulating the industrial hemp industry. Ms. Runyan replied that tribal governments have submitted their own plans to the USDA that meet the same requirements as the state plan. If approved, tribes will be responsible for their own enforcement.

Representative Hunhoff commented that the Department of Public Safety already faces challenges in completing current inspection schedules and wondered if the number of inspectors would be able to handle the additional workload. Mr. Lusk responded that the agency will utilize the current inspector structure and add one additional full-time employee. All inspectors will be trained in the hemp inspection process.

Responding to Representative Hunhoff regarding due process for growers, Mr. Lusk said initially when a grower applies for a license, they identify the lot. An inspector will be notified when the lot is ready to harvest so a sample can be pulled and sent to testing; the test will determine if the crop meets the criteria. Ms. Runyan clarified that ultimately, the Department of Agriculture is responsible for enforcement and growers can re-test if they have questions about test results.

Representative Hansen asked why the proposed rules outlining inspection requirements, which mirror the statute ([SDCL 38-35-9](#)), contain additional language giving the Department of Public Safety complete and unrestricted access during regular business hours. Mr. Lusk stated the unlimited access language is found in [SDCL 38-35-7](#) and would only apply to lots where industrial hemp is grown. He clarified that two types of licenses can be issued: a grower license and a processor license.

Representative Hunhoff moved, seconded by Representative Hansen, that the review of the rules proposed by the Department of Agriculture and the Department of Public Safety is complete. Motion prevailed on a roll call vote with 5 ayes and 1 nay. Voting aye: Cwach, Hansen, Hunhoff, Kennedy, and Sutton. Voting nay: Russell.

Senator Sutton commended the agencies and the South Dakota Industrial Hemp Association for their cooperative effort on the rules and said she looks forward to positive news about South Dakota's industrial hemp industry in the future.

Discussion Regarding the Emergency and Permanent Rule Making Process

Mr. Justin Goetz, Code Counsel, reviewed the history of the emergency rule promulgation process and the differences between the processes for emergency rules and permanent rules. [Flow charts](#) were provided detailing the current practices for both types of rules.

Representative Hunhoff noted efforts are being made to collaborate with agencies to iron out any differences in interpretations before the proposed rules come before the Rules Review Committee. She said it is the role of the committee to challenge agencies to promulgate rules that are clear and effective. The rule making process will be reviewed with the new members of the Rules Review Committee when its organizational meeting is held in early 2021.

At Representative Hunhoff's request, Mr. Goetz next explained proposed changes to Form 10, the document used by agencies to record the minutes from their agency rules hearings. Form 10 is submitted to Rules Review Committee members as part of the agency's final rules packet and is intended to provide information about public testimony and agency discussion and action. Mr. Goetz said due to a lack of consistency in how agencies draft their minutes, changes were being suggested to expand certain areas of the form to make it more useful to members.

Senator Sutton asked what methods secretaries are currently using to record the minutes. Mr. Goetz said it varies between agencies with some using recording devices or other electronic means while others are simply typing them up. He clarified that the minutes are taken by agency administrative people and not LRC secretaries.

Senator Kennedy said modifying Form 10 is a good idea as there is a marked difference in minutes between those agencies that promulgate rules regularly and those for whom it is a rare occurrence.

The committee directed Mr. Goetz to implement the proposed changes to Form 10 and notify rules contacts of the updated form.

Closing Comments

Representative Hunhoff acknowledged the members for their hard work during the 2020 interim and said she appreciated the guidance provided over the past several years by those who are finishing their service on the committee.

Adjournment

Representative Hansen moved, seconded by Senator Sutton, that the meeting be adjourned. Motion prevailed on a unanimous voice vote.

Chair Hunhoff adjourned the meeting at 3:17 p.m.