

TITLE 21: AGRICULTURE AND RANCHING

CHAPTER 1: AGRICULTURE AND RANCHING GENERAL PROVISIONS

PART 1: NMDA RULE MAKING PROCEDURES

21.1.1.1 ISSUING AGENCY:

New Mexico Department of Agriculture, New Mexico State University.

MSC 3189; PO Box 30005; Las Cruces, New Mexico 88003-8005; Telephone: (575) 646-3007

[21.1.1.1 NMAC, Rp, 21.1.1.1 NMAC, 11/01/2018]

21.1.1.2 SCOPE:

This rule establishes a rulemaking procedure, which will enable the New Mexico department of agriculture to secure the views and statements of all interested persons concerning rules and regulations at the department in a transparent, organized and fair manner.

[21.1.1.2 NMAC, Rp, 21.1.1.2 NMAC, 11/01/2018]

21.1.1.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under Sections 76-1-2 NMSA 1978 compilation and shall apply to all New Mexico department of agriculture rulemaking proceedings.

[21.1.1.3 NMAC, Rp, 21.1.1.3 NMAC, 11/01/2018]

21.1.1.4 DURATION:

Permanent.

[21.1.1.4 NMAC, Rp, 21.1.1.4 NMAC, 11/01/2018]

21.1.1.5 EFFECTIVE DATE:

November 1, 2018, unless a later date is cited at the end of a section.

[21.1.1.5 NMAC, Rp, 21.1.1.5 NMAC, 11/01/2018]

21.1.1.6 OBJECTIVE:

Standardize rule making procedures for the NMDA.

[21.1.1.6 NMAC, Rp, 21.1.1.6 NMAC, 11/01/2018]

21.1.1.7 DEFINITIONS:

This rule adopts the definitions found in Section 14-4-2 NMSA 1978.

A. "Department" means the New Mexico department of agriculture.

B. "Director" means the director of the New Mexico department of agriculture.

[21.1.1.7 NMAC, Rp, 21.1.1.7 NMAC, 11/01/2018]

21.1.1.8 ORDER OF ADVANCE NOTICE OF RULEMAKING:

For purposes of developing proposed rules and regulations, the department may request attendance at informal meetings or workshops.

[21.1.1.8 NMAC, Rp, 21.1.1.13 NMAC, 11/01/2018]

21.1.1.9 RULEMAKING PREREQUISITES:

A. Prior to the adoption, amendment, or repeal of any rule, the department shall publish notice of its proposed action in the New Mexico register and at least 30 days prior to its proposed action, not including the publication or the day of proposed action, shall:

(1) if required by statute, publish notice of its proposed action in newspapers or trade, industrial, or professional publications, as will reasonably give public notice to interested persons;

(2) notify by mail or electronic mail any person or group filing a written request for such notification to the New Mexico department of agriculture, notification being by mail or electronic mail to the last address specified by the person or group;

(3) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(4) post on the agency website;

(5) post on the sunshine portal;

- (6) make available at the agency district and field offices;
- (7) provide to the New Mexico legislative council.

B. The notice described in Subsection A of 21.1.1.9 NMAC above shall include:

- (1) information on the public hearing and how a person may participate;
 - (2) information on how comments may be submitted to the department where the comments will be received, and when the comments are due;
 - (3) a summary describing the full text of the proposed rule;
 - (4) a short explanation describing the substance of the proposed action;
 - (5) information on how the proposed rule may be obtained and internet link that provides free access to the full text of the proposed rule;
 - (6) a reference to the statutory authority under which the rule is proposed;
- and
- (7) a citation to technical information, if any, and how to obtain the technical information.

[21.1.1.9 NMAC, Rp, 21.1.1.8 NMAC, 11/01/2018, A; 12/01/2022]

21.1.1.10 RULEMAKING HEARINGS:

Rulemaking hearings shall be conducted as follows.

A. The rules of civil procedure and the rules of evidence shall not apply.

B. Unless the circumstances otherwise justify the order of appearance will be as follows:

- (1) comments of department staff;
- (2) comments of each proponent;
- (3) comments of each opponent; and
- (4) comments from the general public.

C. Comments from any individual who provides public comment at the hearing may be questioned by the agency or hearing officer or, at the discretion of the agency or hearing officer, or as otherwise provided by law, by other persons at the hearing.

D. Public hearings shall be conducted in a fair and equitable manner.

E. Public hearings shall be open to the public and recorded.

[21.1.1.10 NMAC, Rp. 21.1.1.9 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.11 PUBLIC COMMENT:

The department shall afford all interested persons reasonable opportunity to submit written data, views, or arguments in support of or opposition to a proposed rule. Any interested person seeking to modify a proposed rule in any way must submit a proposed modification in writing to the department.

A. Information or comment submitted may be in electronic or written format;

B. public comment period will be open for a period of at least 30 days after the date of notice in the NM register; and

C. the department will consider all comments respecting the proposed rule prior to a final decision.

D. All comments filed on proposed rule shall be made available to any person for inspection upon request and shall be posted to the agency's website within three (3) business days of receipt.

[21.1.1.11 NMAC, N, 11/01/2018; A, 12/01/2022]

21.1.1.12 HEARING OFFICER:

The director shall appoint an agency representative or hearing officer to conduct the hearing and receive statements and supporting data. The agency representative or hearing officer will be authorized to make all rulings in the conduct of the proceedings and in the receipt of statements and supporting data.

[21.1.1.12 NMAC, Rp, 21.1.1.10 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.13 RECORD OF THE RULEMAKING HEARING:

A. A record shall be made at each proceeding, the cost of which shall be borne by the department. Transcript costs shall be paid by those persons requesting transcripts. The records shall contain:

- (1) a copy of all publications in the NM register relating to the proposed rule;
- (2) a copy of technical information that was relied upon in formulating the final rule;

(3) official transcript, audio recording or verbatim transcript of the hearing, and any memoranda summarizing the hearing provided by the hearing officer or agency official presiding over the hearing;

(4) a copy of all comments and other material received by the agency during public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the concise explanatory statement provided with the state records administrator ; and

(6) any corrections made by the state records administrator.

B. The record shall be closed at the conclusion of the proceeding unless the department or hearing examiner holds it open for no longer than 30 days for the purpose of receiving additional written supporting comment.

[21.1.1.13 NMAC, Rp, 21.1.1.11 NMAC, 11/01/2018]

21.1.1.14 ADOPTION OF THE RULE:

Adoption of any rule will be through the board of regents of New Mexico state university at a scheduled board meeting. The board shall be presented with a complete hearing record and recommended action of the director. At the time a rule is adopted, the department shall provide a concise explanatory statement to the public containing:

A. the date the agency adopted the rule and effective date if different than adopted date;

B. a reference to the specific statutory or other authority authorizing the rule; and

C. any findings required by a provision of law for the adoption of the rule;

D. reasons for any changes between the published proposed rule and the final rule;

E. reasons for not accepting substantive arguments made through public comment.

[21.1.1.14 NMAC, Rp, 21.1.1.14 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.15 EMERGENCY RULE:

The department shall comply with emergency rulemaking procedures in Section 14-4-5.6 NMSA 1978.

[21.1.1.15 NMAC, N, 11/01/2018; A, 12/01/2022]

21.1.1.16 FILING RULES:

Each rule, amendment, or repeal thereof adopted by the department shall be filed with the state records center in accordance with the State Rules Act, Section 14-4-5 NMSA 1978.

[21.1.1.16 NMAC, Rp, 21.1.1.15 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.17 GENERAL RULES:

[RESERVED]

[21.1.1.17NMAC, Rp, 21.1.1.17 NMAC, 11/01/2018]

PART 2: FEES FOR DOCUMENTS AND SERVICES

21.1.2.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.1.2.1 NMAC - Rn & A, 21 NMAC 1.2.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.1.2.2 SCOPE:

Part 2 shall apply to all persons requesting special documents, or special services from the New Mexico department of agriculture, division of agricultural and environmental services or one of the division's sections.

[7/1/97; 21.1.2.2 NMAC - Rn, 21 NMAC 1.2.2, 05/29/09; A, 01/29/10]

21.1.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Agriculture Law, Chapter 76, Article 1, Section 2, paragraph M, NMSA 1978.

[7/1/97; 21.1.2.3 NMAC - Rn, 21 NMAC 1.2.3, 05/29/09]

21.1.2.4 DURATION:

Permanent.

[7/1/97; 21.1.2.4 NMAC - Rn, 21 NMAC 1.2.4, 05/29/09]

21.1.2.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.1.2.5 NMAC - Rn, 21 NMAC 1.2.5, 05/29/09]

21.1.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 1 is to establish fees for [requested lists and] services plus certain documents issued by the New Mexico department of agriculture, division of agricultural and environmental services.

[7/1/97; 21.1.2.6 NMAC - Rn, 21 NMAC 1.2.6, 05/29/09; A, 01/29/10]

21.1.2.7 DEFINITIONS:

A. "Division" means the division of agricultural and environmental services and its sections within the New Mexico department of agriculture.

B. "Request for service" means any written or oral request by any public or private entity for services, or documents not routinely provided by the division as part of its official regulatory responsibilities or determined to be for the personal or commercial benefit of the person making the request.

[7/1/97; 21.1.2.7 NMAC - Rn, 21 NMAC 1.2.7, 05/29/09; A, 01/29/10]

21.1.2.8 DETERMINATION OF SPECIAL REQUEST:

The director of the division is authorized to determine the circumstances under which fees are to be charged to recover the cost of a request for service.

[7/1/97; 21.1.2.8 NMAC - Rn, 21 NMAC 1.2.8, 05/29/09]

21.1.2.9 FEE SCHEDULE:

A. All fees for documents, or services rendered are due and payable at the time they are ordered or when billing is received, as appropriate. Failure to pay for either documents or services shall result in withholding all further services by the division until outstanding amounts are paid in full by cashier's check or money order.

B. Per diem at standard rates, hourly wages, and mileage charges may be assessed in addition to fees charged for documents when the use of New Mexico department of agriculture personnel is required to inspect or draw samples of a particular agricultural commodity for laboratory analysis as a prerequisite to preparation of the documents. Per diem, wage, and mileage charges may be portal to portal- the time and distance traveled to perform the service and return. In addition, per diem at

standard rates or other expenses for materials or shipping incurred as a result of providing special inspections or commodity sampling may be charged when applicable. These other expenses will be charged at actual cost.

C. The following fees shall apply:

- (1) Certificates of inspection - \$5 per certificate.
- (2) Federal phytosanitary certificate - not to exceed federal charges (certificate only; inspection and laboratory fees may be charged in addition to fees charged for certificates).
- (3) State phytosanitary certificates and state certificates of origin - \$15 per certificate (either fully or partially completed by New Mexico department of agriculture staff).
- (4) Faxing of either state or federal certificates prepared by New Mexico department of agriculture to any destination requested by the shipper or consignee - \$5 per page.
- (5) Special local need 24(c) registrations - \$35 each.
- (6) Section 18 exemption from federal registration, preparation and submission - \$350 each.
- (7) Laboratory analysis:
 - (a) pesticide formulation - \$150 per active ingredient.
 - (b) tank mix samples - \$150 per active ingredient.
 - (c) residue samples - \$300 per active ingredient.

D. For request for service not specifically covered by this rule, the division may charge a fee not to exceed the cost of providing the service as determined by the division director.

[7/1/97; 21.1.2.9 NMAC - Rn, 21 NMAC 1.2.9, 05/29/09; A, 01/29/10]

21.1.2.10 WAIVER OF FEES:

The division director may waive any or all fees if in the division director's opinion the public interest would be served by exempting the party from the fee, or the fee is incidental to the cost of providing the service.

[7/1/97; 21.1.2.10 NMAC - Rn, 21 NMAC 1.2.10, 05/29/09; A, 01/29/10]

PART 3: PARENTAL RESPONSIBILITY ACT COMPLIANCE

21.1.3.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[21.1.3.1 NMAC - N, 8/16/2010]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.1.3.2 SCOPE:

This part applies to disciplinary proceedings by the issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation.

[21.1.3.2 NMAC - N, 8/16/2010]

21.1.3.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13, and the following licensing statutes under the authority of the department of agriculture:

- A.** Egg Grading Act, NMSA 1978, Section 25-6-12;
- B.** Dairy Establishment Sanitation Act, NMSA 1978, Sections 25-7B-4 and 25-7B-6;
- C.** Standards of Weights and Measures Act, NMSA 1978, Sections 57-17-1 to 57-17-19;
- D.** Weightmaster Act, NMSA 1978, Section 57-18-5;
- E.** Petroleum Products Standards Act; NMSA 1978, Sections 57-18-3 and 57-19-28;
- F.** New Mexico Pesticide Control Act, NMSA 1978, Section 76-4-17;
- G.** Plant Protection Act, NMSA 1978, Sections 76-5-14, 76-5-16, 76-5-21, and 76-5-23;
- H.** Bee Act, NMSA 1978, Sections 76-9-6, 76-9-10 and 76-9-11; and
- I.** Produce Marketing Act, NMSA 1978, Section 76-15-14.

[21.1.3.3 NMAC - N, 8/16/2010]

21.1.3.4 DURATION:

Permanent

[21.1.3.4 NMAC - N, 8/16/2010]

21.1.3.5 EFFECTIVE DATE:

August 16, 2010, unless a later date is cited at the end of a section.

[21.1.3.5 NMAC - N, 8/16/2010]

21.1.3.6 OBJECTIVE:

This part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required to engage in a profession or occupation by the issuing agency.

[21.1.3.6 NMAC - N, 8/16/2010]

21.1.3.7 DEFINITIONS:

All terms defined in the Parental Responsibility Act shall have the same meaning in this part unless defined below:

- A. "agency" means the New Mexico department of agriculture;
- B. "HSD" means the New Mexico human services department;
- C. "license" means a license, certificate, registration or permit issued by agency that a person is required to have to engage in a profession or occupation in New Mexico;
- D. "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and
- E. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment or order for support.

[21.1.3.7 NMAC - N, 8/16/2010]

21.1.3.8 GENERAL PROVISIONS:

- A. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for support, the agency:

- (1) shall deny an application for a license;
- (2) shall deny the renewal of a license; and
- (3) has grounds for suspension or revocation of a license.

B. Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the agency shall match the certified list against the current list of agency applicants and licensees. Upon later receipt of an application for licensure or renewal, the agency shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the agency shall report to HSD the names of agency applicants and licensees who are on the certified list and the action the agency has taken in connection with such applicants and licensees.

C. Initial action: Upon determination that an applicant or licensee appears on the certified list, the agency shall:

(1) commence a formal proceeding under Subsection D of 21.1.3.8 NMAC to take appropriate action under Subsection A of 21.1.3.8 NMAC; or

(2) for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the agency with a subsequent statement of compliance by the earlier of the application for license renewal or a specified date not to exceed six (6) months; if the licensee fails to provide the statement of compliance, the agency shall commence a formal proceeding under Subsection D of 21.1.3.8 NMAC.

D. Notice of contemplated action: Prior to taking any action specified in Subsection A of 21.1.3.8 NMAC, the agency shall serve upon the applicant or licensee a written notice stating that:

(1) the agency has grounds to take such action, and the agency shall take such action unless the applicant or licensee:

(a) mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(b) provides the agency, within thirty (30) days of the date of the notice, a statement of compliance; and

(2) if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact HSD child support enforcement division.

E. Evidence of proof: In any hearing under this part, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the agency to take the appropriate action under Subsection A of 21.1.3.8 NMAC unless:

(2) the applicant or licensee can provide the agency with a subsequent statement of compliance which shall preclude the agency from taking any action based solely on the prior statement of non-compliance.

F. Order: When an action is taken under this part solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The agency may also include any other conditions necessary to comply with agency requirements for reapplications or reinstatement of lapsed licenses.

G. Procedures: Proceedings under this part shall be governed by the agency's statutory authority, and any adjudicatory procedures adopted by the agency.

[21.1.3.8 NMAC - N, 8/16/2010]

CHAPTER 2: WATER DISTRICTS GENERAL PROVISIONS [RESERVED]

CHAPTER 3: ARTESIAN CONSERVANCY DISTRICTS [RESERVED]

CHAPTER 4: DITCHES [RESERVED]

CHAPTER 5: DRAINAGE DISTRICTS [RESERVED]

CHAPTER 6: IRRIGATION DISTRICTS [RESERVED]

CHAPTER 7: CONSERVANCY DISTRICTS [RESERVED]

CHAPTER 8: FLOOD DISTRICTS [RESERVED]

CHAPTER 9: SOIL AND WATER CONSERVATION DISTRICTS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: CONDUCTING AN ELECTION OF DISTRICT SUPERVISORS [REPEALED]

[This part was repealed on January 1, 2019.]

PART 3: CONDUCTING A REFERENDUM [REPEALED]

[This part was repealed on January 1, 2019]

CHAPTER 10-14: [RESERVED]

CHAPTER 15: AGRICULTURE GENERAL PROVISIONS

PART 1: ORGANIC AGRICULTURE

21.15.1.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

[21.15.1.1 NMAC - Rp, 21.15.1.1 NMAC, 1/1/2018]

21.15.1.2 SCOPE:

The rule shall apply to certification of agricultural products.

[21.15.1.2 NMAC - Rp, 21.15.1.2 NMAC, 1/1/2018]

21.15.1.3 STATUTORY AUTHORITY:

The rule is promulgated pursuant to the provisions of the Organic Production Act, Sections 76-21A-1 through 76-21A-5 NMSA 1978.

[21.15.1.3 NMAC - Rp, 21.15.1.3 NMAC, 1/1/2018]

21.15.1.4 DURATION:

Permanent.

[21.15.1.4 NMAC - Rp, 21.15.1.4 NMAC, 1/1/2018]

21.15.1.5 EFFECTIVE DATE:

January 1, 2018,

[21.15.1.5 NMAC - Rp, 21.15.1.5 NMAC, 1/1/2018]

21.15.1.6 OBJECTIVE:

The rule establishes that the department, as a USDA-accredited certifying agent, follows the requirements of the national organic program's standards to certify agricultural products as organic.

[21.15.1.6 NMAC - Rp, 21.15.1.6 NMAC, 1/1/2018]

21.15.1.7 DEFINITIONS:

The following definitions apply to this part and all other regulations the department adopts.

A. "Accreditation" means a determination made by USDA that authorizes a private, foreign, or state entity to conduct certification activities as a certifying agent under the standards.

B. "Agricultural product" means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock.

C. "Application" means a formal request to an authority for the purpose of organic certification.

D. "Certify or certification or certified" means a determination made by a USDA-accredited certifying agent that a production or handling operation is in compliance with the Organic Foods Production Act of 1990 and the standards which is documented by a certificate of organic operation.

E. "Certifying agent" means any entity accredited by the national organic program as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

F. "Department" means the New Mexico department of agriculture.

G. "Farm operation" means raising, cultivating, propagating, fattening, grazing, or any other farming or ranching activity.

H. "Fees" means funds collected by the department as provided for under the act.

I. "Handler" means any person who engages in the business of handling agricultural products, including producers who handle crops or livestock of their own

production, except such term shall not include final retailers of agricultural products that do not process agricultural products. This may include a processor.

J. "National organic program" means the USDA program authorized by the federal Organic Foods Production Act of 1990 for the purpose of implementing its provisions.

K. "Organic" means a labeling term that refers to an agricultural product produced in accordance with the federal Organic Foods Production Act of 1990.

L. "Organic products" means all products certified by the department as "100 percent organic," "organic" or "made with organic (ingredients or food groups)."

M. "Processor" means any person who engages in the cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

N. "Producer" means a person who engages in the business of growing or producing food, fiber, feed, and other agricultural products.

O. "Renewal" means annual update required for continued certification.

P. "Reviewing Process" means the review of an application prior to conducting an inspection of the applicant's scope(s).

Q. "Scope" refers to operation type; crops, livestock, wild crops, and handling.

R. "Standards" means the specific federal requirements that must be verified by the certifying agent accredited by the national organic program of the USDA before products can be labeled organic.

S. "USDA" means United States department of agriculture.

[21.15.1.7 NMAC - Rp, 21.15.1.7 NMAC, 1/1/2018]

21.15.1.8 ADOPTION OF THE STANDARDS:

The standards established by USDA's national organic program and set forth in Title 7 CFR Part 205 are incorporated by reference.

[21.15.1.8 NMAC - Rp, 21.15.1.8 NMAC, 1/1/2018]

21.15.1.9 FEES:

A. All fees shall be collected directly by the department, and used to carry out the provisions of the Organic Production Act NMSA 76-21A.

B. New Application Fee: New applicants, regardless of scope, must submit a \$750 application fee for the initial review and processing of the application at the time of submission. New applications received without accompanying fees shall be deemed incomplete, and the applicant shall be notified that the application will not be further processed until the fee is paid. Applicants applying for dual scopes (crop and processor and animal and processor, but not crop and animal) must pay two fees. All fees are nonrefundable.

C. Renewal Fee: Renewal applicants must submit a \$500 application fee for the review and processing of the application at the time of submission per scope. The deadline for renewal applicants shall be the anniversary date of the operations initial certification each year. Renewal applications received without accompanying fees shall be deemed incomplete, and the applicant shall be notified that the application will not be further processed until the fee is paid. Applicants applying for dual scopes (crop and processor and animal and processor, but not crop and animal) must pay two fees. All fees are nonrefundable.

D. Late Fee – Renewals: Late fee charges on renewal applications shall be assessed as follows:

Received 30 days after the anniversary date of the operations initial certification, \$100;

Received 60 days after the anniversary date of the operations initial certification, \$200;

Received 90 days after the anniversary date of the operations initial certification, \$500.

E. Hourly rate: an hourly rate of \$65 per hour shall be assessed for time spent directly related to conducting inspections in quarter hour increments, certification process review, and issuance of the organic certification certificate. Certificates and renewals shall only be issued once all fees have been paid in full. The hourly rate does not include mileage and per diem.

F. Mileage and per diem: In addition to the application fee and hourly rate, mileage and per diem will be charged in accordance with the provisions of the New Mexico state university business procedure manual, Chapter 5C: Travel. If multiple inspections are in the same area, the mileage and per diem rate will be divided equally among applicants.

G. Collection of Fund: All funds collected shall be subject to policies set in New Mexico state university's business procedures manual.

[21.15.1.9 NMAC - Rp, 21.15.1.9 NMAC, 1/1/2018]

CHAPTER 16: AGRICULTURAL WEIGHTS AND MEASURES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES

21.16.2.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.2.1 NMAC - Rn & A, 21 NMAC 16.2.1, 05/29/09]

[MSC 3189 P. O. Box 30005 Las Cruces, New Mexico 88003-8005; Telephone: (575) 646-3007]

21.16.2.2 SCOPE:

All parties involved in the servicing or use of commercial weighing or measuring devices.

[7/1/97; 21.16.2.2 NMAC - Rn, 21 NMAC 16.2.2, 05/29/09]

21.16.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.2.3 NMAC - Rn, 21 NMAC 16.2.3, 05/29/09]

21.16.2.4 DURATION:

Permanent

[7/1/97; 21.16.2.4 NMAC - Rn, 21 NMAC 16.2.4, 05/29/09]

21.16.2.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.2.5 NMAC - Rn, 21 NMAC 16.2.5, 05/29/09]

21.16.2.6 OBJECTIVE:

This part establishes the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices.

[7/1/97; 21.16.2.6 NMAC - Rn, 21 NMAC 16.2.6, 05/29/09]

21.16.2.7 DEFINITIONS:

[RESERVED]

21.16.2.8 [RESERVED]

21.16.2.9 SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS:

The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices for the state of New Mexico shall be the same as adopted by the national conference on weights and measures as set forth in *national institute of standards and technology (NIST) handbook 44*, as revised.

[7/1/97; 21.16.2.9 NMAC - Rn, 21 NMAC 16.2.9, 05/29/09]

21.16.2.10 [RESERVED]

PART 3: NOT SEALED NOT LEGAL FOR TRADE UNDER THE WEIGHTS AND MEASURES LAW

21.16.3.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.3.1 NMAC - Rn & A, 21 NMAC 16.3.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.16.3.2 SCOPE:

All parties involved in the servicing or use of commercial weighing or measuring devices.

[7/1/97; 21.16.3.2 NMAC - Rn, 21 NMAC 16.3.2, 05/29/09]

21.16.3.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.3.3 NMAC - Rn, 21 NMAC 16.3.3, 05/29/09]

21.16.3.4 DURATION:

Permanent

[7/1/97; 21.16.3.4 NMAC - Rn, 21 NMAC 16.3.4, 05/29/09]

21.16.3.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.3.5 NMAC - Rn, 21 NMAC 16.3.5, 05/29/09]

21.16.3.6 OBJECTIVE:

This part establishes the conditions and circumstances under which a weighing or measuring device may be marked "not sealed - not legal for trade."

[7/1/97; 21.16.3.6 NMAC - Rn, 21 NMAC 16.3.6, 05/29/09]

21.16.3.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Director" means the director of the New Mexico department of agriculture.
- C. "Registered service establishment" means any person, firm, or company registered with the department for the purpose of installing, servicing, repairing, or reconditioning commercial weighing or measuring devices.

[7/1/97; 21.16.3.7 NMAC - Rn, 21 NMAC 16.3.7, 05/29/09]

21.16.3.8 [RESERVED]

21.16.3.9 CONDITIONS:

Any weighing or measuring device not used for commercial purpose in the state of New Mexico, may be marked "not sealed - not legal for trade" if:

- A. the owner of the device declares in writing the device is not used for commercial purpose;
- B. the director determines a device is not being used for commercial purpose through abandonment, location, or condition; or

C. the director determines a device cannot be used commercially because of its construction or design.

[7/1/97; 21.16.3.9 NMAC - Rn, 21 NMAC 16.3.9, 05/29/09]

21.16.3.10 PROHIBITED USE:

A. Any device marked or tagged as "not sealed - not legal for trade" pursuant to this part, shall not be used for commercial purpose nor shall the tag or mark be removed until it has been properly placed in service by the department or a registered service establishment.

B. Such inspection by the department will be at the request of the device owner and may require the payment of a fee based on current fee schedules.

[7/1/97; 21.16.3.10 NMAC - Rn, 21 NMAC 16.3.10, 05/29/09]

21.16.3.11 [RESERVED]

PART 4: METHOD OF SALE OF COMMODITIES

21.16.4.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.4.1 NMAC - Rn & A, 21 NMAC 16.4.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.16.4.2 SCOPE:

All processors, distributors and retailers of consumer commodities.

[7/1/97; 21.16.4.2 NMAC - Rn, 21 NMAC 16.4.2, 05/29/09]

21.16.4.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.4.3 NMAC - Rn, 21 NMAC 16.4.3, 05/29/09]

21.16.4.4 DURATION:

Permanent

[7/1/97; 21.16.4.4 NMAC - Rn, 21 NMAC 16.4.4, 05/29/09]

21.16.4.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.4.5 NMAC - Rn, 21 NMAC 16.4.5, 05/29/09]

21.16.4.6 OBJECTIVE:

This part establishes the method of sale of specific commodities sold or offered for sale in New Mexico.

[7/1/97; 21.16.4.6 NMAC - Rn, 21 NMAC 16.4.6, 05/29/09]

21.16.4.7 DEFINITIONS:

A. "Berries" means all fruit whose names end in the term "berry".

B. "Cord" means the amount of fuelwood contained in a space of 128 cubic feet when the fuelwood is ranked and well stowed and when one-half (1/2) the kerf of the wood is included.

C. "SI" means the international system of units.

D. "Shellfish" means aquatic animals having a shell, such as mollusks or crustaceans.

E. "Small fruits" include, but are not limited to, cherries, currants and cherry tomatoes.

[7/1/97; 21.16.4.7 NMAC - Rn, 21 NMAC 16.4.7, 05/29/09]

21.16.4.8 [RESERVED]

21.16.4.9 METHODS OF SALE:

A. Berries and small fruits: Shall be offered and exposed for sale and sold by weight, or by volume. If sold by volume, berries and small fruits must be in measure containers having inch-pound capacities of one-half (1/2) dry pint, one (1) dry pint, or one (1) dry quart or SI capacities of two-hundred fifty (250) milliliters, five hundred (500) milliliters or one (1) liter. When sold by volume in measure containers, whether or not covered, the measure containers themselves shall not be packages for labeling purposes.

B. Bread: Bread kept, offered, or exposed for sale, whether or not packaged or sliced, shall be sold by weight. The wrappers of bread sold and expressly represented

at the time of sale as "stale bread" shall not be considered packages for labeling purposes.

C. Butter, oleomargarine, margarine, butter-like and/or margarine-like spreads: Shall be offered and exposed for sale and sold by weight.

D. Flour, corn meal and hominy grits: Wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, corn flour, corn meal and hominy grits, whether enriched or not, shall be packaged, kept, offered or exposed for sale and sold by weight.

E. Meat, poultry, fish and seafood:

(1) Shall be sold by weight, except whole shellfish in the shell may be sold by weight, measure or count.

(2) When meat, poultry, fish or seafood is combined with some other food element to form a distinctive food product, the quantity representation may be in terms of the total weight of the product or combination, and a quantity representation need not be made for each element.

F. Ready-to-eat food: When sold from bulk, or in single servings packed on the premises where sold, may be sold by weight, measure or count.

G. Fluid milk products: All fluid milk products, including but not limited to milk, lowfat milk, skim milk, non-fat milk, flavored milk, half and half, cream and cultured milk shall be sold in terms of fluid volume.

H. Other milk products: Cottage cheese, cottage cheese products and other milk products that are solid, semi-solid, viscous or a mixture of solid and liquid, as defined in the pasteurized milk ordinance of the U.S. public health service, as amended, shall be sold in terms of weight.

I. Factory packaged ice cream and similar frozen products: Ice cream, ice milk, frozen yogurt and similar products shall be sold in terms of fluid volume.

J. Sales of bulk commodities: Whenever the quantity is determined by the seller, all bulk deliveries of heating fuel and all bulk sales of one hundred (100) pounds or more net weight shall be accompanied by a delivery ticket containing the following information:

(1) the name and address of the buyer and seller;

(2) the date of the delivery;

(3) the quantity delivered and the quantity upon which the total selling price is based if this differs from the delivered quantity; and

(4) the identity of the commodity in the most descriptive terms commercially practicable including any quality representations made in connection with sale.

K. Fuelwood: Shall be advertised, offered for sale, and sold only by the cord or fractional part of a cord, except it may be sold by weight if the seller declares the price per unit of weight and the equivalent price per cord. The provisions of this method of sale shall not apply to fuelwood sold in packaged form in bundles of less than one hundred (100) pounds net weight.

L. Machine vended commodities: All vending machines dispensing packaged commodities shall indicate:

(1) product identity;

(2) net quantity; and

(3) name, address, and telephone number of party responsible for the vending machine;

(4) requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

M. Exemptions for small packages: The following shall be exempt from the labeling requirements for net quantity of the contents:

(1) individually wrapped pieces of "penny candy," meat or meat products, and other confectionery of less than one-half (1/2) ounce or fifteen (15) grams net weight per individual piece provided the container in which such confectionery is shipped or sold fulfills all labeling requirements set forth in 57-17-12.A, NMSA, 1978; and

(2) individual-serving-size packages of food containing less than one-half (1/2) ounce or fifteen (15) grams or less than one-half (1/2) fluid ounce or fifteen (15) milliliters for use in restaurants, institutions and passenger carriers.

[7/1/97; 21.16.4.9 NMAC - Rn, 21 NMAC 16.4.9, 05/29/09]

21.16.4.10 [RESERVED]

PART 5: BONDING AND REGISTRATION OF SERVICE TECHNICIANS AND SERVICE ESTABLISHMENTS FOR COMMERCIAL WEIGHING OR MEASURING DEVICES

21.16.5.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.5.1 NMAC - Rn, 21 NMAC 16.5.1 1/31/07, A, 5/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (575) 646-3007]

21.16.5.2 SCOPE:

All parties involved in the servicing or use of commercial weighing or measuring devices.

[7/1/97; 21.16.5.2 NMAC - Rn, 21 NMAC 16.5.2, 01/31/07]

21.16.5.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.5.3 NMAC - Rn, 21 NMAC 16.5.3, 01/31/07]

21.16.5.4 DURATION:

Permanent

[7/1/97; 21.16.5.4 NMAC - Rn, 21 NMAC 16.5.4, 01/31/07]

21.16.5.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.5.5 NMAC - Rn, 21 NMAC 16.5.5, 01/31/07]

21.16.5.6 OBJECTIVE:

This part provides for the bonding and registration of service technicians and service establishments for commercial weighing or measuring devices.

[7/1/97; 21.16.5.6 NMAC - Rn, 21 NMAC 16.5.6, 01/31/07]

21.16.5.7 DEFINITIONS:

A. "Commercial weighing or measuring device" means any device used or employed in establishing the quantity, weight, count, or size of products involving a

monetary transaction or in computing any basic charge or payment for services rendered on the basis of weight or measure.

B. "Department" means the New Mexico department of agriculture.

C. "Director" means the director of the New Mexico department of agriculture.

D. "Full service establishment" means any person, firm, or company which for the purpose of direct or indirect benefit installs, services, repairs, or reconditions commercial weighing or measuring devices. (bond required)

E. "Limited service establishment" means any person, firm, or company which installs, services, repairs, or reconditions commercial weighing or measuring devices solely under its ownership. (no bond required)

F. "Service technician" means any individual employed by a full or limited service establishment who installs, services, repairs, or reconditions commercial weighing or measuring devices.

[7/1/97; 21.16.5.7 NMAC - Rn, 21 NMAC 16.5.7, 01/31/07]

21.16.5.8 [RESERVED]

21.16.5.9 REGISTRATION:

A. Prior to installing, servicing, repairing or reconditioning any commercial weighing or measuring device in the state of New Mexico, a service establishment and each service technician employed by, or who is a part of, the service establishment shall be registered with the department. Application for registration shall be on a form supplied by the department with said form duly signed and witnessed. By applying for registration, the principal officer of the service establishment certifies that each service technician employed by the service establishment is fully competent to install, service, repair or recondition the class of devices for which registration is applied; has in their possession or available for use the required certified test standards and all necessary testing equipment, and required reference materials; and has full knowledge of all applicable laws, rules, and regulations. At the request of the department, an applicant shall submit appropriate evidence of qualifications.

B. This part shall not preclude or limit the right and privilege of any individual to install, service, repair, or recondition a commercial device owned by him or his employer. However, without registration, such individual is not permitted to remove an official out-of-order tag or place a device into commercial service.

[7/1/97; 21.16.5.9 NMAC - Rn, 21 NMAC 16.5.9, 01/31/07]

21.16.5.10 ANNUAL REGISTRATION FEES:

A complete registration will include payment of applicable fees for the registrant and all service technicians as established by an external policy memorandum.

[7/1/97; 21.16.5.10 NMAC - Rn & A, 21 NMAC 16.5.10, 01/31/07]

21.16.5.11 BOND REQUIRED:

With the application for full service registration, each service establishment shall furnish a one thousand dollar (\$1,000) surety bond payable to the state of New Mexico, or other proof of financial responsibility as may be prescribed by the director, for faithful performance of duty. A bond or other proof of financial responsibility shall apply to each registered service technician employed by the registered service establishment. The bond or other proof of financial responsibility shall be in a form prescribed by the director.

[7/1/97; 21.16.5.11 NMAC - Rn, 21 NMAC 16.5.11, 01/31/07]

21.16.5.12 REGISTRATION CERTIFICATE:

Upon receipt and acceptance of a properly executed application, the required bond (full service only) and calibration certificate, a "registration certificate" shall be issued for a period not to exceed one (1) year. Registration certificates are non-transferable.

[7/1/97; 21.16.5.12 NMAC - Rn, 21 NMAC 16.5.12, 01/31/07]

21.16.5.13 AUTHORITY AND RESPONSIBILITIES OF A REGISTRANT:

A. A registered service technician or registered service establishment shall have the authority to:

- (1) remove official tested and approved, out-of-order, and not sealed - not legal for trade stickers or tags;
- (2) break seals on adjustment mechanisms;
- (3) place into commercial service a device that has been officially rejected;
- (4) place into commercial service a new or used device.

B. Prior to placing a device into commercial service, it shall be the responsibility of the registered service technician to:

- (1) install, service, repair or recondition a commercial device in such a manner that the device will comply with applicable requirements set forth in *national institute of standards and technology (NIST) handbook 44*, as revised, and the weights and measures law and associated rules;

(2) remove from a commercial device being installed, serviced, repaired, or reconditioned all existing tested and approved, out-of-order or not sealed - not legal for trade stickers or tags;

(3) seal all adjustment mechanisms with an appropriate seal;

(4) affix to a commercial device installed, serviced, repaired, or reconditioned, a clearly visible tag or sticker containing the registered service establishment name or registration number and date on which installation, service, repair or recondition was performed.

[7/1/97; 21.16.5.13 NMAC - Rn, 21 NMAC 16.5.13, 01/31/07]

21.16.5.14 PLACE-IN-SERVICE REPORT:

A. Within five (5) calendar days after a new or used device is installed, or a device that has been officially rejected has been repaired, the original of the properly executed place-in-service report shall be sent to the department. The duplicate copy of the report shall be retained by the registered service establishment and the triplicate copy of the report shall be given to the owner or operator of the device.

B. A place-in-service report for the types of devices specified below shall be accompanied by the registered service establishment's test report which shows the device was tested and performing within applicable tolerances at the time the device was placed into service:

(1) For scales above two thousand (2,000) pounds or one thousand (1,000) kilograms capacity, a test report shall be required which shows that certified test weights were applied to test the scale to used capacity or ten thousand (10,000) pounds or five thousand (5,000) kilograms whichever is less.

(2) For meters (liquid measuring devices) with a capacity of more than twenty (20) gallons or seventy five (75) liters per minute, a test report shall be required which shows that a volumetric prover of sufficient capacity to receive a test draft as specified in *NIST handbook 44* for the device under test was used to test and calibrate the device.

(3) For devices other than those described above, test reports may be required by the director if it is determined at his discretion that test reports are in the best interest of all concerned.

[7/1/97; 21.16.5.14 NMAC - Rn, 21 NMAC 16.5.14; A, 01/31/07; A, 08/01/11]

21.16.5.15 STANDARDS AND TESTING EQUIPMENT:

A. A service technician or service establishment must possess or have available sufficient certified test standards to test in accordance with *NIST handbook 44* requirements the class of devices for which registration is applied. Prior to registration, and at least annually thereafter, all standards and testing equipment used by the registered service technician or registered service establishment shall be examined by the department or another approved laboratory and a calibration certificate issued for all standards and testing equipment found to be acceptable. A copy of the calibration certificate for all standards and testing equipment used by the registered service technician or registered service establishment shall accompany the registration application.

B. A registered service technician or registered service establishment shall not use in installing, servicing, repairing, or reconditioning a commercial device any standards or testing equipment that has not been certified.

[7/1/97; 21.16.5.15 NMAC - Rn, 21 NMAC 16.5.15, 01/31/07]

21.16.5.16 REVOCATION OF REGISTRATION CERTIFICATE:

The director may suspend or revoke a registration certificate in accordance with the procedures set forth in New Mexico department of agriculture administrative procedures and remedies for enforcement actions internal policy.

[7/1/97; 21.16.5.16 NMAC - Rn, 21 NMAC 16.5.16, 01/31/07]

21.16.5.17 LIST OF REGISTERED SERVICE ESTABLISHMENTS:

The department shall maintain and supply upon request a list of the registered service establishments.

[7/1/97; 21.16.5.17 NMAC - Rn, 21 NMAC 16.5.17, 01/31/07]

PART 6: PRICE REPRESENTATIONS

21.16.6.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.6.1 NMAC - Rn & A, 21 NMAC 16.6.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.16.6.2 SCOPE:

All retailers of consumer commodities.

[7/1/97; 21.16.6.2 NMAC - Rn, 21 NMAC 16.6.2, 05/29/09]

21.16.6.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.6.3 NMAC - Rn, 21 NMAC 16.6.3, 05/29/09]

21.16.6.4 DURATION:

Permanent

[7/1/97; 21.16.6.4 NMAC - Rn, 21 NMAC 16.6.4, 05/29/09]

21.16.6.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.6.5 NMAC - Rn, 21 NMAC 16.6.5, 05/29/09]

21.16.6.6 OBJECTIVE:

This part establishes the price representation requirements for all retail sales displays of consumer commodities sold by weight, measure or count.

[7/1/97; 21.16.6.6 NMAC - Rn, 21 NMAC 16.6.6, 05/29/09]

21.16.6.7 DEFINITIONS:

[RESERVED]

21.16.6.8 [RESERVED]

21.16.6.9 PRICE REPRESENTATIONS:

All retail sales displays of consumer commodities sold by weight, measure, or count shall include price information as provided below. It shall be the responsibility of the person or firm selling or offering the commodity for sale to furnish correct price information.

A. Whenever an advertised, posted or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be immediately adjacent to, of the same general design and style, and at least one-half (1/2) the height and width of the numerals representing the whole cent.

B. Price information may be displayed by means of a sign, which offers the price for one or more brands and/or sizes of a given commodity, by means of a sticker, stamp, sign, label or tag affixed to the shelf upon which the commodity is displayed, or by means of a sticker, stamp, sign, label or tag affixed to the commodity itself.

C. Where a sign providing price information for one or more sizes or brands of a given commodity is used, that sign shall be provided clearly and in a nondeceptive manner in a central location as close as practical to all items to which the sign refers.

D. If a single sign or tag does provide the price information for more than one brand or size of a given commodity, the following information shall be provided:

- (1) the identity and the brand name of the commodity;
- (2) the quantity of the packaged commodity if more than one package size per brand is displayed; and
- (3) the total retail sales price.

[7/1/97; 21.16.6.9 NMAC - Rn, 21 NMAC 16.6.9, 05/29/09]

21.16.6.10 [RESERVED]

PART 7: NEW MEXICO CHILE VERIFICATION AND RECORD REQUIREMENTS

21.16.7.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

[21.16.7.1 NMAC - N, 01/17/2012]

21.16.7.2 SCOPE:

All vendors of New Mexico chile products.

[21.16.7.2 NMAC - N, 01/17/2012]

21.16.7.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university, under the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through 4, New Mexico Statutes Annotated 1978 Compilation.

[21.16.7.3 NMAC - N, 01/17/2012; A, 09/30/2013]

21.16.7.4 DURATION:

Permanent.

[21.16.7.4 NMAC - N, 01/17/2012]

21.16.7.5 EFFECTIVE DATE:

January 17, 2012, unless a later date is cited at the end of a section.

[21.16.7.5 NMAC - N, 01/17/2012]

21.16.7.6 OBJECTIVE:

This rule establishes the New Mexico chile advertising requirements for New Mexico chile and products offered for sale containing New Mexico chile.

[21.16.7.6 NMAC - N, 01/17/2012]

21.16.7.7 DEFINITIONS:

- A. "Board" means the board of regents of New Mexico state university.
- B. "Department" means New Mexico department of agriculture.
- C. "Director" means the director of the New Mexico department of agriculture.
- D. "New Mexico chile" referred to in these rules is capsicum annum. Capsicum annum includes all chile varieties comprising that species grown in New Mexico.
- E. "Vendor" means any person or business that is involved in the sale of chile or chile products.
- F. "Verification form" is a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico.

[21.16.7.7 NMAC - N, 01/17/2012]

21.16.7.8 [RESERVED]

21.16.7.9 METHOD OF SALE REQUIREMENTS:

- A. A five percent by weight maximum tolerance of non-New Mexico chile is allowed. This tolerance is necessary because of the potential mixture of New Mexico grown and non-New Mexico grown lots on grading tables, harvesting equipment, processing

equipment, conveying equipment, cooking pots, display tables, and the use of natural chile derived heat extract.

B. Blending of up to five percent by weight of non-New Mexico chile will be allowed to meet the sales orders for Scoville scale (heat level) and ASTA (color).

[21.16.7.9 NMAC - N, 01/17/2012]

21.16.7.10 VERIFICATION AND RECORD REQUIREMENTS:

A. Submission of verification form requirement for processed chile:

(1) Each chile vendor of products offered for sale containing New Mexico chile or product that reasonably implies that the chile peppers are, or the product contains, New Mexico chile, must fill out, sign, and submit a verification form to the department. Verification forms must be submitted within three months of institution of these rules for existing vendors and within one month for new vendors starting a business. The department will supply a verification form (available at the department and on the website) which includes:

(a) a guarantee by the submitter that record keeping requirements are being met for chile advertised as New Mexico chile;

(b) a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico;

(c) a guarantee that the regulations are being followed by those selling chile as New Mexico chile.

(2) The department is empowered to audit the required purchasing and sales records of any vendor coming under the provisions of the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through 4, NMSA 1978. These records shall be retained for a period of one year. A business receiving request for records shall permit the inspection immediately or as soon as is practicable under the circumstances not to exceed three business days. Failure to submit the records on request of the department or its authorized agents is a violation of the New Mexico Chile Advertising Act.

B. Submission of verification form requirement for fresh chile:

(1) Verification forms must be submitted with each load and followed through to the point of sale. The department will supply a verification form (available at the department and on the website) and includes:

(a) a guarantee by the submitter that record keeping requirements are being met for chile advertised as New Mexico chile;

(b) a guarantee by the submitter that chile sold as New Mexico chile was grown in New Mexico.

(2) Copy of the verification form must accompany each load of fresh New Mexico chile wherever it is sold.

(3) The department is empowered to audit the required purchasing and sales records of any vendor coming under the provisions of the New Mexico Chile Advertising Act, Chapter 25, Article 11, Sections 1 through-4, NMSA, 1978 Compilation. These records shall be retained for a period of one year. Failure to submit the records on request of the department or its authorized agents is a violation of the New Mexico Chile Advertising Act.

(4) Sales of twenty thousand pounds or less of chile peppers per calendar year by the person that grew the chile peppers are exempt from any record keeping requirement.

C. The department will maintain a public website that lists all chile product vendors that have submitted verification form(s).

[21.16.7.10 NMAC - N, 01/17/2012; A, 09/30/2013]

21.16.7.11 EMERGENCY WAIVER:

Any or all of the provisions of this rule may be temporarily waived by the director when he determines, at his discretion, that an emergency warrants such waiver.

[21.16.7.11 NMAC - N, 01/17/2012]

PART 8: [RESERVED]

PART 9: WEIGHMASTER BONDING REQUIREMENTS

21.16.9.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.9.1 NMAC - Rn & A, 21 NMAC 16.9.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.16.9.2 SCOPE:

All individuals engaged in public weighing or charging a fee for any weight determination.

[7/1/97; 21.16.9.2 NMAC - Rn, 21 NMAC 16.9.2, 05/29/09]

21.16.9.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weighmaster Act, Chapter 57, Article 18, Sections 1 through 26, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.9.3 NMAC - Rn, 21 NMAC 16.9.3, 05/29/09]

21.16.9.4 DURATION:

Permanent

[7/1/97; 21.16.9.4 NMAC - Rn, 21 NMAC 16.9.4, 05/29/09]

21.16.9.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.9.5 NMAC - Rn, 21 NMAC 16.9.5, 05/29/09]

21.16.9.6 OBJECTIVE:

This part specifies the means by which a weighmaster shall meet the bonding requirements of the New Mexico Weighmaster Act.

[7/1/97; 21.16.9.6 NMAC - Rn, 21 NMAC 16.9.6, 05/29/09]

21.16.9.7 DEFINITIONS:

A. "Department" means the New Mexico department of agriculture.

B. "Director" means the director of the New Mexico department of agriculture.

C. "Public weighing" means the determination of any weight upon which a sale is based, or upon which a basic charge or payment for services rendered is based, when the person making the weight determination is not a party to, or an agent of the party to, the transaction upon which the weight is based.

D. "Weighmaster" means any person who performs public weighing as defined in Subsection C of 21.16.9.7 NMAC.

[7/1/97; 21.16.9.7 NMAC - Rn, 21 NMAC 16.9.7, 05/29/09]

21.16.9.8 [RESERVED]

21.16.9.9 BONDING REQUIREMENTS:

It is the responsibility of the director to determine, in his sole discretion, whether each applicant for a weighmaster license has met the bonding requirements, as well as the other licensing requirements, set forth in the Weighmaster Act. The director may provide applicants the opportunity to meet the bonding requirements by one of the following alternatives.

A. Corporate surety bond: The applicant shall execute and deliver to the director a surety bond in the sum of one thousand dollars (\$1,000). The bond shall be executed by the applicant as principal and by a corporate surety company qualified and authorized to do business in New Mexico as a surety. The bond shall be on a form furnished by the department. The bond may be for a term of one (1) or more years. Each renewal will be by means of a continuation certificate or a new bond.

B. Personal bond: The applicant may, if approved by the department, act as his own surety, or may have such other persons, partnership, joint ventures and corporations as may be approved by the department act as surety. Prior to any review of the personal bond by the department, the surety must furnish the department, at the time of the application for registration or renewal of registration, a current financial statement in form satisfactory to the department showing that the surety has liquid assets of at least five thousand dollars (\$5,000), with which to meet the bond application. What constitutes "liquid assets" shall be subject to the sole discretion of the department. The financial statement must be audited and certified by a certified public accountant licensed to do business in the state of New Mexico, or in the state in which the surety has his principal place of business.

C. Certificate of deposit: Applicant may deposit one thousand dollars (\$1,000) in a savings and loan association, bank, or trust company located within the state of New Mexico. The savings and loan, bank or trust company must be insured by an agency of the federal government and must be approved by the department. The certificate of deposit must be on a form approved from time to time by the department at its sole discretion. The certificate shall specifically include a provision that the deposit may not be withdrawn, pledged or assigned by the applicant to others during the applicant's registration term, and for a period of one year after the expiration of the term of registration. However, the certificate may contain a provision that all interest may be paid directly to the applicant as the interest accrues. During the term of the certificate, the certificate shall be under subconditions that the state of New Mexico or the department may order the deposit to be paid to the state or the department. In the event that all or part of the deposit is executed upon by a court of competent jurisdiction, or applied to the department during the term of the applicant's registration, the applicant shall forthwith deposit an additional sum sufficient to maintain the one thousand dollars (\$1,000) minimum under the same conditions for the remainder of the applicant's term of registration and for the period of one year thereafter. The certificate of deposit shall be held by the department and the institution issuing the certificate shall be so advised.

D. Irrevocable letter of credit: The applicant may submit an irrevocable letter of credit in the sum of one thousand dollars (\$1,000) established in favor of the state or the department at a bank located within the state of New Mexico. The bank must be insured by an agency of the federal government and must be approved by the department. The irrevocable letter of credit shall be available to be drawn on by the state or the department during the applicant' s registration term and for a period of one year after the expiration of the term of registration. Should the state or department exercise their rights to collect upon the irrevocable letter of credit, these monies shall be immediately delivered to the state or department.

E. Cash/certified check: For interim bonding the applicant may deposit with the department one thousand dollars (\$1,000) in the form of cash or certified check. A certified check shall be drawn on a bank located within the state of New Mexico and made payable to the department. The bank must be insured by an agency of the federal government and must be approved by the department. The certified check must on its face indicate it is valid, and cannot be canceled for a period of eighteen (18) months after the date of issue. The cash or certified check will be held by the department during the interim period until the bonding requirements set by this rule are met.

[7/1/97; 21.16.9.9 NMAC - Rn, 21 NMAC 16.9.9, 05/29/09]

21.16.9.10 [RESERVED]

PART 10: CHECKING THE NET CONTENTS OF PACKAGED GOODS

21.16.10.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.16.10.1 NMAC - Rn & A, 21 NMAC 16.10.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.16.10.2 SCOPE:

All manufacturers, packers, distributors and retailers of consumer commodities.

[7/1/97; 21.16.10.2 NMAC - Rn, 21 NMAC 16.10.2, 05/29/09]

21.16.10.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.16.10.3 NMAC - Rn, 21 NMAC 16.10.3, 05/29/09]

21.16.10.4 DURATION:

Permanent

[7/1/97; 21.16.10.4 NMAC - Rn, 21 NMAC 16.10.4, 05/29/09]

21.16.10.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.16.10.5 NMAC - Rn, 21 NMAC 16.10.5, 05/29/09]

21.16.10.6 OBJECTIVE:

This part establishes the procedure for compliance testing and checking the net contents of packaged goods.

[7/1/97; 21.16.10.6 NMAC - Rn, 21 NMAC 16.10.6, 05/29/09]

21.16.10.7 DEFINITIONS:

[RESERVED]

21.16.10.8 [RESERVED]

21.16.10.9 PACKAGED GOODS:

The procedure for compliance testing and checking the net contents of packaged goods shall be those contained in the latest edition of *national institute of standards and technology (NIST) handbook-133*.

[7/1/97; 21.16.10.9 NMAC - Rn, 21 NMAC 16.10.9, 05/29/09]

21.16.10.10 [RESERVED]

PART 11: APPLYING ADMINISTRATIVE PENALTIES: WEIGHTS AND MEASURES LAW

21.16.11.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[21.16.11.1 NMAC - N, 3/14/2008; A, 5/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (575) 646-3007]

21.16.11.2 SCOPE:

All parties regulated under the Weights and Measures Law.

[21.16.11.2 NMAC - N, 3/14/2008]

21.16.11.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weights and Measures Law, Chapter 57, Article 17, Sections 1 through 19, New Mexico Statutes Annotated, 1978 Compilation.

[21.16.11.3 NMAC - N, 3/14/2008]

21.16.11.4 DURATION:

Permanent

[21.16.11.4 NMAC - N, 3/14/2008]

21.16.11.5 EFFECTIVE DATE:

March 14, 2008, unless a later date is cited at the end of a section.

[21.16.11.5 NMAC - N, 3/14/2008]

21.16.11.6 OBJECTIVE:

This part provides for assessment of administrative penalties for violations of the Weights and Measures Law or rules adopted under the act and specifies the appeal process.

[21.16.11.6 NMAC - N, 3/14/2008]

21.16.11.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Director" means the director/secretary of the New Mexico department of agriculture.
- C. "Division director" means the director of the division of standards and consumer services within the New Mexico department of agriculture.

D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for the administration of the Weights and Measures Law and associated rules.

E. "Violation /offense" means disregard of field enforcement actions or the law.

F. "Routine inspection" means inspections conducted within the prescribed guidelines for frequency.

G. "Testing and inspection procedures" means procedures adopted from various handbooks, rules and reference materials which include, but are not limited, to the following: *the national institute of standards and technology (NIST) handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices; NIST handbook 133, checking the net contents of packaged goods; NIST handbook 112, examination procedure outlines for commercial weighing and measuring devices a manual for weights and measures officials; the New Mexico department of agriculture, examination procedure for price verification.*

[21.16.11.7 NMAC - N, 3/14/2008]

21.16.11.8 [RESERVED]

21.16.11.9 ASSESSING PENALTIES:

The assessment of administrative penalties will be used as intermediate step between field enforcement actions and court action, or when stop sale orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. All monies derived from administrative penalties to be deposited in the state general fund after all expenses. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, with concurrence of the supervisor, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions, such as stop sale orders. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the

director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. Violations/offenses are per business location not per company and will be based on offenses per routine inspection. All inspections will be based on adopted testing and inspection procedures. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, and 14 of this part.

[21.16.11.9 NMAC - N, 3/14/2008]

21.16.11.10 GRAVITY OF VIOLATION:

A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.
- (2) Degree of inconvenience or deception to a buyer or prospective buyer.
- (3) Degree of disregard for the law.

B. COLUMN A: Minimal gravity -- When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.

C. COLUMN B: Moderate gravity -- When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.

D. COLUMN C: Great gravity -- When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.

[21.16.11.10 NMAC - N, 3/14/2008]

21.16.11.11 FREQUENCY OF VIOLATION:

The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

A. When a person commits the same violation three (3) or more times in a twelve (12) month period, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be a twelve (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.16.11.11 NMAC - N, 3/14/2008]

21.16.11.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.16.11.12 NMAC - N, 3/14/2008]

21.16.11.13 PAYMENT OF PENALTY:

If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.16.11.13 NMAC - N, 3/14/2008]

21.16.11.14 PENALTY TABLE:

TABLE I

Gravity	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE	
	A	B	C	A	B	C	A	B
C	\$250.	\$1000.	\$1500.	\$2000.	\$2500.			
	\$3000.	\$3500.	\$4000.	\$5000.				

[21.16.11.14 NMAC - N, 3/14/2008]

PART 12: APPLYING ADMINISTRATIVE PENALTIES: WEIGHMASTER ACT

21.16.12.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[21.16.12.1 NMAC - N, 3/14/2008; A, 5/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (575) 646-3007]

21.16.12.2 SCOPE:

All parties regulated under the Weighmaster Act.

[21.16.12.2 NMAC - N, 3/14/2008]

21.16.12.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Weighmaster Act, Chapter 57, Article 18, Sections 1 through 26, New Mexico Statutes Annotated, 1978 Compilation as amended by Chapter 80, Laws of 1979.

[21.16.12.3 NMAC - N, 3/14/2008]

21.16.12.4 DURATION:

Permanent

[21.16.12.4 NMAC - N, 3/14/2008]

21.16.12.5 EFFECTIVE DATE:

March 14, 2008, unless a later date is cited at the end of a section.

[21.16.12.5 NMAC - N, 3/14/2008]

21.16.12.6 OBJECTIVE:

This part provides for assessment of administrative penalties for violations of the Weighmaster Act or rules adopted under the act and specifies the appeal process.

[21.16.12.6 NMAC - N, 3/14/2008]

21.16.12.7 DEFINITIONS:

A. "Department" means the New Mexico department of agriculture.

B. "Director" means the director/secretary of the New Mexico department of agriculture.

C. "Division director" means the director of the division of standards and consumer services within the New Mexico department of agriculture.

D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for the administration of the Weighmaster Act and associated rules.

E. "Violation /offense" means disregard of field enforcement actions or the law.

F. "Routine inspection" means inspections conducted within the prescribed guidelines for frequency.

G. "Testing and inspection procedures" means procedures adopted from various handbooks, rules and reference materials which include, but are not limited, to the following: *the national institute of standards and technology (NIST) handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices; NIST handbook 112, examination procedure outlines for commercial weighing and measuring devices a manual for weights and measures officials.*

[21.16.12.7 NMAC - N, 3/14/2008]

21.16.12.8 [RESERVED]

21.16.12.9 ASSESSING PENALTIES:

The assessment of administrative penalties will be used as an intermediate step between field enforcement actions and court action, or when out of orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. All monies derived from administrative penalties to be deposited in the state general fund after all expenses. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, with concurrence of the supervisor, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no

penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. Violations/offenses are per business location not per company and will be based on offenses per routine inspection. All inspections will be based on adopted testing and inspection procedures. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, and 14 of this part.

[21.16.12.9 NMAC - N, 3/14/2008]

21.16.12.10 GRAVITY OF VIOLATION:

A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.
- (2) Degree of inconvenience or deception to the user or prospective user.
- (3) Degree of disregard for the law.

B. COLUMN A: Minimal gravity -- When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.

C. COLUMN B: Moderate gravity -- When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.

D. COLUMN C: Great gravity -- When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.

[21.16.12.10 NMAC - N, 3/14/2008]

21.16.12.11 FREQUENCY OF VIOLATION:

The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

A. When a person commits the same violation more than three (3) times in a twelve (12) month period, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be a twelve (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.16.12.11 NMAC - N, 3/14/2008]

21.16.12.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.16.12.12 NMAC - N, 3/14/2008]

21.16.12.13 PAYMENT OF PENALTY:

If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.16.12.13 NMAC - N, 3/14/2008]

21.16.12.14 PENALTY TABLE:

TABLE I

OFFENSE	FIRST OFFENSE			SECOND OFFENSE			THIRD	
	A	B	C	A	B	C	A	B
Gravity C	\$250.	\$1000.	\$1500.	\$2000.	\$5000.	\$4000.	\$2500.	
	\$3000.	\$3500.						

[21.16.12.14 NMAC - N, 3/14/2008]

CHAPTER 17: PEST, DISEASE, AND WEED CONTROL

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PLANT NURSERY LICENSING AND INSPECTION

21.17.2.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture, MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (505) 646-3007.

[7/1/97; 21.17.2.1 NMAC - Rn, 21 NMAC 17.2.1, 01/01/09]

21.17.2.2 SCOPE:

Part 2 shall apply to all persons selling nursery stock in New Mexico.

[7/1/97; 21.17.2.2 NMAC - Rn, 21 NMAC 17.2.2, 01/01/09]

21.17.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Plant Protection Act, Chapter 76, Article 5, Sections 11 through 28, NMSA 1978 Compilation.

[7/1/97; 21.17.2.3 NMAC - Rn, 21 NMAC 17.2.3, 01/01/09]

21.17.2.4 DURATION:

Permanent.

[7/1/97; 21.17.2.4 NMAC - Rn, 21 NMAC 17.2.4, 01/01/09]

21.17.2.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.17.2.5 NMAC - Rn, 21 NMAC 17.2.5, 01/01/09]

21.17.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 17 is to establish annual fees for nursery inspections, licenses, and collected plants permits; and to establish standards to maintain the health and vigor of nursery stock offered for sale in New Mexico.

[7/1/97; 21.17.2.6 NMAC - Rn, 21 NMAC 17.2.6, 01/01/09]

21.17.2.7 DEFINITIONS:

[RESERVED]

21.17.2.8 LICENSE YEAR:

The license year shall be a twelve month period from October 1 to September 30. Licenses, certificates or permits issued at any time during the license year shall expire on September 30 following issuance.

[7/1/97; 21.17.2.8 NMAC - Rn, 21 NMAC 17.2.8, 01/01/09]

21.17.2.9 FEES:

A. The annual fee for an inspection certificate shall be seventy-five dollars (\$75) plus two dollars (\$2) per acre, except as provided for in Subsection A of 21.17.2.10 NMAC.

B. The annual fee for an inspection certificate for farmers markets or other grower cooperatives shall be seventy-five dollars (\$75) per location.

C. The annual license fee for a nursery or florist dealer, landscaper or agent shall be seventy-five dollars (\$75).

D. The annual fee for a special dealer's license for persons who handle only vegetable or cactus plants shall be twenty-five dollars (\$25).

E. The annual fee for a special vegetable inspection certificate for persons who grow only vegetable plants shall be twenty-five dollars (\$25).

F. The annual fee for a collected plants permit shall be seventy-five dollars (\$75).

G. Double fees required because of late renewal of licenses or permits described in Subsections A through F of 21.17.2.9 NMAC shall be twice the amount stated for the appropriate license or permit.

H. Once the appropriate document has been issued by the department, fees collected for licenses or permits are non-refundable.

I. Fees for licenses or permits may be paid by money order, personal check or cashier's check. Cash may be accepted only at the Las Cruces office of the department and only during business hours. Businesses or individuals who pay fees with personal checks that are later returned to the department because of insufficient funds or accounts closed shall make all future payments of fees with money orders, cashier's checks or cash. Fees and licenses are not transferable between individuals or businesses whether or not the businesses are owned by the same individual.

[7/1/97; 21.17.2.9 NMAC - Rn & A, 21 NMAC 17.2.9, 01/01/09]

21.17.2.10 EXEMPTIONS:

A. A non-profit educational, charitable or service organization may be exempt from payment of fees for a plant protection license or permit provided the applicant provides to the department in writing that:

(1) nursery and/or floral stock offered for sale by the organization is grown by its members and/or is purchased from a New Mexico certified or licensed nursery or florist dealer;

(2) the funds received from the sale of such plants shall be used for the benefit of the organization or for improvement or beautification projects within the local community;

(3) a properly completed and signed application for the appropriate license or permit is filed by the applicant in addition to written statements described in Paragraphs (1) and (2) of Subsection A of 21.17.2.10 NMAC;

(4) an organization meeting the criteria described in Paragraphs (1) through (3) of Subsection A of 21.17.2.10 NMAC may be exempt from fees for one license or permit for one activity category only. Additional licenses or permits and all tags shall be available at the fee schedule described in Subsections A through I of 21.17.2.9 NMAC.

B. A school organization affiliated with a state accredited education institution, whose primary function as part of the offered academic curriculum is to teach members or students to landscape or to propagate and market nursery and floral stock, may provide landscape services or may sell nursery or florist stock raised by organization members without payment of fees. A properly completed application for the appropriate license, permit and activity shall be filed with the department annually by the organization's sponsor along with a written description of the organization, its activities and its affiliation with a particular state accredited institution.

C. An individual who grows plants by his own efforts for pleasure, whose return from sales do not exceed the outlay for propagative plant materials, who does not advertise or display for purpose of sale and who does not sell any nursery/floral stock interstate or internationally is exempt from payment of fees. No license or permit is required.

D. Fees may be waived by the director when, in his discretion, special circumstances warrant such a waiver.

[7/1/97; 21.17.2.10 NMAC - Rn, 21 NMAC 17.2.10, 01/01/09]

21.17.2.11 LICENSES FOR FARMERS MARKETS AND GROWER COOPERATIVES:

A. Farmers markets and grower cooperatives may obtain an inspection certificate whereby registered members of the farmers market or grower cooperative may sell plants they have grown on land owned or leased by them without obtaining an individual inspection certificate.

B. A person selling under a farmers market or grower cooperative inspection certificate may only sell plants grown by themselves on land owned or leased by them.

C. Persons selling plants which have been purchased from a wholesaler or other person for resale shall be required to obtain a nursery dealers license in order to sell their plants.

D. The farmers market or grower cooperative shall supply the department with a list of registered persons authorized to sell plants grown by them at the farmers market or grower cooperative.

E. Persons selling plants under a farmers market or grower cooperative permit can only sell plants at the registered location for the farmers market or growers cooperative. Sales at any other location shall require an individual inspection certificate or nursery dealers license issued to that individual person or company.

[7/1/97; 21.17.2.11 NMAC - Rn, 21 NMAC 17.2.11, 01/01/09]

21.17.2.12 EFFECTIVE DATE OF APPLICATION AND PAYMENT OF DOUBLE FEES:

A. The effective date of application for license and permit renewals by mail shall be the date postmarked on the applicant's properly completed application package. Renewal packages postmarked September 30 or before may be considered for renewal at single fee rates as described in Subsections A through F of 21.17.2.9 NMAC. Renewal packages postmarked October 1 or later are considered late; these packages will be returned to the applicant along with appropriate paperwork for renewal at double fee rates as described in Subsection G of 21.17.2.9 NMAC.

B. The effective date of application for license and permit renewals done in person shall be the actual calendar date when the properly completed application or renewal package is presented to the department. These application or renewal packages may be received by the department only during regular business hours.

C. Incomplete or improperly completed application or renewal packages will be so identified by the department and returned to the applicant for completion or correction. The effective date of application shall be the date postmarked on the original envelope for packages received by mail; the effective date of application for packages submitted in person shall be the actual calendar date the applicant first presents the package to the department office. This presentation shall occur during regular business hours only.

[7/1/97; 21.17.2.12 NMAC - Rn, 21 NMAC 17.2.12, 01/01/09]

21.17.2.13 USE OF AN AFFIDAVIT TO OBTAIN A PLANT PROTECTION LICENSE OR PERMIT AT SINGLE FEE RATES:

Owners or operators of seasonal businesses may renew their plant protection licenses or permits at single fee rates only if they provide the department with an affidavit stating that they have not engaged in buying, selling, digging or taking orders for florist or nursery stock for at least ninety (90) days following the expiration of their old license or permit. This claim by the businessman shall be verified in writing by the department's inspector. Contradictory evidence obtained by the inspector at any time during the license year shall be cause to require payment of double fees for renewal of all appropriate license categories.

[7/1/97; 21.17.2.13 NMAC - Rn, 21 NMAC 17.2.13, 01/01/09]

21.17.2.14 COLLECTING PLANTS THAT ARE GROWING IN THE WILD ON STATE, FEDERAL, OR PRIVATE LANDS:

A. Any person, prior to collecting plants growing in the wild for sale, shall obtain annually a collected plant permit from the department. Application shall be made on a form prescribed by the department and shall be accompanied by the prescribed fee.

B. Vehicles used to transport collected plants for sale by persons holding valid collected plant permits shall have the collected plant permit number displayed on both sides of the vehicle in letters and numerals not less than three (3) inches high.

- (1) The letters and numerals shall be in a contrasting color.
- (2) The number shall be in the following format: CP no. XXXX.
- (3) The XXXX is the collected plant permit number issued by the department.

(4) The permit number may be on magnetic or other removable media, but must be displayed at all times when transporting collected plants for sale.

C. Collected plants brought into New Mexico from out-of-state for sale shall be accompanied by a bill-of-sale showing the state of origin.

D. Collected plant permits are not transferable.

[7/1/97; 21.17.2.14 NMAC - Rn, 21 NMAC 17.2.14, 01/01/09]

21.17.2.15 STORAGE AND DISPLAY OF NURSERY STOCK:

A. Balled and burlapped nursery stock shall be maintained by surrounding and covering the earth ball with sawdust, peat, shingletow or other moisture-holding material not toxic to plants. Such moisture-holding material shall be kept moist at all times.

B. Container nursery stock shall be watered sufficiently to maintain the viability and vigor of the stock and shall be kept under temperature and light intensity conditions that will permit normal growth.

C. Bare-root nursery stock shall be kept under conditions of temperature and moisture to retard growth and maintain viability. Moisture must be supplied to the root system by high humidity conditions in storage or by covering the roots with soil, sawdust, peat, shingletow or other moisture-holding material not toxic to plants; such moisture-holding material to be kept moist at all times.

D. Prepackaged nursery stock with roots packaged in moisture retaining plastic, peat, shingletow or other moisture retaining material not toxic to plants must be stored and displayed under conditions that will retard etiolated (non-green) or otherwise abnormal growth and will insure an adequate supply of moisture to the roots at all times.

E. All prepackaged nursery stock must have printed on the package the name and address of the packer or grower.

[7/1/97; 21.17.2.15 NMAC - Rn, 21 NMAC 17.2.15, 01/01/09]

21.17.2.16 MINIMUM INDICES OF VITALITY:

A. Woody stemmed deciduous nursery stock such as fruit and shade trees, rose bushes and flowering shrubs shall have moist, green cambium tissue, in the stem or stems and branches and shall have viable buds or normal green, unwilted growth sufficient to permit the stock to live and grow in a form characteristic of the species when planted and given reasonable care, except that in the cases of rose bushes each stem must show moist, green undamaged cambium in at least the first 8 inches above the graft. Any single stem on a rose bush not meeting this specification shall disqualify the entire plant: provided that a bush may be pruned to comply with the specification of at least one stem meeting the specification remains and the grade designation is changed accordingly, if sold by grade. No green wax or other colored coatings may be used on nursery stock which may conceal harmful insects and diseases or conceal the true condition of plants.

B. Hardy herbaceous biennials or perennials when in a wilted, rotted or any other such condition indicative of subnormal vitality shall not be sold or offered for sale.

C. Any bare-rotted or prepackaged woody-stemmed nursery stock having more than 2 inches of etiolated (non-green) growth from individual buds shall not be sold or offered for sale.

D. Balled and burlapped nursery stock in a weakened condition as evidenced by die-back or dryness of foliage or such stock having broken or loose earthballs or earthballs of a size smaller than established by the American standard for nursery stock shall not be sold or offered for sale.

E. Nursery stock on display at sales outlets not meeting the foregoing minimum indices of vitality shall be destroyed or removed from public view by the owner or person in charge and not offered for sale.

[7/1/97; 21.17.2.16 NMAC - Rn, 21 NMAC 17.2.16, 01/01/09]

PART 3-26: [RESERVED]

PART 27: JAPANESE BEETLE EXTERIOR QUARANTINE

21.17.27.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture,

[21.17.27.1 NMAC - N, 06/30/11]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.27.2 SCOPE:

Part 27 shall apply to all persons transporting regulated articles into and through New Mexico.

[21.17.27.2 NMAC - N, 06/30/11]

21.17.27.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilations.

[21.17.27.3 NMAC - N, 06/30/11]

21.17.27.4 DURATION:

Permanent.

[21.17.27.4 NMAC - N, 06/30/11]

21.17.27.5 EFFECTIVE DATE:

June 30, 2011, unless a later date is cited at the end of a section.

[21.17.27.5 NMAC - N, 06/30/11]

21.17.27.6 OBJECTIVE:

The objective of Part 27, Chapter 17 is to reduce the risk of introducing Japanese beetle into New Mexico.

[21.17.27.6 NMAC - N, 06/30/11]

21.17.27.7 DEFINITIONS:

A. "Board" means the board of regents of New Mexico state university or any officer or employee to whom authority to act in their stead has been or hereafter may be delegated.

B. "Free of soil" individual soil "clump(s)" less than ½ inch in diameter.

C. "Department" means the New Mexico department of agriculture.

D. "Certificate" an authenticated document issued by the department of agriculture affirming compliance with quarantine restrictions affecting movements of regulated articles, indicating articles are believed to be free of the live quarantine pest.

E. "Infestation" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.

F. "Director" means the director of New Mexico department of agriculture.

[21.17.27.7 NMAC - N, 06/30/11]

21.17.27.8 JAPANESE BEETLE EXTERIOR QUARANTINE:

A. Pest: Japanese beetle, *Popillia japonica*.

B. Areas under quarantine: States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

C. Any areas not listed in Subsection B of 21.17.27.8 NMAC where Japanese beetle has been found or areas where Japanese beetle is believed to occur shall be included as an area under quarantine.

D. Regulated articles:

- (1) Japanese beetle in any living state of development.
- (2) Grass and grass sod, regardless of container size.
- (3) Nongramineous plants with roots and soil or soilless medium attached and growing in

containers that have a horizontal surface area equal to or greater than 113 square inches (i.e. 12 inch diameter pot) or shipped as "ball and burlap" with rootballs equal to or greater than 12 inches in diameter; houseplants grown in the home and not for sale are exempt.

- (4) Bulbs, corms, tubers, and rhizomes, unless free of soil.
- (5) Any other product, articles, or means of conveyance of any character whatsoever, not covered by this subsection, are regulated articles when it is determined by the department that they present a risk of spreading Japanese beetle and the person in possession thereof has been so notified.

[21.17.27.8 NMAC - N, 06/30/11]

21.17.27.9 RESTRICTIONS:

A. All regulated articles are prohibited entry into New Mexico from areas under quarantine unless they have the required certificate. A phytosanitary certificate or compliance agreement issued by an authorized state agricultural official of the origin state must accompany regulated articles moved from the quarantined area into New Mexico. Compliance agreements must be preapproved by the New Mexico state plant regulatory official prior to shipment. The certificate must state that the regulated article is certified free of Japanese beetle based on one of the following options.

(1) Regulated article originated in certified Japanese beetle-free premises in a quarantined area and has not been exposed to an infestation while within the quarantined area. Premises approved by the state plant regulatory official include Japanese beetle-free greenhouse or screenhouse that has been inspected annually and approved by an authorized state agricultural official of the origin state as being Japanese beetle free in accordance to criteria specified in the *U.S. Japanese beetle harmonization plan*, Appendix 1, "Production in an approved Japanese-free greenhouse/screenhouse." The following additional declaration shall appear on the state phytosanitary certificate, "The rooted plants (or crowns) were produced in an approved Japanese beetle-free greenhouse or screenhouse."

(2) Regulated article production cycle completed and shipped during an adult Japanese beetle-free period. The adult Japanese beetle-free period will be based on

recent trapping information conducted by an authorized state agricultural official of the origin state for that location. Only plants grown in sterilized and soilless medium will be considered for entry into New Mexico under this certification. The following additional declaration shall appear on the state phytosanitary certificate, "The plants were produced and shipped outside the adult Japanese beetle flight period."

(3) Regulated article treated to destroy Japanese beetle infestations in accordance with the *U.S. Japanese beetle harmonization plan*, Appendix 1, "*application of approved regulatory treatment*." The following additional declaration shall appear on the state phytosanitary certificate, "The rooted plants were treated to control *Popillia japonica*, in accordance to the criteria for shipment to Category 1 states as provided in the *U.S. domestic Japanese beetle harmonization plan*, or treated using a method approved by the New Mexico state plant regulatory official."

(4) Regulated article subject to *origin detection survey*. Regulated articles originating from specific counties not infested with Japanese beetle and within infested states may be accepted if the county of origin is shown not to be infested with Japanese beetle based on current and historic adult surveys. An authorized state agricultural official of the origin state must reapply annually in writing to the New Mexico state plant regulatory official for inclusion of counties under this option. Decision by the department to approve shipment of regulated articles under this option will be based on the results from adult surveys conducted by the department of agriculture of the originating state. Surveys to detect Japanese beetle adults shall be conducted at each growing location and throughout the county. The following additional declaration shall appear on the state phytosanitary certificate, "The plants were produced and shipped from an area not found to be infested with Japanese beetle in accordance with the New Mexico's Japanese Beetle Exterior Quarantine." Requests for approval of regulated articles under this option shall include:

(a) name of the county and nurseries requesting approval;

(b) survey information and results that include trap locations for nursery and county of origin (i.e. maps, GPS coordinates), dates of deployment and trap maintenance, survey methodology, and results;

(c) historic information regarding Japanese beetle surveys and related information relevant to determining the status of Japanese beetle infestation levels at the nursery and county levels; and

(d) number of miles from each nursery to nearest Japanese beetle positive trap catch or known population which would include relevant counties in adjacent states.

(5) Other treatments or methods of mitigation not described therein may be submitted in writing by an authorized state agricultural official of the origin state to the department for review prior to shipment into New Mexico.

B. State phytosanitary certificates and compliance agreements shall be securely attached to the outside of the container in which the articles are moved, except where the certificate is attached to the shipping document and the regulated articles are adequately described on the shipping document or on the certificate.

C. The director may make exceptions, modifications, or additions to restrictions as needed or at the request of individual departments of agriculture for the purpose of addressing specific issues.

[21.17.27.9 NMAC - N, 06/30/11]

21.17.27.10 EXCEPTIONS:

None.

[21.17.27.10 NMAC - N, 06/30/11]

21.17.27.11 DISPOSITION OF VIOLATIONS:

Failure to comply with the requirements as stated above shall be a violation of this rule and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978. The board is granted the authority to direct the disposal, removal, or other means necessary to mitigate the threat of noncompliant regulated articles.

[21.17.27.11 NMAC - N, 06/30/11]

21.17.27.12 LIABILITY DISCLAIMER:

The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

[21.17.27.12 NMAC - N, 06/30/11]

PART 28: PECAN WEEVIL EXTERIOR QUARANTINE

21.17.28.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (575) 646-3007.

[21.17.28.1 NMAC – Rp, 21.17.28.1 NMAC; Rp, 11/08/2022]

21.17.28.2 SCOPE:

Part 28 shall apply to all persons transporting regulated articles into or through New Mexico.

[21.17.28.2 NMAC – Rp, 21.17.28.2 NMAC; Rp, 11/08/2022]

21.17.28.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.

[21.17.28.3 NMAC – Rp, 21.17.28.3 NMAC; Rp, 11/08/2022]

21.17.28.4 DURATION:

Permanent.

[21.17.28.4 NMAC – Rp, 21.17.28.4 NMAC; Rp, 11/08/2022]

21.17.28.5 EFFECTIVE DATE:

November 8, 2022, unless a later date is cited at the end of a section.

[21.17.28.5 NMAC – Rp, 21.17.28.5 NMAC; Rp, 11/08/2022]

21.17.28.6 OBJECTIVE:

The objective of Part 28 of Chapter 17 is to establish an exterior quarantine in order to prevent the introduction of the pecan weevil into New Mexico.

[21.17.28.6 NMAC – Rp, 21.17.28.6 NMAC; Rp, 11/08/2022]

21.17.28.7 DEFINITIONS:

A. "Board" means the regents of New Mexico state university or any individual whom authority to act in their stead has been or hereafter may be delegated.

B. "Certificate of origin" means a document issued by the department of agriculture of the state of origin that certifies that exported commodities contained in a shipment are wholly obtained, produced, manufactured or processed in a particular state and county. Certificate shall include name and address of grower and consignee, regulated article and amount, date of shipment and lot number. Lot number must also be placed on each shipping container or bag to correspond with lot numbers on the certificate of origin.

C. "Compliance agreement" means a document issued or authorized by the department that outlines/identifies specific requirements related to the transportation, treatment, handling or processes related to regulated articles.

D. "Department" means the New Mexico department of agriculture and authorized staff.

E. "Director" means director secretary of New Mexico department of agriculture.

F. "Infested" means reasonable expectation that regulated articles may harbor pecan weevil.

G. "Non-compliant" means regulated articles transported into New Mexico that are in violation of the requirements set forth in 21.17.28 NMAC.

H. "Originating" means produced within or having spent sufficient time in a quarantine area to be believed to be at risk of being infested.

I. "Pecan weevil" means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

J. "Phytosanitary certificate" means a document issued or authorized by a state department of agriculture with specific declarations to include contact information for pecan owner, shipment amount, treatment method, treatment dates, destination contact information, and other information deemed relevant by the department. Includes equivalent documents issued by a state department of agriculture and addresses completion of treatment requirements.

K. "Regulated article" means pecan weevil, plant tissue, equipment, trailers, or any other item capable of or having a reasonable expectation of harboring pecan weevil. Including all varieties of pecan and hickory in-shell nuts; sacks used in harvesting, storage, transporting or storing of in-shell pecans or hickory nuts; harvesting equipment; live trees or parts thereof with soil attached; hulls, husks, and fragments of hull.

[21.17.28.7 NMAC – N, 11/08/2022]

21.17.28.8 QUARANTINE AREAS:

The following are quarantined areas: All states and districts of the United States except Arizona, California, and El Paso, Hudspeth, Culberson, Jeff Davis and Presidio counties in Texas. The director may make changes to the quarantine status of a state or areas within states by issuing an emergency quarantine, amendment of this rule, or the promulgation of a new quarantine rule.

[21.17.28.8 NMAC – Rp, 21.17.28.8 NMAC; Rp, 11/08/2022]

21.17.28.9 RESTRICTION ON REGULATED ARTICLES:

In order to prevent the introduction of the pecan weevil into New Mexico, the board hereby orders and declares the regulated articles herein defined shall not be allowed to move to or through New Mexico from quarantine areas, except under restrictions herein described.

A. Transportation of in-shell nuts of all pecan and hickory varieties, hulls, husks, shell fragments, containers associated with the harvesting, transportation, or storage of in-shell pecans or hickory nuts originating from a quarantine area to or through New Mexico shall be allowed as follows:

(1) Accompanied by a phytosanitary certificate for each shipment of regulated articles. Acceptable treatments are prescribed under Subsections A through C of 21.17.28.11 NMAC.

(2) Accompanied by a valid compliance agreement issued by the director, regulated articles may be transported directly to a facility approved by the director that is capable of providing the treatment(s) as defined under Subsections A through C of 21.17.28.11 NMAC.

B. Transportation of regulated articles not identified in Subsection A of 21.17.28.9 NMAC including equipment and supplies, originating in quarantine areas, to or through non-quarantine areas in New Mexico will be allowed following inspection and issuance of a phytosanitary certificate that identifies regulated articles as not being infested.

C. Regulated articles from Arizona, California, and El Paso, Hudspeth, Culberson, Jeff Davis and Presidio counties in Texas will be admitted into the state of New Mexico if accompanied by a certificate of origin.

[21.17.28.9 NMAC – Rp, 21.17.28.9 NMAC; Rp, 11/08/2022]

21.17.28.10 DISPOSITION OF VIOLATIONS:

Any non-compliant regulated article will be subject to immediate quarantine and expulsion from the state or destruction under parameters set forth by the department, or other method of disposition as directed by the department that serves the best interest of the state. All transportation or disposal of non-compliant regulated articles will be at the expense of the owners, agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney's fees and cost, incurred by the department. Reimbursement to the department is required within 30 days after notification via issuance of invoice requesting payment. If payment is not received within 30 days of notification, the department shall initiate legal action to collect or recuperate actual cost.

[21.17.28.10 NMAC – Rp, 21.17.28.10 NMAC; Rp, 11/08/2022]

21.17.28.11 TREATMENT OF REGULATED ARTICLES:

Articles specified in Subsection A of 21.17.28.9 shall be treated using one of the following methods:

A. Storage in an approved cold storage chamber at or below zero degrees fahrenheit for a period of seven consecutive days (168 hours) after the entire lot reaches zero degrees fahrenheit as determined by facility standard operating procedures approved by the department; or

B. Storage in an approved cold storage chamber at 12.2 degrees fahrenheit for a period of 14 consecutive days (336 hours) after the entire lot reaches 12.2 degrees fahrenheit as determined by facility standard operating procedures approved by the department; or

C. Immersion in at least 140 degree fahrenheit water for a period of at least five minutes; or

D. Other treatment methods may be approved under a compliance agreement issued by the director prior to shipment into the state.

[21.17.28.11 NMAC – Rp, 21.17.28.11 NMAC; Rp, 11/08/2022]

21.17.28.12 FEES:

Special inspections or other requested services provided by the department will be subject to fees as authorized under Sections 1 through 10 of 21.1.2 NMAC.

[21.17.28.12 NMAC – N, 11/08/2022]

21.17.28.13 LIABILITY DISCLAIMER:

The board and the department disclaims liability for any costs incident to inspection, expulsion or disposition of non-compliant regulated articles, or compliance with the provisions of this rule.

[21.17.28.13 NMAC – Rp, 21.17.28.12 NMAC; Rp, 11/08/2022]

21.17.28.14 ADDITIONAL LAWS AND REGULATIONS:

All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, the United States or both now in effect or which may hereafter be promulgated.

[21.17.28.14 NMAC – N, 11/08/2022]

PART 29: PEPPER WEEVIL INTERIOR QUARANTINE AND PLOW-DOWN

21.17.29.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.17.29.1 NMAC - Rn & A, 21 NMAC 17.29.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.29.2 SCOPE:

Part 29 shall apply to producers and processors of all varieties of peppers in Dona Ana, Sierra and Luna counties within the state of New Mexico.

[7/1/97; 21.17.29.2 NMAC - Rn, 21 NMAC 17.29.2, 05/29/09]

21.17.29.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.

[7/1/97; 21.17.29.3 NMAC - Rn, 21 NMAC 17.29.3, 05/29/09]

21.17.29.4 DURATION:

Permanent.

[7/1/97; 21.17.29.4 NMAC - Rn, 21 NMAC 17.29.4, 05/29/09]

21.17.29.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.17.29.5 NMAC - Rn, 21 NMAC 17.29.5, 05/29/09]

21.17.29.6 OBJECTIVE:

The objective of Part 29 of Chapter 17 is to establish cultural control practices for the pepper weevil in order to protect the New Mexico sweet and chile pepper industry from this injurious pest.

[7/1/97; 21.17.29.6 NMAC - Rn, 21 NMAC 17.29.6, 05/29/09]

21.17.29.7 DEFINITIONS:

[RESERVED]

21.17.29.8 PROCESSING RESIDUES:

All stalks, leaves, fruit, or pods remaining from the processing of any variety of pepper shall not be transported out of the quarantine area.

A. Processing residues shall be disposed of within 48 hours of their generation.

B. Disposal of processing residues may be by transport to a landfill within the regulated areas, feeding to livestock within the regulated area, or by such other method as approved by the director of the New Mexico department of agriculture.

C. Processing residues transported for livestock feed shall be fed to livestock within 48 hours of receipt unless stored according to a method approved by the director.

[7/1/97; 21.17.29.8 NMAC - Rn, 21 NMAC 17.29.8, 05/29/09]

21.17.29.9 TREATMENT OF FIELD RESIDUES:

The following cultural practices shall be performed by February 1, of each year to reduce overwintering populations and prevent increased damage to the subsequent crop:

A. Crop remnants, including any stalks, leaves, bolls and seed remaining in the fields shall be disposed of by shredding the stalks and turning under all debris by plowing, disking or chiseling.

B. All debris left in turn rows, on ditch banks, on field roads, and other areas that cannot be plowed or disked shall be gathered and burned or scattered over field areas that will be plowed or disked.

C. Such other cultural control practices as the director may determine from time to time as appropriate and necessary.

[7/1/97; 21.17.29.9 NMAC - Rn, 21 NMAC 17.29.9, 05/29/09]

21.17.29.10 DISPOSITION OF VIOLATIONS:

Failure to comply with the requirements as stated above shall be in violation of this regulatory order and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978.

[7/1/97; 21.17.29.10 NMAC - Rn, 21 NMAC 17.29.10, 05/29/09]

21.17.29.11 LIABILITY DISCLAIMER:

The board disclaims liability for any costs incident to inspection or compliance with the provisions of 21.17.29 NMAC.

[7/1/97; 21.17.29.11 NMAC - Rn, 21 NMAC 17.29.11, 05/29/09]

PART 30: [RESERVED]

PART 31: PINK BOLLWORM PERMANENT PLOWDOWN

21.17.31.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[12/16/96; 21.17.31.1 NMAC - Rn & A, 21 NMAC 17.31.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.31.2 SCOPE:

Any person producing cotton or owning land on which cotton is grown in New Mexico.

[12/30/86; 2/4/87; 1/4/88; 5/28/93; 1/7/94; 12/15/95; 12/16/96; 11/15/97; 21.17.31.2 NMAC - Rn, 21 NMAC 17.31.2, 05/29/09]

21.17.31.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.

[12/30/86; 2/4/87; 1/4/88; 5/28/93; 1/7/94; 12/15/95; 12/16/96; 21.17.31.3 NMAC - Rn, 21 NMAC 17.31.3, 05/29/09]

21.17.31.4 DURATION:

Permanent.

[12/16/96; 11/15/97; 21.17.31.4 NMAC - Rn, 21 NMAC 17.31.4, 05/29/09]

21.17.31.5 EFFECTIVE DATE:

November 15, 1997, unless a different date is cited at the end of a section or paragraph.

[12/16/96; 11/15/97; 21.17.31.5 NMAC - Rn, 21 NMAC 17.31.5, 05/29/09]

21.17.31.6 OBJECTIVE:

The objective of Part 31, Chapter 17 is to establish a permanent cotton plowdown date to reduce overwintering populations of pink bollworm.

[12/30/86; 2/4/87; 1/4/88; 5/28/93; 1/7/94; 12/15/95; 12/16/96; 11/15/97; 21.17.31.6 NMAC - Rn, 21 NMAC 17.31.6, 05/29/09]

21.17.31.7 DEFINITIONS:

A. "**Department**" means the New Mexico department of agriculture.

B. "**Director**" means the director of the New Mexico department of agriculture.

C. "**Plowdown**" means destruction of cotton plants by shredding followed by plowing or by other appropriated means to prohibit the presence of any cotton plants or cotton residue on the soil surface. All plant residue shall be buried 6 inches or more below the soil surface.

[12/16/96; 11/15/97; 21.17.31.7 NMAC - Rn, 21 NMAC 17.31.7, 05/29/09]

21.17.31.8 PINK BOLLWORM PERMANENT PLOWDOWN:

A. In order to reduce the overwintering population of pink bollworm in New Mexico, the director designates February 1 of every year as a permanent date for completion of plowdown of all cotton plants in New Mexico.

B. The director may, on written request by a farm owner and/or operator, grant an extension of the cotton plowdown date. The director may also, on written request by a farm owner and/or operator, authorize an alternative to the method of mechanical destruction of cotton prescribed by the rule.

C. The director may exclude a county or may authorize an alternative method of cotton destruction prescribed by the rule for a county designated by the USDA, natural resources conservation service (NRCS) where the resulting soil erosion rates would be in conflict with the mandated soil erosion requirements as specified by NRCS.

D. All requests for extensions on initially undestroyed cotton or for approval of an alternative method of cotton destruction must be postmarked on or prior to the plowdown date.

E. The cotton producers from a county or cotton producing area not infested or threatened by the pink bollworm may petition the director to be excluded from the plowdown. All petitions to be excluded must be received 30 days prior to the plowdown date.

[12/30/86; 2/4/87; 1/4/88; 5/28/93; 1/7/94; 12-15-95; 12-16-96; 11-15-97; 21.17.31.8 NMAC - Rn, 21 NMAC 17.31.8, 05/29/09]

21.17.31.9 DISPOSITION OF VIOLATORS:

A. Any cotton field within the regulated area found not in compliance of the plowdown requirements will be in violation of the Pest Control Act, Section 76-6-6 NMSA 1978. The department will take emergency action as necessary to prevent and retard the spread of the pink bollworm in accordance with the provision of the Pest Control Act and shall:

(1) immediately give a written notice to any farm owner and to the operator in charge of the field that is in violation of Section 8, instructing the owner and the operator to plowdown cotton plants within five calendar days after the date written notice is issued;

(2) post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation, if either the owner or operator cannot be located after a reasonable effort by the department;

(3) have the cotton plants plowed down, if no response is received by the department from either the owner or operator within five calendar days after the date of posting of the notice at the field, or if the department considers the response inadequate.

B. Failure to comply with the requirements as stated above shall be a violation of this rule. The director may take any appropriate action including but not limited to:

(1) referring to the appropriate district attorney;

(2) taking emergency action;

(3) proceeding for a court order requiring plowdown.

C. When a continuing threat of the spread of a pest exists, the director may take reasonable emergency action necessary and may assess an emergency action fee to recover the cost of the emergency action, not to exceed \$1000 per field, against the property owner and/or operator.

D. If it becomes necessary for the department to contract with someone to plowdown the cotton, the farm owner or operator shall reimburse the department the actual cost. After notification to the owner or his agent, if the owner or his agent does not reimburse the department within 30 days after issuance by the department of a bill requesting payment, the director shall refer the delinquent account for collection.

[12/30/86; 2/4/87; 1/4/88; 5/28/93; 1/7/94; 12/15/95; 12/16/96; 11/15/97; 21.17.31.9 NMAC - Rn, 21 NMAC 17.31.9, 05/29/09]

21.17.31.10 GENERAL RULES:

The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

[12/30/86; 2/4/87; 1/4/88; 5/28/93; 1/7/94; 12/15/95; 12/16/96; 21.17.31.10 NMAC - Rn, 21 NMAC 17.31.10, 05/29/09]

PART 32: COTTON PEST EMERGENCY ACTION

21.17.32.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[08-14-98; 21.17.32.1 NMAC - Rn, 21 NMAC 17.32.1, 12-13-02; A, 5/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.32.2 SCOPE:

Any person producing cotton or owning land on which cotton is grown in areas with cotton pest control districts established by referendum in New Mexico.

[08-14-98, A, 06-15-99; 21.17.32.2 NMAC - Rn & A, 21 NMAC 17.32.2, 12-13-02]

21.17.32.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6 Sections 1 through 9, NMSA 1978 Compilation.

[08-14-98; 21.17.32.3 NMAC - Rn, 21 NMAC 17.32.3, 12-13-02]

21.17.32.4 DURATION:

Permanent.

[08-14-98, A, 06-15-99; 21.17.32.4 NMAC - Rn, 21 NMAC 17.32.4, 12-13-02]

21.17.32.5 EFFECTIVE DATE:

June 15, 1999, unless a different date is cited at the end of a section or paragraph.

[08-14-98, A, 06-15-99; 21.17.32.5 NMAC - Rn, 21 NMAC 17.32.5, 12-13-02]

21.17.32.6 OBJECTIVE:

The objective of Part 32, Chapter 17 is to prevent the further spread of cotton pests in the designated control districts.

[08-14-98; 21.17.32.6 NMAC - Rn & A, 21 NMAC 17.32.6, 12-13-02]

21.17.32.7 DEFINITIONS:

A. "Control districts" means the designated areas duly established under New Mexico statute wherein a program to suppress or eradicate cotton pests is administered.

B. "Control committee" means persons elected by the cotton producers in a designated control district to carry out an eradication program.

C. "Department" means the New Mexico department of agriculture.

D. "Director" means the director of the New Mexico department of agriculture.

E. "Producer" means any person producing cotton plants.

[08-14-98, A, 06-15-99; 21.17.32.7 NMAC - Rn & A, 21 NMAC 17.32.7, 12-13-02]

21.17.32.8 EMERGENCY ACTION:

In order to prevent the spread of regulated cotton pests in the control districts, the director will take emergency action. As a response to a request from the control committee for assistance, when a producer and/or owner refuses to allow trapping or treatment of a cotton field by the control district, to treat the crop with an efficacious pesticide, or to destroy the host crop in accordance with the Pest Control Act and the regulating state statute, the director will act in accordance with the provisions of the Pest Control Act and shall:

A. Make reasonable inspection of the field with the consent of the owner/producer or by court order.

B. If the field is found to be infested by a regulated cotton pest, give notice to the owner/producer that the host crop will be plowed within three days, if abatement action is not taken by the producer.

[08-14-98; 21.17.32.8 NMAC - Rn & A, 21 NMAC 17.32.8, 12-13-02]

21.17.32.9 DISPOSITION OF VIOLATORS:

A. Failure to comply with Subsection B of 21.17.32.8 NMAC as stated above shall be a violation of this rule. The director may take any appropriate measures including, but not limited to:

- (1) taking emergency action;
- (2) disposing of the host;
- (3) eradication of the pest.

B. When a continuing threat of the spread of a pest exists, the director may take emergency action necessary and may assess an emergency action fee to recover the cost of the emergency action, not to exceed \$1,000 per field, against the property owner and/or operator.

C. If it becomes necessary for the department to contract with someone to plow down the cotton, the control committee which requested the assistance will reimburse the department the actual cost.

[08-14-98; 21.17.32.9 NMAC - Rn, 21 NMAC 17.32.9, 12-13-02]

21.17.32.10 GENERAL RULES:

The board disclaims any liability for any costs incident to inspection or compliance with the provisions of this rule.

[08-14-98; 21.17.32.10 NMAC - Rn, 21 NMAC 17.32.10, 12-13-02]

PART 33: RED IMPORTED FIRE ANT INTERIOR QUARANTINE

21.17.33.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[8/14/98; 21.17.33.1 NMAC - Rn & A, 21 NMAC 17.33.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.33.2 SCOPE:

Part 33 shall apply to all persons transporting regulated articles intrastate from quarantined areas of New Mexico.

[8/14/98; 21.17.33.2 NMAC - Rn, 21 NMAC 17.33.2, 05/29/09]

21.17.33.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 compilation.

[8/14/98; 21.17.33.3 NMAC - Rn, 21 NMAC 17.33.3, 05/29/09]

21.17.33.4 DURATION:

Permanent

[8/14/98; 11/13/98; 2/12/99; 4/30/99; 21.17.33.4 NMAC - Rn, 21 NMAC 17.33.4, 05/29/09]

21.17.33.5 EFFECTIVE DATE:

August 14, 1998, unless a different date is cited at the end of a section or paragraph.

[8/14/98; 21.17.33.5 NMAC - Rn, 21 NMAC 17.33.5, 05/29/09]

21.17.33.6 OBJECTIVE:

The objective of Part 33, Chapter 17 is to prevent the further spread of the red imported fire ant to counties of New Mexico not known to be infested.

[8/14/98; 21.17.33.6 NMAC - Rn, 21 NMAC 17.33.6, 05/29/09]

21.17.33.7 DEFINITIONS:

A. "**Board**" means the board of regents of New Mexico state university or any officer or employee to whom authority to act in their stead has been or hereafter may be delegated.

B. "**Department**" means the New Mexico department of agriculture.

C. "**Infestation**" means actually infested or infected with a pest, or so exposed to infestation that it would be reasonable to believe that an infestation exists.

D. "**Certificate**" a document issued or authorized by the board indicating that a regulated article is not contaminated with a pest.

[8/14/98; 21.17.33.7 NMAC - Rn, 21 NMAC 17.33.7, 05/29/09]

21.17.33.8 RED IMPORTED FIRE ANT EMERGENCY QUARANTINE:

A. Pest: Red imported fire ant, *Solenopsis invicta* Buren.

B. Areas under quarantine: Dona Ana county, New Mexico.

C. Regulated articles:

- (1) the red imported fire ant in any living stage of development;
- (2) soil, compost, decomposed manure, humus, muck and peat, separately or with other things, except potting soil that is shipped in original containers in which the soil was placed after commercial preparation;
- (3) plants with roots and soil attached; except houseplants grown in the home and not for sale;
- (4) grass sod;
- (5) baled hay and baled straw stored in direct contact with the ground;
- (6) used mechanized soil-moving equipment, unless removed of all non-compacted soil;
- (7) any other product, articles, or means of conveyance of any character whatsoever, not covered by this subsection, are regulated articles when it is determined that they present a risk of spreading red imported fire ants and the person in possession thereof has been so notified.

[8/14/98; 21.17.33.8 NMAC - Rn, 21 NMAC 17.33.8, 05/29/09]

21.17.33.9 RESTRICTIONS:

A. A certificate must accompany regulated articles moved out of the quarantined area.

B. Certificates may be issued by the department or under the authority of a compliance agreement if the regulated articles:

- (1) have originated in certified imported fire ant free premises in a quarantined area and have not been exposed to infestation while within the quarantined area; or
- (2) upon examination, have been found to be free of imported fire ant infestations; or
- (3) have been treated to destroy infestations in accordance with approved procedures; or
- (4) have been grown, produced, manufactured, stored or handled in such a manner that infestation would be precluded.

C. Certificates shall be securely attached to the outside of the container in which the articles are moved except where the certificate is attached to the shipping document

and the regulated articles are adequately described on the shipping document or on the certificate.

[8/14/98; 21.17.33.9 NMAC - Rn, 21 NMAC 17.33.9, 05/29/09]

21.17.33.10 EXCEPTIONS:

The following regulated articles are exempted from certification requirements:

A. soil samples of one pound or less which are packaged so that no soil will be spilled in transit;

B. soil samples of any size collected and shipped to any United States army corps of engineers soil laboratory;

C. compost, decomposed manure, humus, and peat, if dehydrated, ground, pulverized or compressed;

D. other exemptions may be granted upon departmental review.

[8/14/98; 21.17.33.10 NMAC - Rn, 21 NMAC 17.33.10, 05/29/09]

21.17.33.11 DISPOSITION OF VIOLATIONS:

Failure to comply with the requirements as stated above shall be a violation of this rule and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978.

[8/14/98; 21.17.33.11 NMAC - Rn, 21 NMAC 17.33.11, 05/29/09]

21.17.33.12 LIABILITY DISCLAIMER:

The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

[8/14/98; 21.17.33.12 NMAC - Rn, 21 NMAC 17.33.12, 05/29/09]

PART 34: APPLE MAGGOT EMERGENCY INTERIOR QUARANTINE [EXPIRED]

[The duration of this part expired after 90 days.]

PART 35: APPLE MAGGOT INTERIOR QUARANTINE [REPEALED]

[This part was repealed on October 29, 2010.]

PART 36: PECAN WEEVIL INTERIOR QUARANTINE

21.17.36.1 ISSUING AGENCY:

New Mexico department of agriculture, MSC, 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.

[21.17.36.1 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.2 SCOPE:

Part 36 of Chapter 17 applies to all person(s) transporting regulated articles from infested counties in New Mexico to New Mexico pecan weevil-free counties.

[21.17.36.2 NMAC - N, 11/01/2018]

21.17.36.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9 NMSA 1978 compilation and the Pecan Act, Chapter 76, Article 16, Sections 1 through 9, NMSA 1978 compilation.

[21.17.36.3 NMAC - N, 11/01/2018]

21.17.36.4 DURATION:

Permanent.

[21.17.36.4 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.5 EFFECTIVE DATE:

November 1, 2018, unless a later date is listed at the end of a section.

[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.6 OBJECTIVE:

The objective of Part 36 of Chapter 17 is to establish an interior quarantine to restrict the transportation of pecan weevil from quarantined areas to non-quarantined areas in New Mexico.

[21.17.36.5 NMAC - N, 11/01/2018]

21.17.36.7 DEFINITIONS:

A. "Board" means the board of regents of New Mexico state university or any individual whom authority to act in their stead has been or hereafter may be delegated.

B. "Certificate" means a document issued or authorized by the director with specific declarations related to the treatment, handling, transportation, condition or other processes related to regulated articles.

C. "Compliance agreement" means a document issued or authorized by the director that outlines/identifies specific requirements related to the transportation, treatment, handling or processes related to regulated articles.

D. "Department" means the New Mexico department of agriculture and authorized staff.

E. "Director" means director secretary of New Mexico department of agriculture.

F. "Infested" means reasonable expectation that regulated articles may harbor pecan weevil.

G. "Non-compliant" means regulated articles transported within New Mexico that are in violation of the requirements set forth in 21.17.36 NMAC.

H. "Originating" means produced within or having spent sufficient time in a quarantined area to be believed to be at risk of being infested.

I. "Pecan weevil" means any live developmental stage or synonym of *curculio caryae* (horn) including adult, pupae, larvae, or egg.

J. "Regulated article" means pecan weevil, plant tissue, equipment, trailers, or any other item capable of or having a reasonable expectation of harboring pecan weevil. Including in-shell pecans; sacks used in harvesting, storage, transporting or storing of in-shell pecans; harvesting equipment; live trees or parts thereof with soil attached; hulls, husks, and fragments of hull.

[21.17.36.7 NMAC – N, 11/01/2018; A, 11/08/2022]

21.17.36.8 QUARANTINE AREAS:

The following counties are quarantined areas: Eddy, Lea, Otero, and Chaves counties. The director may make changes to the quarantine status of a county by issuing an emergency quarantine, amendment of this rule, or the promulgation of a new quarantine rule.

[21.17.36.8 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.9 RESTRICTIONS ON REGULATED ARTICLES:

To prevent the spread of pecan weevil in New Mexico, the board hereby orders and declares regulated articles cannot be transported out of quarantined areas, except under the following conditions:

A. Transportation of in-shell pecans, hulls, husks, shell fragments, containers associated with the harvesting, transportation, or storage of in-shell pecans originating in quarantined counties to or through non-quarantined areas in New Mexico shall be allowed as follows:

(1) Accompanied by a certificate for each shipment of regulated articles, certifying treatment under supervision of the department or in accordance with a compliance agreement prior to transporting out of the quarantined area. Acceptable treatments are prescribed under Subsections A through C of 21.17.36.11 NMAC. The certificate must include contact information for pecan owner, shipment amount, treatment method (including treatment dates), destination contact information with address, and any other information deemed relevant by the department; or

(2) Transported in enclosed trailers or other containers approved by the director and transported directly to a facility approved by the director, that is capable of providing the treatment(s) as defined under Subsections A through C of 21.17.36.11 NMAC; or

(3) Transportation of regulated articles using alternative methods as approved under a compliance agreement.

B. Transportation of regulated articles not identified in Subsection A of 21.17.36.9 NMAC including equipment and supplies, originating in quarantined area, to or through non-quarantined areas in New Mexico will be allowed following inspection by the department and issuance of a certificate that identifies regulated articles as not being infested.

[21.17.36.9 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.10 DISPOSITION OF VIOLATIONS:

Any non-compliant regulated article will be subject to immediate quarantine and returned back to place of origin or destruction under parameters set forth by the department, or other method of disposition as directed by the department that serves the best interest of the state. All transportation or disposal of non-compliant articles will be at the expense of the owners, agents or both and performed under the direction of the department. If necessary for the department to incur any cost associated with the disposition of non-compliant regulated articles, the owner, agents or both shall reimburse the department for all costs, including attorney's fees and cost, incurred by the department. Reimbursement to the department is required within 30 days after notification via issuance of invoice requesting payment. If payment is not received within

30 days of notification, the department shall initiate legal action to collect or recuperate actual cost.

[21.17.36.10 NMAC - N, 11/01/2018; A 11/08/2022]

21.17.36.11 TREATMENT OF REGULATED ARTICLES:

Individuals or businesses must be approved by the director prior to receiving in-shell pecans or other regulated articles for treatment. Compliance agreements will be issued to those individuals or business demonstrating the capabilities to provide treatment using one of the following methods:

A. Storage in an approved cold storage chamber at or below zero degrees fahrenheit for a period of seven consecutive days (168 hours) after the entire lot reaches zero degrees fahrenheit as determined by facility standard operating procedures approved by the department; or

B. Storage in an approved cold storage chamber at 12.2 degrees fahrenheit for a period of 14 consecutive days (336 hours) after the entire lot reaches 12.2 degrees fahrenheit as determined by facility standard operating procedures approved by the department; or

C. Immersion in at least 140 degrees fahrenheit water for a period of at least five minutes; or

D. Other treatment methods approved under a compliance agreement issued by the director.

[21.17.36.11 NMAC - N, 11/01/2018; A, 11/08/2022]

21.17.36.12 FEES:

Certificates, special inspections or other requested services provided by the department will be subject to fees as authorized under Sections 1 through 9 of 21.1.2 NMAC.

[21.17.36.12 NMAC - N, 11/01/2018]

21.17.36.13 LIABILITY DISCLAIMER:

The board and the department disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

[21.17.36.13 NMAC - N, 11/01/2018]

21.17.36.14 ADDITIONAL LAWS AND REGULATIONS:

All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico, United States or both now in effect or which may hereafter be promulgated.

[21.17.36.14 NMAC - N, 11/01/2018; A 11/08/2022]

PART 37-41: [RESERVED]

PART 42: COTTON BOLL WEEVIL QUARANTINE

21.17.42.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

[21.17.42.1 NMAC - N, 3/1/2004]

21.17.42.2 SCOPE:

This rule establishes the restrictions to all persons transporting regulated articles into, through, or intrastate from quarantined areas of New Mexico and interstate into New Mexico from quarantined areas.

[21.17.42.2 NMAC - N, 3/1/2004]

21.17.42.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation.

[21.17.42.3 NMAC - N, 3/1/2004]

21.17.42.4 DURATION:

Permanent.

[21.17.42.4 NMAC - N, 3/1/2004]

21.17.42.5 EFFECTIVE DATE:

March 1, 2004, unless a later date is cited in the history note at the end of a section.

[21.17.42.5 NMAC - N, 3/1/2004]

21.17.42.6 OBJECTIVE:

The objective of Part 42 of Chapter 17 is to establish a permanent cotton boll weevil quarantine to protect those cotton producing areas of New Mexico that have achieved eradication of the cotton boll weevil.

[21.17.42.6 NMAC - N, 3/1/2004]

21.17.42.7 DEFINITIONS:

A. "Board" means the board of regents of New Mexico state university or any officer or employee to whom authority to act in their stead has been or hereafter may be delegated.

B. "Certificate" is a document issued or authorized by the board indicating that a regulated article is not contaminated with a pest, a phytosanitary certificate issued by an authorized representative of the department allowing the movement of plants or plant products, or a document issued by an authorized representative of the department allowing the movement of equipment or vehicles.

C. "Compliance agreement" is a written agreement between the department and any person engaged in growing, distributing, handling, or moving regulated articles where the latter agrees to comply with conditions specified in the agreement to prevent the dissemination of the cotton boll weevil.

D. "Control district" is a cotton boll weevil control district - any area duly established under the Cotton Boll Weevil Control Act wherein a program to suppress or eradicate the cotton boll weevil is administered.

E. "Cotton" means all parts of cotton and wild cotton plants of the genera *Gossypium* and *Thurberia* grown for commercial or non-commercial use.

F. "Cotton lint" means all forms of raw ginned cotton except linters and gin waste.

G. "Cotton products" means seed cotton, cotton lint, linters, oil mill waste, gin waste, gin trash, cotton seed, cottonseed hulls and all other forms of unmanufactured cotton fiber.

H. "Cotton seed" means the seed of the cotton plant, separated from lint.

I. "Department" means the New Mexico department of agriculture.

J. "Director" is the director of the New Mexico department of agriculture.

K. "Eradicated area" is an area apparently free of cotton boll weevil for which scientific documentation acceptable to the department has been provided that indicates that no cotton boll weevils were captured for a period of at least one cotton growing season by cotton boll weevil pheromone traps operated by an authorized control district,

the department, an approved governmental agency, or other entity approved by the department.

L. "Functionally eradicated area" is an area meeting the trapping criteria for a suppressed area with no confirmed evidence of cotton boll weevil reproduction occurring in the area and no oviposition on the squares, and in which the movement of regulated articles presents a threat to the success of the cotton boll weevil eradication program. The cotton boll weevil population must be less than or equal to average of 0.001 cotton boll weevils per trap per week for the cotton growing season as measured by cotton boll weevil pheromone traps operated by an authorized control district, the department, an approved governmental agency, or other entity approved by the department.

M. "Gin notes" are short fragments of unmanufactured cotton fiber removed from lint cleaners after ginning cotton.

N. "Gin trash" is all material produced during the cleaning and ginning of seed cotton, bollies, or snapped cotton, includes burrs, does not include lint, linters, cotton seed, or gin waste.

O. "Gin waste" is all forms of un-manufactured waste cotton fiber, including gin notes, resulting from the ginning of seed cotton.

P. "Infested" means actually infested with a cotton boll weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.

Q. "Limited permit" is a document issued or authorized by a federal or state regulatory official to provide for the movement of regulated articles to a restricted destination for limited handling, utilization, processing or treatment.

R. "Linters" are residual un-manufactured cotton fibers separated from cotton seed after the lint has been removed.

S. "Oil mill waste" is waste products, including linters, derived from the milling of cotton seed.

T. "Restricted area" is an area designated as suppressed, functionally eradicated, or eradicated of cotton boll weevils as those terms are defined in this section.

U. "Seed cotton" includes all forms of un-ginned cotton from which the seed has not been separated.

V. "Suppressed area" is an area in which some cotton boll weevil reproduction may be present in the area or a portion thereof, and in which the movement of regulated articles presents a threat to the success of the cotton boll weevil eradication program. The cotton boll weevil population must be less than or equal to 0.025 cotton boll weevils

per trap per week for the cotton-growing season as measured by cotton boll weevil pheromone traps operated by an authorized control district, the department, an approved governmental agency, or other entity approved by the department.

W. "Trap" is a type of adult cotton boll weevil pheromone trap approved by New Mexico cotton boll weevil technical advisory committee or the department.

X. "Treatment" is the act of eliminating possible cotton boll weevil infestation(s) or contamination by cleaning or by fumigation, in instances in which normal cleaning will not eliminate the infestation or contamination.

[21.17.42.7 NMAC - N, 3/1/2004]

21.17.42.8 PEST:

Cotton boll weevil, *Anthonomus grandis* Boheman, in any living stage of development.

[21.17.42.8 NMAC - N, 3/1/2004]

21.17.42.9 AREAS UNDER QUARANTINE:

A. New Mexico: Those areas of New Mexico not declared suppressed, functionally eradicated, or eradicated for cotton boll weevil.

B. All other states: All states or any portion of such states not declared suppressed, functionally eradicated, or eradicated for cotton boll weevil by a duly authorized agency.

[21.17.42.9 NMAC - N, 3/1/2004]

21.17.42.10 PROTECTED AREAS:

A. Suppressed areas: The director may grant a request for declaration of an area as "suppressed" after a written recommendation is submitted to the department from an authorized control district or approved governmental agency, supported by scientific documentation acceptable to the department, indicating that movement of regulated articles into the area presents a threat to the success of cotton boll weevil eradication.

B. Functionally eradicated areas: The director may grant a request for declaration of an area as "functionally eradicated" after a written recommendation is submitted to the department from an authorized control district or approved governmental agency, supported by scientific documentation acceptable to the department, indicating that movement of regulated articles into the area presents a threat to the success of cotton boll weevil eradication.

C. Eradicated areas: The director may grant a request for declaration of an area as "eradicated" after a written recommendation is submitted to the department from an authorized control district or approved governmental agency, supported by scientific documentation acceptable to the department, indicating that movement of regulated articles into the area presents a threat to the success of cotton boll weevil eradication.

[21.17.42.10 NMAC - N, 3/1/2004]

21.17.42.11 REGULATED ARTICLES:

A. Cotton boll weevil, in any living stage of development.

B. Cotton and cotton products.

C. Cotton harvesting equipment and other equipment associated with the production and transport of cotton, including, but not limited to, the following:

(1) Harvest equipment:

(a) cotton pickers;

(b) cotton strippers; or

(c) other mechanical harvesting equipment.

(2) Handling and transport equipment:

(a) module builders;

(b) module hauling equipment; and

(c) boll buggies and any other equipment or vehicles associated with cotton harvest.

(3) Miscellaneous associated equipment:

(a) trucks such as service trucks, parts trucks, harvesting equipment trucks;

(b) flatbed trailers, portable living quarters, fuel and all other support vehicles;
and

(c) tractors, shredders, plows, discs, and other equipment associated with cotton production activities which have regulated articles present; and

(d) vehicles used to remove and/or transport cotton products.

D. Gin equipment previously used for the ginning of cotton.

E. All other products, articles, or means of conveyance not covered above when an inspector determines that they present a risk of a cotton boll weevil outbreak and the person in possession has been notified.

[21.17.42.11 NMAC - N, 3/1/2004]

21.17.42.12 RESTRICTIONS:

A. General: Movement of regulated articles is prohibited in the following cases:

- (1)** from or through a quarantined area to an eradicated area, a functionally eradicated area, or a suppressed area;
- (2)** from or through a suppressed area to an eradicated area or a functionally eradicated area;
- (3)** from or through a functionally eradicated area to an eradicated area; or
- (4)** when the department determines the movement may cause an increase in infestation of cotton boll weevil.

B. Exemptions: The following are exempt from the requirements of Subsection A:

- (1)** cotton seed and vehicles transporting the seed;
- (2)** baled cotton, baled gin motes and linters and vehicles transporting baled cotton and baled gin motes and linter; and
- (3)** manufactured cotton products.

C. Exceptions: The following are exceptions to the restrictions in Subsection A of this section:

(1) Cotton harvesting equipment and other equipment associated with the production and transport of cotton as well as used gin equipment, otherwise prohibited from movement by this regulation, may be moved to or through a restricted area provided the equipment is free of cotton products and cotton boll weevils in any stage of development or treated in one of the following manners:

(a) physical removal of hostable material including, but not limited to; removal by hand, high-pressure air cleaning; or high pressure washing; or

(b) fumigation of regulated articles as prescribed by the department.

(2) Cotton products and other regulated articles, otherwise prohibited from movement by these rules, may be transported to or through a restricted area provided that the producer, transporter, ginner, or other responsible party entered into a compliance agreement with the department and operates under its conditions.

(3) A USDA certificate of inspection (PPQ Form 540, used to certify equipment free of pink bollworm) showing that cotton harvesting equipment or other equipment associated with the production and transport of cotton, as well as used gin equipment, has been cleaned or fumigated is acceptable to the department as an exception to the restrictions set forth in Subsection A of this section.

[21.17.42.12 NMAC - N, 3/1/2004]

21.17.42.13 INSPECTIONS AND CERTIFICATES:

A. Inspections:

(1) Within New Mexico: An inspection for movement of regulated articles is not required, but may be obtained upon request to the department and payment of fee.

(2) Outside New Mexico from a quarantine area: An inspection certificate issued by the state of origin, a USDA certificate of inspection (PPQ Form 540) or a limited permit shall be filed with the department prior to the movement of regulated articles into the state.

B. Certificates: An inspection certificate may be issued certifying the movement of regulated articles in compliance with these rules, for the current growing season, if an authorized representative of the department determines:

(1) adequate measures have been taken to ensure that there will be little or no danger of increased infestation of the quarantined pest or expansion of a regulated area by such movement; or

(2) the articles have been treated to eliminate infestation of the quarantined pest, for a specific location; or

(3) such movement will not result in the spread or increased infestation of the quarantined pest. Any certificate may be withdrawn or canceled if an authorized representative of the department determines that the use of the issued certificate may result in the spread of the quarantined pest.

[21.17.42.13 NMAC - N, 3/1/2004]

21.17.42.14 DISPOSITION OF VIOLATIONS:

Any regulated article arriving in New Mexico in violation of this rule shall be subject to immediate quarantine, and treated or otherwise disposed of as necessary to prevent spread or establishment of the pest in the state. Such treatment or disposal shall be at the expense of the owners or agents and under the direction of the New Mexico department of agriculture after proper notification to the owner or agent. Failure to comply with the requirements as stated above shall be a violation of this rule and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978. In addition, the department may revoke or suspend any compliance agreements or certificates issued.

[21.17.42.14 NMAC - N, 3/1/2004]

21.17.42.15 LIABILITY DISCLAIMER:

The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

A. All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico or the United States department of agriculture now in effect or which may hereafter be promulgated.

B. Regulated articles covered by this rule may be imported by an authorized governmental or private organization under special permit from the New Mexico department of agriculture.

[21.17.42.15 NMAC - N, 3/1/2004]

PART 43: SOUTH CENTRAL NEW MEXICO PINK BOLLWORM CONTROL COMMITTEE ASSESSMENT

21.17.43.1 ISSUING AGENCY:

South Central New Mexico Pink Bollworm Control Committee.

[21.17.43.1 NMAC - N, 08/15/2002]

21.17.43.2 SCOPE:

This rule establishes the control committee assessment to be paid by cotton producers in the South Central New Mexico Pink Bollworm Control District.

[21.17.43.2 NMAC - N, 08/15/2002]

21.17.43.3 STATUTORY AUTHORITY:

Granted to the South Central New Mexico Pink Bollworm Control Committee under the Pink Bollworm Control Act, Chapter 76, Article 6B, Sections 1 through 12, NMSA 1978 Compilation.

[21.17.43.3 NMAC - N, 08/15/2002]

21.17.43.4 DURATION:

Until the South Central New Mexico Pink Bollworm Control District ceases to exist.

[21.17.43.4 NMAC - N, 08/15/2002]

21.17.43.5 EFFECTIVE DATE:

August 15, 2002, unless a later date is cited in the history note at the end of a section.

[21.17.43.5 NMAC - N, 08/15/2002]

21.17.43.6 OBJECTIVE:

The objective of Part 43, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the pink bollworm control district.

[21.17.43.6 NMAC - N, 08/15/2002]

21.17.43.7 DEFINITIONS:

A. "Committee" means South Central New Mexico Pink Bollworm Control Committee.

B. "Control District" means South Central New Mexico Pink Bollworm Control District.

C. "Producer" means any person producing five or more acres of cotton plants.

D. "Bt cotton" means genetically-engineered cotton that contains toxins derived from *Bacillus thuringiensis* effective against Pink Bollworm.

[21.17.43.7 NMAC - N, 08/15/2002]

21.17.43.8 ASSESSMENT:

A. The committee assessment rate is set forth at 10 dollars (\$10) per bale of conventional cotton produced by producers in the control district. The assessment will be collected at the gin. No assessment is due for Bt cotton produced within the control district.

B. Bt cotton will be verified by the control district. Any discrepancies will be decided by the control committee.

C. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

D. Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the County Clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8 1/2 percent per annum on the balance unpaid after 30 days.

[21.17.43.8 NMAC - N, 08/15/2002]

PART 44: CURRY AND ROOSEVELT COTTON BOLL WEEVIL CONTROL DISTRICT ASSESSMENT

21.17.44.1 ISSUING AGENCY:

Curry and Roosevelt Cotton Boll Weevil Control District

[21.17.44.1 NMAC - N, 06/29/2001]

21.17.44.2 SCOPE:

This rule establishes the control committee assessment to be paid by cotton producers in the Curry and Roosevelt cotton boll weevil control district.

[21.17.44.2 NMAC - N, 06/29/2001]

21.17.44.3 STATUTORY AUTHORITY:

Granted to the Curry and Roosevelt cotton boll weevil control committee under the Cotton Boll Weevil Control Act, Chapter 76, Article 6A, Sections 1 through 16, NMSA 1978 Compilation.

[21.17.44.3 NMAC - N, 06/29/2001]

21.17.44.4 DURATION:

Until the Curry and Roosevelt cotton boll weevil control district ceases to exist.

[21.17.44.4 NMAC - N, 06/29/2001]

21.17.44.5 EFFECTIVE DATE:

June 29, 2001, unless a later date is cited in the history note at the end of a section.

[21.17.44.5 NMAC - N, 06/29/2001]

21.17.44.6 OBJECTIVE:

The objective of Part 44, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the cotton boll weevil control district.

[21.17.44.6 NMAC - N, 06/29/2001]

21.17.44.7 DEFINITIONS:

- A. "Committee" means Curry and Roosevelt cotton boll weevil control committee.
- B. "Control district" means Curry and Roosevelt cotton boll weevil control district.
- C. "Producer" means any person producing five or more acres of cotton plants.

[21.17.44.7 NMAC - N, 06/29/2001]

21.17.44.8 ASSESSMENT:

A. The committee assessment rate is set forth annually by the committee to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent. Any cotton acreage is subject to verification by the control committee.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed up to a rate of 18 percent per annum or 1 1/2 percent per month on the balance unpaid after 30 days.

[21.17.44.8 NMAC - N, 06/29/2001; A, 09/29/2006; A, 07/30/2010]

PART 45: CENTRAL LEA COUNTY COTTON BOLL WEEVIL CONTROL DISTRICT ASSESSMENT

21.17.45.1 ISSUING AGENCY:

Central Lea County Cotton Boll Weevil Control District

[21.17.45.1 NMAC - N, 02/28/2001]

21.17.45.2 SCOPE:

This rule establishes the control committee assessment to be paid by cotton producers in the central Lea county cotton boll weevil control district.

[21.17.45.2 NMAC - N, 02/28/2001]

21.17.45.3 STATUTORY AUTHORITY:

Granted to the central Lea county cotton boll weevil control committee under the Cotton Boll Weevil Control Act, Chapter 76, Article 6A, Sections 1 through 16, NMSA 1978 Compilation.

[21.17.45.3 NMAC - N, 02/28/2001]

21.17.45.4 DURATION:

Until the central Lea county cotton boll weevil control district ceases to exist.

[21.17.45.4 NMAC - N, 02/28/2001]

21.17.45.5 EFFECTIVE DATE:

February 28, 2001, unless a later date is cited in the history note at the end of a section.

[21.17.45.5 NMAC - N, 02/28/2001]

21.17.45.6 OBJECTIVE:

The objective of Part 45, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the cotton boll weevil control district.

[21.17.45.6 NMAC - N, 02/28/2001]

21.17.45.7 DEFINITIONS:

A. "Committee" means central Lea county cotton boll weevil control committee.

B. "Control district" means central Lea county cotton boll weevil control district.

C. "Producer" means any person producing five or more acres of cotton plants.

[21.17.45.7 NMAC - N, 02/28/2001]

21.17.45.8 ASSESSMENT:

A. The committee assessment rate is set forth at 3 dollars (\$3) per land acre of irrigated cotton and 3 dollars (\$3) per land acre for dryland cotton to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent. Any cotton acreage is subject to verification by the control committee.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.

[21.17.45.8 NMAC - N, 02/28/2001; A, 05/14/2004; A, 07/29/2005]

PART 46: LEA COUNTY COTTON BOLL WEEVIL CONTROL DISTRICT ASSESSMENT

21.17.46.1 ISSUING AGENCY:

Lea County Cotton Boll Weevil Control District

[21.17.46.1 NMAC - N, 02/14/2001]

21.17.46.2 SCOPE:

This rule establishes the control committee assessment to be paid by cotton producers in the Lea county cotton boll weevil control district.

[21.17.46.2 NMAC - N, 02/14/2001]

21.17.46.3 STATUTORY AUTHORITY:

Granted to the Lea county cotton boll weevil control committee under the Cotton Boll Weevil Control Act, Chapter 76, Article 6A, Sections 1 through 16, NMSA 1978 Compilation.

[21.17.46.3 NMAC - N, 02/14/2001]

21.17.46.4 DURATION:

Until the Lea county cotton boll weevil control district ceases to exist.

[21.17.46.4 NMAC - N, 02/14/2001]

21.17.46.5 EFFECTIVE DATE:

February 14, 2001, unless a later date is cited in the history note at the end of a section.

[21.17.46.5 NMAC - N, 02/14/2001]

21.17.46.6 OBJECTIVE:

The objective of Part 46, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the cotton boll weevil control district.

[21.17.46.6 NMAC - N, 02/14/2001]

21.17.46.7 DEFINITIONS:

- A. "Committee" means Lea county cotton boll weevil control committee.
- B. "Control district" means Lea county cotton boll weevil control district.
- C. "Producer" means any person producing five or more acres of cotton plants.

[21.17.46.7 NMAC - N, 02/14/2001]

21.17.46.8 ASSESSMENT:

A. The committee assessment rate is set forth at 3 dollars (\$3) per land acre of irrigated cotton and 3 dollars (\$3) per land acre for dryland cotton to be collected each annum from cotton producers in the control district. The control committee may annually set an incentive for early payment of the assessment.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee or their authorized agent.

C. The number of acres used in calculating the assessment amount due will be the number of land acres the cotton producer has certified with the farm service agency, or if the cotton acreage is not certified by the farm service agency the number of land acres used in calculating the assessment amount due shall be determined by other methods set by the control committee or their authorized agent.

D. Failure to comply with payment of assessment to the committee or their authorized agent may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8 ½ percent per annum on the balance unpaid after 30 days.

[21.17.46.8 NMAC - N, 02/14/2001; A, 05/14/2004; A, 07/29/2005]

PART 47: PECOS VALLEY COTTON BOLL WEEVIL CONTROL DISTRICT ASSESSMENT

21.17.47.1 ISSUING AGENCY:

Pecos Valley Cotton Boll Weevil Control District

[21.17.47.1 NMAC - N, 06/15/2000]

21.17.47.2 SCOPE:

This rule establishes the control committee assessment to be paid by cotton producers in the Pecos valley cotton boll weevil control district.

[21.17.47.2 NMAC - N, 06/15/2000]

21.17.47.3 STATUTORY AUTHORITY:

Granted to the Pecos valley cotton boll weevil control committee under the Cotton Boll Weevil Control Act, Chapter 76, Article 6A, Sections 1 through 16, NMSA 1978 Compilation.

[21.17.47.3 NMAC - N, 06/15/2000]

21.17.47.4 DURATION:

Until the Pecos valley cotton boll weevil control district ceases to exist.

[21.17.47.4 NMAC - N, 06/15/2000]

21.17.47.5 EFFECTIVE DATE:

June 15, 2000, unless a later date is cited in the history note at the end of a section.

[21.17.47.5 NMAC - N, 06/15/2000]

21.17.47.6 OBJECTIVE:

The objective of Part 47, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the cotton boll weevil control district.

[21.17.47.6 NMAC - N, 06/15/2000]

21.17.47.7 DEFINITIONS:

- A. "Committee" means Pecos valley cotton boll weevil control committee.
- B. "Control district" means Pecos valley cotton boll weevil control district.
- C. "Producer" means any person producing five or more acres of cotton plants.

[21.17.47.7 NMAC - N, 06/15/2000]

21.17.47.8 ASSESSMENT:

A. The committee assessment rate is set forth at 2 dollars (\$2) per bale of cotton for all cotton producers in the control district. The assessment will be collected at the cotton gins.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee.

C. Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.

[21.17.47.8 NMAC - N, 06/15/2000; A, 08/31/2006; A, 09/28/2007; A, 10/30/2008]

PART 48: SOUTH CENTRAL NEW MEXICO COTTON BOLL WEEVIL CONTROL COMMITTEE ASSESSMENT

21.17.48.1 ISSUING AGENCY:

South Central New Mexico Cotton Boll Weevil Control Committee

[07/31/98; 21.17.48.1 NMAC - Rn & A, 21 NMAC 17.48.1, 06/14/2001]

21.17.48.2 SCOPE:

This rule establishes the control committee assessment to be paid by cotton producers in the south central New Mexico cotton boll weevil control district.

[07/31/98; 21.17.48.2 NMAC - Rn, 21 NMAC 17.48.2, 06/14/2001]

21.17.48.3 STATUTORY AUTHORITY:

Granted to the south central New Mexico cotton boll weevil control committee under the Cotton Boll Weevil Control Act, Chapter 76, Article 6A, Sections 1 through 16, NMSA 1978 Compilation.

[07/31/98; 21.17.48.3 NMAC - Rn, 21 NMAC 17.48.3, 06/14/2001]

21.17.48.4 DURATION:

Until the south central New Mexico cotton boll weevil control district ceases to exist.

[07/31/98; 21.17.48.4 NMAC - Rn & A, 21 NMAC 17.48.4, 06/14/2001]

21.17.48.5 EFFECTIVE DATE:

July 31, 1998, unless a later date is cited in the history note at the end of a section.

[07/31/98; 21.17.48.5 NMAC - Rn & A, 21 NMAC 17.48.5, 06/14/2001]

21.17.48.6 OBJECTIVE:

The objective of Part 48, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the cotton boll weevil control district.

[07/31/98; 21.17.48.6 NMAC - Rn, 21 NMAC 17.48.6, 06/14/2001]

21.17.48.7 DEFINITIONS:

A. "Committee" means south central New Mexico cotton boll weevil control committee.

B. "Control district" means south central New Mexico cotton boll weevil control district.

C. "Producer" means any person producing five or more acres of cotton plants.

[07/31/98; 21.17.48.7 NMAC - Rn, 21 NMAC 17.48.7, 06/14/2001]

21.17.48.8 ASSESSMENT:

A. The committee assessment rate is set forth at 2 dollars and fifty cents (\$2.50) per bale of cotton for all cotton produced by producers in the control district. The assessment will be collected at the gin.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee.

C. Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.

[07/31/98; 21.17.48.8 NMAC - Rn & A, 21 NMAC 17.48.8, 06/14/2001; A, 09/30/2002; A, 10/01/2004]

**PART 49: LUNA COUNTY PEST MANAGEMENT ASSOCIATION
[EXPIRED]**

[This part expired February 5, 2010.]

PART 50: PESTICIDES

21.17.50.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.17.50.1 NMAC - Rn, 21 NMAC 17.50.1, 11/30/05; A, 5/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007.]

21.17.50.2 SCOPE:

Part 50 shall apply to all persons regulated under the Pesticide Control Act, including but not limited to private applicators, commercial applicators, non-commercial

applicators, public applicators, pest management consultants, pesticide dealers and pesticide manufacturers, and to all activities relating to the distribution and use of pesticides.

[7/1/97; 21.17.50.2 NMAC - Rn, 21 NMAC 17.50.2, 11/30/05]

21.17.50.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation.

[7/1/97; 21.17.50.3 NMAC - Rn, 21 NMAC 17.50.3, 11/30/05]

21.17.50.4 DURATION:

Permanent.

[7/1/97; 21.17.50.4 NMAC - Rn, 21 NMAC 17.50.4, 11/30/05]

21.17.50.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.17.50.5 NMAC - Rn, 21 NMAC 17.50.5, 11/30/05]

21.17.50.6 OBJECTIVE:

The objective of Part 50 of Chapter 17 is to set criteria for the use of pesticides in New Mexico, including the licensing and certification of pesticide applicators, record keeping, equipment inspection, storage and disposal of pesticides.

[7/1/97; 21.17.50.6 NMAC - Rn, 21 NMAC 17.50.6, 11/30/05]

21.17.50.7 DEFINITIONS:

A. "Active ingredient" means any ingredient which will prevent, destroy, repel, control or mitigate a pest or which will act as a regulator, defoliant or desiccant.

B. "Aircraft" means any fixed-wing aerial equipment or helicopter used to apply pesticides.

C. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.

D. "Bait" means an edible material containing a pesticide attractive to a pest.

E. "Beneficial insect" means any insect which, during its life cycle, is an effective pollinator of plants, is a parasite or predator of pests, or is an insect that provides useful products.

F. "Certified applicator" means any person who has complied with the certification requirements established by the department to use or supervise the use of any pesticide covered by a valid license issued by the department.

G. "Competent" means properly qualified to perform functions associated with pesticide application and/or use, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

H. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

I. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

J. "Direct supervision" means verifiable instruction to a competent person as follows:

- (1) detailed guidance for applying and/or using the pesticide properly; and
 - (2) provisions for contacting the certified applicator in the event he is needed;
- or
- (3) actual physical presence of a certified applicator when required by the label.

K. "Disposal" means to abandon, deposit, inter, or otherwise discard of waste as a final action after its use has been achieved or a use is no longer intended.

L. "Fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts) as, for example, rust, smut, mildew, mold and yeast, except those on or in processed food, beverages, or pharmaceuticals.

M. "Ground equipment" means any equipment used to supply pesticides that is operated on the ground and is self-propelled, or is mounted, drawn, or transported by a tractor, truck or other vehicle, and that is:

- (1) gravity fed;
- (2) mechanically driven by chain, gears or belts; or
- (3) obtains power or pressure from a power-take-off or engine.

N. "Hazardous pesticide waste" means any pesticide waste in a concentration or quantity, or a waste pesticide container which the board declares to be hazardous to the public health and safety, domestic livestock or wildlife or property.

O. "Illegal residue" means the amount of pesticide remaining in or on food or feed crops and crop by-products, or in meat, meat by-products, or in the fat or milk of animals in excess of tolerances established by the U.S. environmental protection agency (EPA).

P. "Inert ingredient" means any ingredient which has no active properties.

Q. "Manual equipment" means any pressurized or electrically operated equipment (excluding hand-sized pressurized containers containing pesticides) used to apply pesticides that is carried or drawn as a complete unit by the person who applies the pesticide.

R. "Open burning" means the combustion of pesticide waste in any fashion other than by incineration in an incinerator approved and permitted by the New Mexico environment department and designed for that waste.

S. "Open dumping" means the placing of pesticide waste in a land site other than a sanitary landfill as defined herein.

T. "Operator technician" means any person who uses any pesticide as an employee of a commercial applicator.

U. "Permit" means a written certificate of authority issued by the department to use or apply pesticides.

V. "Pest" means any living organism injurious to other living organisms (except man and viruses, bacteria, or other microorganisms in or on other living organisms other than plants) that is a vector of a disease, or is a parasite on another organism and includes, but is not limited to, organisms in the phyla, Platyhelminthes (flatworms, flukes, tapeworms), Nematelminthes (roundworms), Mollusca (snails), Annelida (earthworms), Arthropoda (centipedes, millipedes, spiders, mites, ticks, insects) and Chordata (fish, amphibians, reptiles, birds, mammals, excluding man).

W. "Pest control operator" means a commercial applicator certified in one or more of the license classification(s) 7A, 7B, 7C, or 7D of Paragraphs (10) through (13) of Subsection B of 21.17.50.8 NMAC.

X. "Pesticide waste" means any active or inert ingredient, or any combination thereof, of a labeled pesticide in either its packaged concentration or diluted for use which is intended for disposal. The term "pesticide waste" does not include any pesticide packaged in a form suitable for use in the household, or for agricultural use by a farmer or rancher.

Y. "Plant regulator" means any substance or mixture of substances, intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof but shall not include substances to the extent that they are intended as fertilizers, such as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments.

Z. "Protective equipment" means clothing, respirators, goggles or other equipment or materials used to shield an applicator against unintended exposure to pesticides.

AA. "Public pest management consultant" means any individual who is employed by a governmental agency or municipality and who offers or supplies technical advice or makes recommendations to a user of restricted-use pesticides.

BB. "Sanitary landfill" means a land site for the disposal of wastes as specified under the environmental improvement board's solid waste management regulations in such a manner so as to preclude hazards to public health and safety, domestic livestock or wildlife, and loss of property by utilizing the principles of engineering to confine the wastes to the smallest practical area and to cover with soil.

CC. "Service container" means any container utilized to hold, store or transport a pesticide concentrate or a pesticide use-dilution preparation other than 1) the original labeled container provided by the manufacturer or 2) the application equipment. Containers used for waste pesticides are not deemed to be service containers.

DD. "Service vehicle" means any vehicle used to transport pesticide application equipment, or use-dilution preparation to the application site.

EE. "Use-dilution preparation" means a pesticide preparation which is mixed with a diluent and at a rate specified on the label or labeling which produces the concentration of the pesticide provided on the registered label or labeling.

FF. "Waste pesticide container" means any container intended for disposal which formerly held pesticides.

GG. "Water dumping" means the disposal of pesticide waste in or on lakes, ponds, rivers, sewers, arroyos or any watercourse, except properly designed and constructed manmade facilities approved by the New Mexico environmental improvement division.

HH. "Weed" means any plant which grows where not wanted.

[7/1/97; 21.17.50.7 NMAC - Rn, 21 NMAC 17.50.7, 11/30/05; A, 3/14/08]

21.17.50.8 LICENSE CATEGORIES:

A. This section delineates the license categories and the scope of operations which may be performed under each category. These license categories represent the certification examinations taken by commercial, public and non-commercial applicators, pest management consultants and public pest management consultants.

B. License category and code number:

(1) IA -- Agricultural pest control -- includes the control of insects, mites, plant, diseases, nematodes, and the use of soil fumigants, on agronomic crops.

(2) IB -- Agricultural weed control -- includes the control of undesirable plants that compete with agricultural crops for water and plant nutrients and includes the use of desiccants, fumigants and defoliant.

(3) IC -- Animal pest control -- includes spraying, dusting, dipping, or administering pesticides internally to control pests such as lice, mites, bots, fleas and flies on pets and livestock or treatment of places where animals are confined.

(4) 2-- Forest pest control -- includes the application of pesticides in forests, forest nurseries and forest seed producing areas.

(5) 3A -- Ornamental and turf pest control: insecticides and fungicides -- includes the control of insect and disease pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

(6) 3B -- Ornamental and turf pest control: herbicides -- includes the control of undesirable vegetation in the maintenance and production of ornamental trees, shrubs, flowers and turf.

(7) 4 -- Seed treatment -- includes the treatment of seeds to control insects, plant diseases and other pests.

(8) 5 -- Aquatic pest control -- includes the application of a pesticide to standing or running water to control algae, undesirable fish and other aquatic organisms, excluding public health pest control.

(9) 6 -- Right-of-way pest control -- includes the control of vegetation along public roads, electric powerlines, pipelines, railway rights-of-way, around oil well, storage areas, airports and similar areas.

(10) 7A -- Structural pest control -- includes the control of household pests, fabric pests and stored product pest.

(11) 7B -- Vertebrate animal control -- includes the control of rodents, birds, bats and predators of wildlife and domestic animals.

(12) 7C -- Fumigation -- includes the use of gases such as methyl bromide, hydrogen cyanide and phosphine to control pests in structures, railroad cars, stored grain and similar areas.

(13) 7D -- Wood destroying pest control -- includes the control of termites, carpenter ants, wood-boring or tunneling beetles, fungi and other organisms which attack lumber in structures or sawed lumber.

(14) 8 -- Public health pest control -- includes the control of mosquitoes, flies, fleas and other vectors that transmit human or animal diseases.

(15) 9 -- Regulatory pest control -- includes state, federal or other governmental employees who control regulated and/or quarantined pests.

(16) 10 -- Demonstration and research pest control -- includes:

(a) individuals who demonstrate to the public the proper use of restricted-use pesticides; or

(b) who conduct field research with pesticides.

(17) 11 -- Other -- to be assigned by the director.

[7/1/97; 21.17.50.8 NMAC - Rn, 21 NMAC 17.50.8, 11/30/05; A, 3/14/08]

21.17.50.9 EXPIRATION DATE OF LICENSES:

The annual registration of pesticides and any licenses or certifications provided for in the Pesticide Control Act shall expire on the dates indicated in this section unless it has been revoked or suspended prior thereto by the director.

A. The annual pesticide or device registration shall expire on December 31 following issuance.

B. The annual pesticide dealer license shall expire on December 31 following issuance.

C. The annual pest management consultant license shall expire on December 31 following issuance.

D. The annual commercial applicator license shall expire on December 31 following issuance.

E. The annual operator/technician license shall expire on December 31 following issuance.

F. The annual non-commercial applicator license shall expire on December 31 following issuance.

G. The annual public applicator license shall expire on December 31 following issuance.

H. The annual public pest management consultant license shall expire on December 31 following issuance.

I. The private applicator certification shall expire on December 31 five years following the date of issuance.

[7/1/97; 21.17.50.9 NMAC - Rn, 21 NMAC 17.50.9, 11/30/05; A, 3/14/08]

21.17.50.10 RECORDS:

A. Each commercial applicator, non-commercial applicator and public applicator shall keep records for pesticides applied by them or persons under their direct supervision which shall include the following:

- (1) name of the person for whom the pesticide was applied;
- (2) target pest(s) and crop or site;
- (3) year, month, day, and time the pesticide was applied;
- (4) brand name or common name of the pesticide and U.S. environmental protection agency registration number(s) of the pesticide(s);
- (5) direction and estimated velocity of the wind and the temperature at the application site at the time the pesticide was applied; this requirement shall not apply to application of baits in bait stations or pesticide applications in or immediately adjacent to structures;
- (6) concentration of the pesticide(s) applied; example: pounds, ounces or pints of pesticide formulation per gallon applied;
- (7) volume of use-dilution preparation applied, if applied in categories IA, IB, 2, 3A, 3B, 5, 6, 7D and 8 as defined in Section 8;
- (8) location of the land or city address to which pesticide was applied;
- (9) if applicable, all aircraft identification numbers;
- (10) name and address of the business or agency and the name of the individual making the application.

B. Pesticide application records shall be completed and available to the department within twenty-four (24) hours after the pesticide is applied.

C. Pesticide application records shall be kept for a period of two (2) years from the date of the application of any pesticide. Upon request, in writing, the department shall be furnished with a copy of these records.

D. Upon written request, the customer shall be provided with a record of each application of pesticide applied to his land which includes all information given under Subsection A of 21.17.50.10 NMAC.

E. Holders of private applicator licenses for M-44 sodium cyanide capsules shall submit to the director by September 15, their field records on the use of the M-44 capsules for the preceding period of September 1 through August 31.

[7/1/97; 21.17.50.10 NMAC - Rn, 21 NMAC 17.50.10, 11/30/05]

21.17.50.11 INSPECTION AND CARE OF EQUIPMENT:

A. Equipment used for applying pesticides by a commercial applicator shall be kept in good mechanical condition. Parts that show signs of wear or malfunction shall be replaced to prevent leakage and to assure uniform dispersal of the pesticide. Equipment, where applicable, shall be calibrated accurately to dispense the prescribed amount of pesticide. Hoses or parts not suitable or not intended for use on spray equipment shall not be used.

B. Equipment to be licensed shall be inspected for, but not limited to, the following:

- (1) nozzle condition and function;
- (2) suitable type of hose;
- (3) tank condition;
- (4) hose and pipe connections and condition;
- (5) proper functioning of pressure regulators, if equipped;
- (6) proper functioning of emergency dump valve;
- (7) proper functioning of pump;
- (8) decal or license plate affixed to the equipment.

C. When the same equipment is used to apply different types of pesticides, it shall be cleaned thoroughly if:

- (1) an insecticide is used following the use of a herbicide or defoliant; or
- (2) residue from material used previously is not compatible with other pesticides to be used; or
- (3) a pesticide has been used that would cause an illegal residue on cultivated crops or processed food.

D. Equipment shall be cleaned in a manner that no residues remain that will cause injury to land, humans, desirable plants or animals when making subsequent application of pesticides.

E. A uniform mixture shall be maintained in the equipment at all times while applying pesticides.

F. Pesticides that remain in spray equipment after a job is completed, and for which no further legal use is intended, shall be disposed of in a manner and location that would not cause unreasonable adverse effects on the environment. Pesticides from any equipment shall not be dumped along public highways, into streams, or at any location that would cause unreasonable adverse effects on the environment.

G. Bait boxes and watering stations placed by commercial applicators, non-commercial applicators, and public applicators shall be legibly marked with the business name of the commercial applicator or name of the public agency; the brand name or common name or chemical name of the pesticide or the active ingredient(s); the EPA registration number; and the phone number of the New Mexico poison control center in Albuquerque, New Mexico (1-800-432-6866).

H. In food handling establishments rodenticides shall be placed in bait boxes or watering stations marked with the information required in Subsection G of 21.17.50.11 NMAC.

I. Service containers shall have affixed to them a legible label with the common name of the active ingredient(s) or the brand name of pesticide contained therein.

J. Securing pesticides and equipment on service vehicles: any container or portable application equipment containing pesticides or pesticide residues shall not be left unattended on a service vehicle unless the container or equipment is in a locked compartment or secured in such a manner so as to render it inaccessible to an unauthorized person.

[7/1/97; 21.17.50.11 NMAC - Rn, 21 NMAC 17.50.11, 11/30/05]

21.17.50.12 PROTECTIVE EQUIPMENT:

All licensed certified applicators shall be required to make available protective equipment properly decontaminated and in proper working order, and advise their employees of its use to meet the safety requirements of the pesticide labeling.

[7/1/97; 21.17.50.12 NMAC - Rn, 21 NMAC 17.50.12, 11/30/05]

21.17.50.13 APPLICATION OF PESTICIDES:

A. A licensed certified applicator shall apply only those pesticides registered for use in New Mexico under his license category(s). Any person applying pesticides shall follow directions, rates and precautions stated on the approved label and labeling. Application or use of a pesticide in a manner inconsistent with the directions on the approved label and labeling shall constitute an illegal use of the pesticide. Restricted-use pesticides shall be applied only by licensed certified applicators or persons under their direct supervision.

B. If a commercial pesticide applicator uses a liability insurance policy as proof of financial responsibility, the applicator shall not apply pesticides exempted in the policy.

[7/1/97; 21.17.50.13 NMAC - Rn, 21 NMAC 17.50.13, 11/30/05; A, 3/14/08]

21.17.50.14 CHANGE OF BUSINESS STATUS:

A. Any person issued a license under the Pesticide Control Act shall within ten (10) days notify the director in writing of any change of:

- (1) employment;
- (2) ownership of the firm;
- (3) the business firm name, address or any pertinent data on his application;
- (4) licensed employees.

B. Licenses issued under the New Mexico Pesticide Control Act are nontransferable.

[7/1/97; 21.17.50.14 NMAC - Rn, 21 NMAC 17.50.14, 11/30/05]

21.17.50.15 DISPLAY AND STORAGE OF PESTICIDES:

A. Pesticides intended for distribution or sale shall be displayed or stored within an enclosed building or fenced area and shall not be displayed on sidewalks, parking lots or similar open areas.

B. Pesticides shall be stored in a manner that will reasonably insure that human foods, pet foods, drugs, animal feeds, commercial fertilizers, seeds or clothing will not be contaminated.

C. Pesticides in leaking, broken, corroded or otherwise damaged containers or with damaged or obscured labels, shall not be displayed or offered for sale.

[7/1/97; 21.17.50.15 NMAC - Rn, 21 NMAC 17.50.15, 11/30/05]

21.17.50.16 IDENTIFICATION OF VEHICLES:

A. All service vehicles used by a commercial applicator for distributing pesticides or devices shall be marked with:

- (1) name of the firm;
- (2) commercial applicator's license number.

B. All letters and numerals shall be of bold lettering at least one and one-half (1-1/2) inches high with a contrasting color as background. Markings shall be visible on both the right and left side of the service vehicle.

[7/1/97; 21.17.50.16 NMAC - Rn, 21 NMAC 17.50.16, 11/30/05]

21.17.50.17 PESTICIDE DEALERS:

A. Each applicant for a pesticide dealer license for outlets within New Mexico shall provide adequate facilities for the storage and distribution of restricted-use pesticides.

B. Each pesticide dealer shall keep a record of the sale of all restricted-use pesticides. Information to be recorded shall include:

- (1) name and license number of the certified applicator;
- (2) date of sale;
- (3) brand name of the pesticide product and its EPA registration number;
- (4) quantity of restricted-use pesticide sold.

C. A pesticide dealer license shall be, in addition to any other license or permit, required by law for offering or supplying technical advice, supervision or aid or making a recommendation to the user of highly toxic pesticides, restricted use pesticides, or both, by a dealer or his employees.

D. It shall be unlawful for a pesticide dealer to knowingly sell any restricted-use pesticide to any person who is not a licensed certified applicator, provided individuals under the direct supervision of a certified applicator may receive and transport restricted-use pesticides for a certified applicator.

[7/1/97; 21.17.50.17 NMAC - Rn, 21 NMAC 17.50.17, 11/30/05]

21.17.50.18 LICENSE APPLICATION AND EXAMINATION: CERTIFICATION AND LICENSING:

A. The applicant may elect to be examined in one or more of the classifications of pest control shown on the application. The examination fee, if applicable, shall be paid prior to administering any examination. If the applicant fails to pass any required examination, he may request, to take such failed examination at another date provided an additional examination fee, if applicable, is paid. A grade of seventy (70) shall be passing on all examinations.

B. If an applicant has not completed all license requirements within sixty (60) days from the date of the original application, then said applicant will be subject to the fees and requirements of a new applicant.

C. The director shall not consider any license application by any individual during the effective period of the license suspension or revocation of any license issued under the Pesticide Control Act.

[7/1/97; 21.17.50.18 NMAC - Rn, 21 NMAC 17.50.18, 11/30/05; A, 3/14/08]

21.17.50.19 REVIEW OF CERTIFICATION AND LICENSES:

The director may review any certification, license, or permit to determine if there are grounds for denial, suspension, or revocation action. A review shall be warranted in the case of:

A. violation of some provision of the Pesticide Control Act or regulations promulgated thereunder;

B. criminal conviction under Section 14(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended;

C. a final order imposing civil penalty under Section 14(a) of amended FIFRA;

D. certification obtained by cheating on an examination or providing false information about attendance or completion of required training or continuing education;

E. a license is obtained or utilized for reasons other than the intended purpose of allowing purchase or use of pesticides as required under the New Mexico Pesticide Control Act or regulations promulgated thereunder.

[7/1/97; 21.17.50.19 NMAC - Rn, 21 NMAC 17.50.19, 11/30/05; A, 3/14/08]

21.17.50.20 OPERATOR/TECHNICIAN TRAINING PERMITS:

A new employee of a licensed commercial applicator may work up to sixty (60) calendar days under a operator/technician training permit provided another commercial applicator or technician licensed in New Mexico at least 6 months is present on the application site. Prior to expiration of the operator/technician training permit, permittees shall take the required examination(s). The permit shall be issued on the request of a licensed commercial applicator. The operator/technician training permit can not be extended.

[7/1/97; 21.17.50.20 NMAC - Rn, 21 NMAC 17.50.20, 11/30/05; A, 3/14/08]

21.17.50.21 PROOF OF FINANCIAL RESPONSIBILITY:

A. A commercial applicator license shall not be issued until the applicant has furnished proof of financial responsibility acceptable to the director. This requirement may be satisfied by:

- (1) a certificate of liability insurance signed by an authorized insurance representative; or
- (2) a certified copy of a liability insurance policy; or
- (3) a surety bond.

B. Proof of financial responsibility by any means other than a certified copy of the policy shall be provided by the issuing company on forms provided by or approved by the director.

C. Proof of financial responsibility shall be clearly conditioned to cover liability resulting from the handling, storage, disposal, application, use or misuse of any pesticide.

D. The director shall be notified in writing by the issuing company ten (10) days prior to any reduction or cancellation of insurance coverage.

E. The insurer or surplus line broker shall be authorized to do business in New Mexico.

[7/1/97; 21.17.50.21 NMAC - Rn, 21 NMAC 17.50.21, 11/30/05]

21.17.50.22 MINIMUM COVERAGE REQUIREMENTS:

- A. Surety bond -- \$100,000.
- B. Liability insurance:
 - (1) Aircraft.
 - (a) Bodily injury -- \$25,000 each occurrence, \$50,000 aggregate.
 - (b) Property damage -- \$50,000 each occurrence.
 - (c) Single limit bodily injury and property damage -- \$100,000.
 - (2) Ground or manual.
 - (a) Bodily injury -- \$10,000 each occurrence -- \$25,000 aggregate.
 - (b) Property damage -- \$25,000 each occurrence.
 - (c) Single limit bodily injury and property damage -- \$50,000.
 - (3) Maximum amount of deductible (if applicable) -- \$1,000.

[7/1/97; 21.17.50.22 NMAC - Rn, 21 NMAC 17.50.22, 11/30/05]

21.17.50.23 STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE WASTES:

- A. Pesticide waste and pesticides intended for use by commercial pesticide applicators shall be stored in enclosed, secured areas and shall be posted with warning signs in English and Spanish.
- B. Pesticide wastes, provided they are not also hazardous pesticide wastes, shall be disposed of in an approved sanitary landfill.
- C. Hazardous pesticide waste shall be disposed of in a permitted hazardous waste disposal site or in a designated area of an approved sanitary landfill under the supervision of the operator; provided, the department shall have the power to disallow disposal in an approved sanitary landfill if the hazardous pesticide waste is determined to be of such a nature that disposal should only be in a permitted hazardous waste disposal site.
- D. Waste pesticide containers shall be crushed or rendered non-serviceable and disposed of in an approved sanitary landfill.

E. Rinsings and waste waters from the cleaning of pesticide apparatuses which can reasonably be expected to contain pesticide contaminants shall be contained in the cleanup area and not allowed to contaminate water or neighboring land.

F. Waste pesticides from livestock dipping vats shall be placed in evaporation ponds so as to avoid contamination of any surface or ground waters.

G. Pesticide waste or waste pesticide containers shall not be disposed of by open dumping, open burning, or water dumping in the state of New Mexico.

H. No pesticide waste shall be disposed of in any sewer or storm drain.

I. No pesticide waste or waste pesticide containers shall be disposed of in a manner inconsistent with its label or labeling.

[7/1/97; 21.17.50.23 NMAC - Rn, 21 NMAC 17.50.23, 11/30/05]

21.17.50.24 VARIANCE:

A. The director may grant a variance from any provision of 21.17.50.23 NMAC under special circumstances, provided such variance does not violate other state or federal laws.

B. A request for a variance shall be made to the director in writing and shall contain such information as the department deems necessary.

[7/1/97; 21.17.50.24 NMAC - Rn, 21 NMAC 17.50.24, 11/30/05]

21.17.50.25 FEES:

A. The annual registration fee for each pesticide or device registered shall be one hundred dollars (\$100.00).

B. The annual pesticide dealer license fee for each location or outlet within the state, or if there is no outlet within the state, for the principal out-of-state location or outlet, shall be seventy five dollars (\$75.00).

C. The annual pest management consultant license fee shall be seventy five dollars (\$75.00).

D. The annual commercial applicator license fee shall be seventy five dollars (\$75.00).

E. The annual operator/agricultural pilot/serviceman license fee shall be fifty dollars (\$50.00).

F. The annual non-commercial applicator license fee shall be seventy five dollars (\$75.00).

G. The private applicator certification fee, or renewal thereof, shall be fifteen dollars (\$15.00).

H. The fee for each additional inspection required to certify a unit of aircraft, ground or manual equipment that fails to pass inspection shall be twenty-five dollars (\$25.00).

I. The examination fee for each examination needed to qualify the applicant as a pest management consultant, commercial applicator, non-commercial applicator or operator/agricultural pilot/serviceman shall be ten dollars (\$10.00) per examination.

[7/1/97; 21.17.50.25 NMAC - Rn & A, 21 NMAC 17.50.25, 11/30/05, A, 11/15/10]

PART 51: CONTROL OF WOOD DESTROYING PESTS

21.17.51.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.17.51.1 NMAC - Rn & A, 21 NMAC 17.51.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.51.2 SCOPE:

Part 51 shall apply to all commercial applicators applying pesticides in structures for the control of wood destroying pests or persons making recommendations for restricted use pesticides for the control of wood destroying pests in structures.

[7/1/97; 21.17.51.2 NMAC - Rn, 21 NMAC 17.51.2, 05/29/09]

21.17.51.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation.

[7/1/97; 21.17.51.3 NMAC - Rn, 21 NMAC 17.51.3, 05/29/09]

21.17.51.4 DURATION:

Permanent.

[7/1/97; 21.17.51.4 NMAC - Rn, 21 NMAC 17.51.4, 05/29/09]

21.17.51.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.17.51.5 NMAC - Rn, 21 NMAC 17.51.5, 05/29/09]

21.17.51.6 OBJECTIVE:

The objective of Part 51 of Chapter 17 is to establish certification, supervision, and record keeping requirements for persons treating structures for wood destroying organisms, principally termites.

[7/1/97; 21.17.51.6 NMAC - Rn, 21 NMAC 17.51.6, 05/29/09]

21.17.51.7 DEFINITIONS:

[RESERVED]

21.17.51.8 TESTING AND EXPERIENCE REQUIREMENTS:

A. Certified applicators shall have at least one (1) year of experience in the classification of wood destroying pest control, have attended four (4) hours of approved training and pass the required certification examination in category 7D, wood destroying pest control, and shall attend four (4) hours of approved training annually thereafter.

B. Termite service technicians shall have attended four (4) hours of initial, approved training and pass a special test on the proper use for controlling wood destroying pests. Furthermore, termite service technicians shall attend four (4) hours of approved training annually thereafter.

C. Any person who performs inspections for wood destroying pests shall be licensed as a termite service technician, pest management consultant or commercial applicator in category 7D, and shall meet the training requirements in Subsection A of 21.17.51.8 NMAC.

D. Failure to meet the annual training requirements shall result in loss of certification in category 7D.

[7/1/97; 21.17.51.8 NMAC - Rn, 21 NMAC 17.51.8, 05/29/09]

21.17.51.9 DIRECT SUPERVISION:

No restricted use pesticide shall be mixed or applied for the control of wood destroying pests except by an applicator certified in category 7D, wood destroying pest control, or a licensed termite service technician.

[7/1/97; 21.17.51.9 NMAC - Rn, 21 NMAC 17.51.9, 05/29/09]

21.17.51.10 RECORDS:

A. In addition to any other records required under the Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation, each person certified in category 7D -- wood destroying pest control shall keep the following:

- (1) name of the person for whom the pesticide was applied;
- (2) mailing address of the person for whom the pesticide was applied;
- (3) location of the treated property;
- (4) brand name(s) and U.S. environmental protection agency registration number(s) of the pesticide(s);
- (5) concentration expressed in percentage by weight and volume (gallons) of the pesticide applied;
- (6) name of the certified applicator or termite service technician who was in direct supervision of the application at the job site;
- (7) detailed drawing on graph paper of the foundation plan of the structure treated showing the type of building construction and the areas treated.

B. Records shall be accessible to the department for inspection and copying during normal business hours.

[7/1/97; 21.17.51.10 NMAC - Rn, 21 NMAC 17.51.10, 05/29/09]

PART 52: [RESERVED]

PART 53: CONTINUING EDUCATION UNITS FOR PESTICIDE APPLICATORS

21.17.53.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[12/1/96; 21.17.53.1 NMAC - Rn & A, 21 NMAC 17.53.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New-Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.53.2 SCOPE:

This rule shall apply to all persons certified to use restricted-use pesticides -- commercial applicators, private applicators, public applicators and non-commercial applicators.

[12/1/96; 21.17.53.2 NMAC - Rn, 21 NMAC 17.53.2, 05/29/09]

21.17.53.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation.

[12/29/92; 21.17.53.3 NMAC - Rn, 21 NMAC 17.53.3, 05/29/09]

21.17.53.4 DURATION:

Permanent.

[12/1/96; 21.17.53.4 NMAC - Rn, 21 NMAC 17.53.4, 05/29/09]

21.17.53.5 EFFECTIVE DATE:

December 1, 1996, unless a different date is cited at the end of a section or paragraph.

[12/1/96; 21.17.53.5 NMAC - Rn, 21 NMAC 17.53.5, 05/29/09]

21.17.53.6 OBJECTIVE:

The objective of Part 53 of Chapter 17 is to establish the mechanism for granting continuing education units for the recertification of private, commercial, non-commercial and public pesticide applicators.

[12/29/92; 12/1/96; 21.17.53.6 NMAC - Rn, 21 NMAC 17.53.6, 05/29/09]

21.17.53.7 DEFINITIONS:

A. "**Continuing education unit**" (CEU) means a credit granted for the attendance and successful completion of an approved training or educational workshop or seminar held for the certification or recertification of private, commercial, non-commercial or public pesticide applicators.

B. "**Certification period**" means:

- (1) the one year period following the year of issuance of a commercial, public or non-commercial applicator license;
- (2) the five year period following the year of issuance of a private applicator license.

C. "**Recertification training**" means workshops, seminars, classes or similar educational forums with instruction on pesticide use approved by the New Mexico department of agriculture (NMDA).

[12/29/92; 12/1/96; 21.17.53.7 NMAC - Rn, 21 NMAC 17.53.7, 05/29/09]

21.17.53.8 RECERTIFICATION:

A. All commercial, public and non-commercial applicators shall be recertified annually following the initial issuance of their license.

B. A minimum of four (4) CEUs shall be required for the annual recertification of commercial, public or non-commercial applicators.

C. Private applicators shall be recertified every five years following the initial issuance of their certification.

D. A minimum of five (5) CEUs shall be required for recertification of private applicators.

E. No more than one (1) CEU per certification period shall be awarded for attendance at product sales meetings.

F. A maximum of one (1) CEU shall be awarded per certification period for approved in-house training programs.

G. The number of hours for recertification contained in this section are the minimum required for general recertification. Recertification in specific categories may require more than these minimums and may be specified in separate regulations relating to specific license categories.

[12/29/92; 12/1/96; 21.17.53.8 NMAC - Rn, 21 NMAC 17.53.8, 05/29/09]

21.17.53.9 APPROVAL OF RECERTIFICATION TRAINING:

NMDA shall have final and sole approval of any program seeking CEUs and shall have complete authority in the awarding of CEUs for any approved program.

[12/29/92; 21.17.53.9 NMAC - Rn, 21 NMAC 17.53.9, 05/29/09]

21.17.53.10 GROUPING OF LICENSE CATEGORIES:

Training for recertification shall be grouped in one of the following categories. NMDA shall make the final determination as to what categories any approved recertification program shall apply.

- A. pesticide use and safety;
- B. wood destroying organisms;
- C. private applicator.

[12/29/92; 12/1/96; 21.17.53.10 NMAC - Rn, 21 NMAC 17.53.10, 05/29/09]

21.17.53.11 AWARDING CONTINUING EDUCATION UNITS:

A. One CEU shall be awarded for each hour of approved instruction or training, except for the following.

(1) A half CEU shall be the maximum awarded for any approved product sales meeting.

(2) One CEU shall be the maximum awarded for any approved in-house training program.

B. One hour of instruction or training shall be equal to at least 45 minutes of contact time. One-half hour of instruction or training shall be equal to at least 20 minutes of contact time.

C. A half CEU shall be the smallest unit awarded.

D. CEUs shall be awarded only for topics relating to the safe effective use of pesticides and the laws and rules governing pesticide use.

E. Persons seeking approval of programs for CEUs shall submit, at least fifteen (15) days prior to the beginning date for the meeting, a copy of the program complete with: 1) topics; 2) short description of each topic; 3) length of presentation per topic; and 4) speakers.

F. Persons seeking approval of programs for CEUs shall allow at least two NMDA employees to attend any training program for purposes of monitoring the training without payment of any registration fee.

G. Persons awarded approval for CEUs for an approved program shall complete and return to NMDA a copy of the meeting attendance roster.

H. Attendance rosters must be post-marked to NMDA no later than ten (10) days from the last day of the training workshop or seminar.

I. It shall be the responsibility of the applicator to return all CEU cards to NMDA.

J. For programs where CEU cards are issued, NMDA shall credit CEUs for individual applicators based solely on returned CEU cards.

K. NMDA may accept CEUs from state or federal agencies on submittal of acceptable documentation.

[12/29/92; 12/1/96; 21.17.53.11 NMAC - Rn, 21 NMAC 17.53.11, 05/29/09]

PART 54-55: [RESERVED]

PART 56: RESTRICTED-USE PESTICIDES

21.17.56.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[12/1/96; 21.17.56.1 NMAC - Rn, 21 NMAC 17.56.1, 02/28/07; A, 5/29/09]

[MSC 3189, Box 30005, Las Cruces, New-Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.56.2 SCOPE:

This rule shall apply to all persons using, selling, or distributing restricted-use pesticides.

[11/21/79, 3/27/80; 21.17.56.2 NMAC - Rn, 21 NMAC 17.56.2, 02/28/07]

21.17.56.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation.

[11/21/79; 21.17.56.3 NMAC - Rn, 21 NMAC 17.56.3, 02/28/07]

21.17.56.4 DURATION:

Permanent.

[12/1/96; 21.17.56.4 NMAC - Rn, 21 NMAC 17.56.4, 02/28/07]

21.17.56.5 EFFECTIVE DATE:

December 1, 1996, unless a later date is cited at the end of a section.

[12/1/96; 21.17.56.5 NMAC - Rn & A, 21 NMAC 17.56.5, 02/28/07]

21.17.56.6 OBJECTIVE:

The objective of Part 56 of Chapter 17 is to establish the classification and restrictions for purchase and use of certain pesticides.

[3/19/84, 5/18/87, 2/19/88; 21.17.56.6 NMAC - Rn & A, 21 NMAC 17.56.6, 02/28/07]

21.17.56.7 DEFINITIONS:

[RESERVED]

21.17.56.8 FEDERAL CLASSIFICATION OF PESTICIDES:

Any pesticide product or use classified for restricted-use by the U.S. environmental protection agency shall be classified for restricted use in New Mexico.

[4/10/74, 9/15/75, 11/21/79; 21.17.56.8 NMAC - Rn, 21 NMAC 17.56.8, 02/28/07]

21.17.56.9 USE OF PESTICIDE IN A MANNER INCONSISTENT WITH ITS LABELING:

It shall be unlawful to use any pesticide in a manner inconsistent with the directions on its labeling; provided, the term "inconsistent with the directions" shall not include:

A. applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling, provided this paragraph shall not apply to the use of termiticides;

B. applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the U.S. environmental protection agency has required that the labeling specifically state the pesticide may be used only for the pests specified on the labeling and the U.S. environmental protection agency has determined the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment;

C. mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;

D. any use of a pesticide in conformance with sections 5, 18, or 24 of the federal Insecticide, Fungicide, and Rodenticide Act.

[5/18/87; 21.17.56.9 NMAC - Rn, 21 NMAC 17.56.9, 02/28/07]

21.17.56.10 PURCHASE OF RESTRICTED-USE PESTICIDES:

A. It shall be unlawful for any person other than a licensed, commercial, non-commercial, or public applicator or certified private applicator to purchase a federal or state restricted-use pesticide.

B. It shall be unlawful for a pesticide dealer to knowingly sell any restricted-use pesticide to any person who is not a certified applicator, provided individuals under the direct supervision of a certified applicator may receive and transport restricted-use pesticides for the certified applicator.

[11/21/79, 12/1/96; 21.17.56.10 NMAC - Rn, 21 NMAC 17.56.10, 02/28/07]

21.17.56.11 STATE RESTRICTED-USE PESTICIDES:

The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

A. State restricted-use insecticides: [REPEALED]

B. State restricted-use herbicides: In order to prevent unreasonable adverse effects on the environment, all formulations of the herbicides listed in this section shall be classified for restricted use in New Mexico, provided their labels or labeling contain directions primarily for use on agronomic crops, range or pasture lands, rights-of-way, forest, or non-croplands. Those products labeled primarily for use in ornamental, turf, or home garden plantings shall remain unrestricted.

(1) 2,4-D/2,4-Dichlorophenoxyacetic acid.

(2) 2,4-DB/4-(2,4-Dichlorophenoxy)butyric acid.

[11/21/79, 12/1/96; 21.17.56.11 NMAC - Rn & A, 21 NMAC 17.56.11, 02/28/07]

21.17.56.12-13 [RESERVED]

[5/18/87, 3/30/89, R, 12/1/96; 21.17.56.12-13 NMAC - Rn, 21 NMAC 17.56.12-13, 02/28/07]

21.17.56.14 [RESERVED]

[1/21/79, 11/21/79, 3/27/80, 5/18/87, 2/19/88, 3/30/89, 12/1/96; 21.17.56.14 NMAC - Rn & A, 21 NMAC 17.56.14, 02/28/07; Repealed, 08/16/10]

21.17.56.15 APPLICATOR RECORDS:

A. Any New Mexico licensed and certified pesticide applicator shall maintain the following records for two years for all pesticide applications:

(1) all records as required under 21.17.50.10 NMAC for restricted use pesticides;

(2) other records not listed above, when required by the worker protection standard, CFR 140, under authority of the federal Insecticide, Fungicide, and Rodenticide Act; and

(3) other records not listed above, when required under the United States department of agriculture private applicator recordkeeping program.

B. For pesticide applications made by a commercial pesticide applicator, application information shall be exchanged in the timeframe and manner specified with any landowner who is an agricultural employer under 40 CFR Part 170, the federal worker protection standard.

[11/21/79, 3/27/80, 5/18/87; 21.17.56.15 NMAC - Rn & A, 21 NMAC 17.56.15, 02/28/07; A, 08/16/10]

21.17.56.16 DEALER RECORDS [RESERVED]

[4/10/74, 11/21/79, 5/18/87; R, 12/1/96; 21.17.56.16 NMAC - Rn, 21 NMAC 17.56.16, 02/28/07]

PART 57: M-44 CAPSULES AND THE LIVESTOCK PROTECTION COLLAR

21.17.57.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[12/1/96; 21.17.57.1 NMAC - Rn & A, 21 NMAC 17.57.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New-Mexico 88003-8005, Telephone No. (575) 646-3007]

21.17.57.2 SCOPE:

This rule shall apply to all persons using, selling or distributing M-44 capsules or livestock protection collars.

[5/16/91; 12/1/96; 21.17.57.2 NMAC - Rn, 21 NMAC 17.57.2, 05/29/09]

21.17.57.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 Compilation.

[5/16/91; 21.17.57.3 NMAC - Rn, 21 NMAC 17.57.3, 05/29/09]

21.17.57.4 DURATION:

Permanent.

[12/1/96; 21.17.57.4 NMAC - Rn, 21 NMAC 17.57.4, 05/29/09]

21.17.57.5 EFFECTIVE DATE:

December 1, 1996, unless a different date is cited at the end of a section or paragraph.

[12/1/96; 21.17.57.5 NMAC - Rn, 21 NMAC 17.57.5, 05/29/09]

21.17.57.6 OBJECTIVE:

The objective of Part 57 of Chapter 17 is to establish limitations and the parameters for selling, distributing or using M-44 capsules or compound 1080 in livestock protection collars.

[5/16/91; 12/1/96; 21.17.57.6 NMAC - Rn, 21 NMAC 17.57.6, 05/29/09]

21.17.57.7 DEFINITIONS:

In addition to the definitions contained in the Pesticide Control Act, 76-4-3, (NMSA 1978), the following definitions shall also apply.

A. **"Department"** means the New Mexico department of agriculture.

B. **"Livestock protection collar"** means a collar-like device which contains the active ingredient sodium fluoroacetate (compound 1080) and is registered with the U.S. environmental protection agency (EPA) for the protection of livestock. The term "livestock protection collar" may be referred to as "LPC".

C. **"M-44 capsule"** means the sodium cyanide capsule, registered with the EPA for use in the M-44 device.

D. **"M-44 device"** means the patented spring-operated device designed to eject the sodium cyanide in an M-44 capsule into the mouth of target organisms.

[5/16/91; 12/1/96; 21.17.57.7 NMAC - Rn, 21 NMAC 17.57.7, 05/29/09]

21.17.57.8 PROHIBITED ACTS:

It shall be unlawful:

A. to sell or transfer LPCs or M-44 capsules used in the M-44 device to persons not certified to use LPC or M-44 capsules respectively;

B. for any person to sell or transfer M-44 capsules unless licensed as an authorized M-44 pesticide dealer;

C. for any person to transfer LPCs except through the registrant;

D. to use LPCs or M-44 capsules without a copy of the label in the possession of the certified applicator;

E. to fill, load, or remove the toxicant from any LPC or M-44 capsule.

[5/16/91; 12/1/96; 21.17.57.8 NMAC - Rn, 21 NMAC 17.57.8, 05/29/09]

21.17.57.9 LICENSING OF PERSONS USING M-44 CAPSULES OR LIVESTOCK PROTECTION COLLARS:

A. The LPC certification category is in addition to any other pesticide certification category. No other certification category covers the use of LPCs in the state.

B. The M-44 certification category is in addition to any other pesticide certification category. No other certification category covers the use of M-44 capsules in the state.

C. No person shall be certified or licensed to use LPCs or M-44 capsules unless they are a livestock producer, a permanent employee of a livestock producer or work for a government animal damage control program.

D. Any person using LPCs or M-44 capsules shall be a certified applicator. No LPCs or M-44 capsules shall be applied under the direct supervision of any other certified applicator.

E. The department may require re-training or re-testing when any applicator fails to comply with the LPC or M-44 capsule label or labeling, New Mexico Pesticide Control Act or its rules.

[5/16/91; 12/1/96; 21.17.57.9 NMAC - Rn, 21 NMAC 17.57.9, 05/29/09]

21.17.57.10 RECORDKEEPING, MONITORING AND REPORTING:

A. Each dealer or registrant shall maintain sales records for LPCs or M-44 capsules on forms prescribed by the department for at least two (2) years after the date of sale, and shall submit copies of those records annually to the department.

B. Where the department is the registrant, each order for registered M-44 capsules shall be accompanied by a record of livestock losses as specified in use restriction No. 7 of the M-44 use restriction bulletin.

(1) Orders shall not be processed until a record of livestock predation is on file.

(2) Documented livestock losses shall not be older than ninety (90) days prior to the date of the order for M-44 capsules, except that historic seasonal losses in a specified area shall be updated annually.

C. Dealer records shall include:

(1) the date of sale or transfer;

(2) license or certification number of each LPC or M-44 applicator who purchased or received a collar or M-44 capsules;

(3) the number of LPCs sold or transferred;

(4) the serial number of each LPC; and

(5) the number of M-44 capsules sold or transferred.

D. Any applicator using LPCs shall maintain for a period of two years from the date of use the following records:

(1) the serial number of the LPC attached to the livestock;

(2) the pasture(s) where collared livestock were placed;

(3) the dates of each attachment, inspection and removal;

(4) the number and locations of livestock found with ruptured LPCs, and the apparent cause of the damage;

(5) the number, dates and approximate location of LPCs lost;

(6) the species, locations and dates of all animals suspected to have been killed by LPCs;

(7) all suspected poisonings of humans, domestic animals or non-target wild animals resulting from LPC use, and all other accidents involving the release of compound 1080; and

(8) the number of LPCs in storage.

E. Any applicator using M-44 capsules shall maintain for a period of two years from the date of use the following records:

(1) the number of M-44 devices placed;

(2) the location of each M-44 device placed;

(3) the dates of each M-44 device placement, inspection or removal;

(4) the number and location of each M-44 device which have been discharged and the apparent reason for the discharge;

(5) number and species of animal(s) taken; and

(6) all suspected poisonings of humans, domestic animals or non-target wild animals resulting from the use of M-44 capsules.

[5/16/91; 12/1/96; 21.17.57.10 NMAC - Rn, 21 NMAC 17.57.10, 05/29/09]

21.17.57.11 ACCIDENT REPORTING:

A. Each in-state dealer or certified applicator shall report accidents involving any suspected or actual poisoning of threatened or endangered species or humans involving LPCs or M-44 capsules used in the M-44 device to the department within one (1) working day by telephone. Phone 800-432-5310.

B. Each certified applicator shall report takings of domestic animals or non-target wild animals involving LPCs or M-44 capsules used in the M-44 device to the department within thirty (30) days of the end of each calendar quarter.

[5/16/91; 12/1/96; 21.17.57.11 NMAC - Rn, 21 NMAC 17.57.11, 05/29/09]

PART 58: ORGANIC METHODS OF CONTROL [REPEALED]

[This part was repealed effective 2/29/2012]

CHAPTER 18: SEEDS, FEEDS, AND FERTILIZERS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: FERTILIZER PRODUCTS

21.18.2.1 ISSUING AGENCY:

New Mexico State University New Mexico Department of Agriculture

[7/1/97; 21.18.2.1 NMAC - Rn & A, 21 NMAC 18.2.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.18.2.2 SCOPE:

Part 2 shall apply to any person distributing fertilizer or soil conditioner products in New Mexico.

[7/1/97; 21.18.2.2 NMAC - Rn, 21 NMAC 18.2.2, 05/29/09]

21.18.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Fertilizer Act, Chapter 76, Article 11, Sections 1 through 20, New Mexico Statutes Annotated 1978 Compilation.

[7/1/97; 21.18.2.3 NMAC - Rn, 21 NMAC 18.2.3, 05/29/09; A, 09/30/13]

21.18.2.4 DURATION:

Permanent.

[7/1/97; 21.18.2.4 NMAC - Rn, 21 NMAC 18.2.4, 05/29/09]

21.18.2.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.18.2.5 NMAC - Rn, 21 NMAC 18.2.5, 05/29/09]

21.18.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 18 is to protect the consumers of fertilizer and soil conditioner products by establishing standards for the labeling and sale of plant food products.

[7/1/97; 21.18.2.6 NMAC - Rn, 21 NMAC 18.2.6, 05/29/09]

21.18.2.7 DEFINITIONS:

"Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the order and form as prescribed in 21.18.2.9 NMAC.

[7/1/97; 21.18.2.7 NMAC - Rn, 21 NMAC 18.2.7, 05/29/09]

21.18.2.8 EXEMPTIONS TO DEFINITIONS:

The following materials are hereby declared exempt from the definition of soil conditioners: peat moss, bark, perlite and vermiculite; provided that no claims are made as outlined in 76-11-3R, NMSA 1978.

[7/1/97; 21.18.2.8 NMAC - Rn, 21 NMAC 18.2.8, 05/29/09]

21.18.2.9 LABELING:

A. The minimum percentage of primary plant nutrients claimed by a fertilizer product shall appear on the product label in the following order and form.

- total nitrogen (N)..... _____%
- _____ % ammoniacal nitrogen
- _____ % nitrate nitrogen
- _____ % water insoluble nitrogen
- _____ % urea nitrogen
- _____ % (other recognized and determinable forms of N)
- available phosphate (P2O5)..... _____%
- soluble potash (K2O)..... _____%

(other nutrients, elemental basis as prescribed in Subsection B of 21.18.2.9 NMAC).._____%

B. In addition to nitrogen, phosphorus, and potassium, other plant nutrients, when mentioned in any form or manner, shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided to the department upon request. Guarantees or claims for the following plant nutrients are the only ones which will be accepted. Unless excluded, the minimum percentages which will be accepted for registration are as follows:

<u>element</u>	<u>percent</u>
calcium (Ca)	1.00
magnesium (Mg)	0.50
sulfur (S)	1.00
boron (B)	0.02
chlorine (Cl)	0.10
cobalt (Co)	0.0005
copper (Cu)	0.05
iron (Fe)	0.10
manganese (Mn)	0.05
molybdenum (Mo)	0.0005
nickel (Ni)	0.0010
sodium (Na)	0.10
zinc (Zn)	0.05

C. Levels below the percentages in Subsection B of 21.18.2.9 NMAC may be allowed provided that:

(1) justification is furnished by research data or other professional sources to satisfy the department that any of these minimum percentages would be detrimental to specific plants, or

(2) a commercial fertilizer is formulated according to specifications which are furnished by a consumer prior to mixing.

D. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the preceding listed elements which are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphorus, and potassium.

E. Sources of nutrients, when shown on the label, shall be listed below the completed guaranteed analysis statement.

F. The label shall display:

(1) directions for use which include both an amount to be applied per unit area and a frequency of use per year; or

(2) a statement which says in effect, "for the agronomic application rates suitable for your geographical area or the maximum allowable non-nutrient application rates per acre, consult a trained soil specialist or write to (name and address of manufacturer/guarantor)."

G. A warning or caution statement is required on the label for any product which contains 0.03% or more of boron in water soluble form. This statement shall carry the word "warning" or "caution" conspicuously displayed, shall state the crop(s) for which the fertilizer is to be used, and state that the use of the fertilizer on any other than those recommended may result in serious injury to the crop(s).

H. Products containing 0.001% or more of molybdenum also require a warning statement on the label. This shall include the word "warning" or "caution" and the statement that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals.

I. The names and definitions for fertilizers shall be those adopted by the association of American plant food control officials.

J. Animal manure materials are permitted to be labeled in cubic feet rather than net weight.

K. Beneficial substances or compounds guarantees shall appear under the heading "contains beneficial substances" or "contains beneficial compounds."

contains beneficial substances

beneficial substance.% or acceptable units

purpose statement:

or

contains beneficial compounds

beneficial compound.....% or acceptable units

purpose statement:

L. Bulk soil conditioner labeling in addition to requirements of 76-11-5 NMSA 1978:

(1) Net weight or volume basis

(2) Product claim(s) allowable for use:

(a) improves soil structure and porosity - creating a better plant root environment;

(b) increases moisture infiltration and permeability and reduces bulk density of heavy soils - improving moisture infiltration rates and reducing erosion and runoff;

(c) improves the moisture holding capacity of light soils - reducing water loss and nutrient leaching and improving moisture retention;

(d) improves the cation exchange capacity (CEC) of soils;

(e) supplies organic matter;

(f) aids the proliferation of soil microorganisms;

(g) supplies beneficial microorganisms to soils and growing media;

(h) encourages vigorous root growth;

(i) allows plants to more effectively utilize nutrients while reducing nutrient loss by leaching;

(j) enables soils to retain nutrients longer;

(k) contains humus - assisting in soil aggregation and making nutrients more available for plant uptake;

(l) buffers soil pH.

(3) Feedstock statement: list of feedstocks from which the compost was derived.

21.18.2.10 ANHYDROUS AMMONIA:

[REPEALED]

[7/1/97; 21.18.2.10 NMAC - Rn, 21 NMAC 18.2.10, 05/29/09]

21.18.2.11 INSPECTION FEE:

An inspection fee of thirty-five cents (.35) per ton is hereby established to be effective on all commercial fertilizer and soil conditioners.

[7/1/97; 21.18.2.11 NMAC - Rn, 21 NMAC 18.2.11, 05/29/09]

21.18.2.12 SAMPLING-ANALYSIS:

The methods of sampling and analysis shall be those of the association of official analytical chemists international. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the state chemist may adopt such appropriate methods from other sources.

[7/1/97; 21.18.2.12 NMAC - Rn, 21 NMAC 18.2.12, 05/29/09]

PART 3: COMMERCIAL FEEDS

21.18.3.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

[21.18.3.1 NMAC - Rp, 21.18.3.1 NMAC, 09/30/2013]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.18.3.2 SCOPE:

Part 3 shall apply to any person distributing commercial feeds in New Mexico.

[21.18.3.2 NMAC - Rp, 21.18.3.2 NMAC, 09/30/2013]

21.18.3.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Commercial Feed Act, Chapter 76, Article 19A, Sections 1 through 17, New Mexico Statutes Annotated 1978.

[21.18.3.3 NMAC - Rp, 21.18.3.3 NMAC, 09/30/2013]

21.18.3.4 DURATION:

Permanent.

[21.18.3.4 NMAC - Rp, 21.18.3.4 NMAC, 09/30/2013]

21.18.3.5 EFFECTIVE DATE:

September 30, 2013, unless a later date is cited at the end of a section.

[21.18.3.5 NMAC - Rp, 21.18.3.5 NMAC, 09/30/2013]

21.18.3.6 OBJECTIVE:

The objective of Part 3 of Chapter 18 is to protect the consumers of commercial feed products by establishing standards for their labeling, registration, and sale.

[21.18.3.6 NMAC - Rp, 21.18.3.6 NMAC, 09/30/2013]

21.18.3.7 DEFINITIONS:

A. The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.

B. The terms used in reference to commercial feeds shall be the official feed terms adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.

C. The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of Section 76-19A-5A NMSA 1978: raw meat and loose salt when unground and when not mixed or intermixed with other materials: provided that these commodities are not adulterated within the meaning of Section 76-19A-8 NMSA 1978.

D. The definitions in Section 76-19A-2 NMSA 1978 shall apply in addition to the following:

(1) Principal display panel means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(2) Ingredient statement means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

(3) Immediate container means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.

(4) All life stages means gestation/lactation, growth, and adult maintenance life stages.

(5) Family means a group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an association of American feed control officials feeding protocol(s).

E. Prescription diet means a feed that is made available to the public only through a licensed veterinarian or through the retail or internet sales to individuals purchasing the product under the direction of a veterinarian.

F. Department means the New Mexico department of agriculture.

[21.18.3.7 NMAC - Rp, 21.18.3.7 NMAC, 9/30/2013; A, 1/01/2021]

21.18.3.8 LABEL FORMAT:

A. Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this regulation on the principal display panel of the product and in the following format:

(1) product name and brand name, if any, as stipulated in Subsection A of 21.18.3.9 NMAC;

(2) if a drug is used, label as stipulated in Subsection B of 21.18.3.9 NMAC;

(3) purpose statement as stipulated in Subsection C of 21.18.3.9 NMAC;

(4) guaranteed analysis as stipulated in Subsection D of 21.18.3.9 NMAC;

(5) feed ingredients as stipulated in Subsection E of 21.18.3.9 NMAC and in 21.18.3.12 NMAC;

(6) directions for use and precautionary statements as stipulated in Subsection F of 21.18.3.9 NMAC and in 21.18.3.13 NMAC;

(7) name and principal mailing address of the manufacturer or person responsible for distributing the feed as stipulated in Subsection G of 21.18.3.9 NMAC;

(8) quantity statement.

B. PRINCIPAL DISPLAY PANEL:

(1) The information as required in Paragraphs (1), (2), (3), and (8) of Subsection A of 21.18.3.8 NMAC must appear in its entirety on the principal display panel.

(2) The information required by Paragraphs (4), (5), (6), and (7) of Subsection A of 21.18.3.8 NMAC shall be displayed in a prominent place on the feed tag or label, but not necessarily on the principal display panel. When a precautionary statement required by Paragraph (6) of Subsection A of 21.18.3.8 NMAC does not appear on the principal display panel, it must be referenced on the principal display panel with a statement such as "See back of label for precautions."

C. None of the information required by 21.18.3.8 NMAC shall be subordinated or obscured by other statements or designs.

D. Customer-formula feed shall be accompanied with the information prescribed in this regulation using labels, invoice, delivery ticket, or other shipping document bearing the following information:

- (1) the name and address of the manufacturer;
- (2) the name and address of the purchaser;
- (3) the date of sale or delivery;
- (4) the customer-formula feed name and brand name if any;
- (5) the product name and net quantity of each registered commercial feed and each other ingredient used in the mixture;
- (6) the direction for use and precautionary statements as required by 21.18.3.13 NMAC and 21.18.3.14 NMAC.
- (7) If a drug containing product is used:
 - (a) the purpose of the medication (claim statement);
 - (b) the established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with Subsection D of 21.18.3.10 NMAC.

[21.18.3.8 NMAC - Rp, 21.18.3.9 & 10 NMAC, 09/30/2013]

21.18.3.9 LABEL INFORMATION:

Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this regulation.

A. Product name and brand name, if any.

(1) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A commercial feed for a particular animal class must be suitable for that purpose.

(2) Commercial, registered brand, or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

(3) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

(4) The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

(5) When the name carries a percentage value, it shall be understood to signify protein or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": provided that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

(6) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the association of American feed control officials unless the department designates otherwise.

(7) The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Subsection C of 21.18.3.10 NMAC.

(8) The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals, which are recognized as essential for animal nutrition.

(9) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats.

(10) If the commercial feed consists of raw milk, the words "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (Blank is to be completed by using the species of animal from which the raw milk is collected.)

B. If a drug is used:

(1) The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

(2) Purpose statement as required in Subsection C of 21.18.3.9 NMAC.

(3) The purpose of medication (claim statement).

(4) An active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection D of 21.18.3.10 NMAC.

C. Purpose statement:

(1) The statement of purpose shall contain the specific species and animal class(es) for which the feed is intended as defined in Subsection D of 21.18.3.9 NMAC.

(2) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species, and purpose while being consistent with the category of animal class defined in Subsection D of 21.18.3.9 NMAC which may include, but is not limited to, weight range(s), sex, or ages of the animal(s) for which the feed is manufactured.

(3) The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

(4) The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix. (This section applicable to commercial feeds regulated under (x) of Subparagraph (b) of Paragraph (11) of Subsection D of 21.18.3.9 NMAC.

(5) The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products, or molasses products may exclude the animal class and species and state "For Further

Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds. (This section applicable to commercial feeds regulated under (x) of Subparagraph (b) of Paragraph (11) of Subsection D of 21.18.3.9 NMAC.)

(6) The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

D. Guarantees - crude protein, equivalent crude protein from non-protein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, calcium, phosphorus, salt, and sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, international units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure.

(1) Required guarantees for swine formula feeds.

(a) animal classes:

- (i)** pre-starter - 2 to 11 pounds;
- (ii)** starter - 11 to 44 pounds;
- (iii)** grower - 44 to 110 pounds;
- (iv)** finisher - 110 to market weight;
- (v)** gilts, sows, and adult boars;
- (vi)** lactating gilts and sows;

(b) guaranteed analysis for swine complete feeds and supplements (all animal classes):

- (i)** minimum percentage of crude protein;
- (ii)** minimum percentage of lysine;
- (iii)** minimum percentage of crude fat;
- (iv)** maximum percentage of crude fiber;
- (v)** minimum and maximum percentage of calcium;
- (vi)** minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum selenium in parts per million (ppm);

(x) minimum zinc in parts per million (ppm).

(2) Required guarantees for formula poultry feeds (broilers, layers, and turkeys).

(a) animal classes:

(i) layer - chickens that are grown to produce eggs for food, e.g., table eggs: 1) starting/growing - from day of hatch to approximately 10 weeks of age; 2) finisher - from approximately 10 weeks of age to time first egg is produced. (approximately 20 weeks of age); 3) laying - from time first egg is laid throughout the time of egg production; 4) breeders - chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their productive cycle;

(ii) broilers - chickens that are grown for human food: 1) starting/growing - from day of hatch to approximately 5 weeks of age; 2) finisher - from approximately 5 weeks of age to market, (42 to 52 days); 3) breeders - hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex;

(iii) broilers, breeders - chickens whose offspring are grown for human food (broilers): 1) starting/growing - from day of hatch until approximately 10 weeks of age; 2) finishing - from approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age; 3) laying - fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced;

(iv) turkeys: 1) starting/growing - turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females) and 16 weeks of age (males); 2) finisher - turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age and males from 16 weeks of age to 20 weeks of age (or desired market weight); 3) laying - female turkeys that are producing eggs from time first egg is produced throughout the time they are producing eggs; 4) breeder - turkeys that are grown to produce fertile eggs from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes;

(b) guaranteed analysis for poultry complete feeds and supplements (all animal classes):

- (i) minimum percentage of crude protein;
- (ii) minimum percentage of lysine;
- (iii) minimum percentage of methionine;
- (iv) minimum percentage of crude fat;
- (v) maximum percentage of crude fiber;
- (vi) minimum and maximum percentage of calcium;
- (vii) minimum percentage of phosphorus;
- (viii) minimum and maximum percentage of salt (if added);

(ix) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(3) Required guarantees for beef cattle formula feeds.

(a) animal classes:

- (i) calves (birth to weaning);
- (ii) cattle on pasture (may be specific as to production stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.);
- (iii) feedlot cattle;

(b) guaranteed analysis for beef complete feeds and supplements (all animal classes):

- (i) minimum percentage of crude protein;
- (ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;
- (iii) minimum percentage of crude fat;
- (iv) maximum percentage of crude fiber;
- (v) minimum and maximum percentage of calcium;
- (vi) minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum percentage of potassium;

(x) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added);

(c) guaranteed analysis for beef mineral feeds (if added):

(i) minimum and maximum percentage calcium;

(ii) minimum percentage of phosphorus;

(iii) minimum and maximum percentage of salt;

(iv) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(v) minimum percentage of magnesium;

(vi) minimum percentage of potassium;

(vii) minimum copper in parts per million (ppm);

(viii) minimum selenium in parts per million (ppm);

(ix) minimum zinc in parts per million (ppm);

(x) minimum vitamin A, other than precursors of vitamin A, in international units per pound.

(4) Required guarantees for dairy formula feeds.

(a) animal classes:

(i) veal milk replacer - milk replacer to be fed for veal production;

(ii) herd milk replacer - milk replacer to be fed for herd replacement calves;

(iii) starter - approximately 3 days to 3 months;

(iv) growing heifers, bulls and dairy beef: 1) grower 1 - 3 months to 12 months of age; 2) grower 2 - more than 12 months of age;

(v) lactating dairy cattle;

(vi) non-lactating dairy cattle;

(b) guaranteed analysis for veal and herd replacement milk replacer:

(i) minimum percentage crude protein;

(ii) minimum percentage crude fat;

(iii) maximum percentage of crude fiber;

(iv) minimum and maximum percentage calcium;

(v) minimum percentage of phosphorus;

(vi) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added);

(c) guaranteed analysis for dairy cattle complete feeds and supplements:

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) maximum percentage of acid detergent fiber (ADF);

(vi) minimum and maximum percentage of calcium;

(vii) minimum percentage of phosphorus;

(viii) minimum selenium in parts per million (ppm);

(ix) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added);

(d) required guaranteed analysis for dairy mixing and pasture mineral (if added):

- (i) minimum and maximum percentage of calcium;
- (ii) minimum percentage of phosphorus;
- (iii) minimum and maximum percentage of salt;
- (iv) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;
- (v) minimum percentage of magnesium;
- (vi) minimum percentage of potassium;
- (vii) minimum selenium in parts per million (ppm);
- (viii) minimum vitamin A, other than the precursors of vitamin A, in international units per pound.

(5) Required guarantees for equine formula feeds.

(a) animal classes:

- (i) foal;
- (ii) mare;
- (iii) breeding;
- (iv) maintenance;

(b) guaranteed analysis for equine complete feeds and supplements (all animal classes):

- (i) minimum percentage of crude protein;
- (ii) minimum percentage of crude fat;
- (iii) maximum percentage of crude fiber;
- (iv) minimum and maximum percentage of calcium;
- (v) minimum percentage of phosphorus;
- (vi) minimum copper in parts per million (ppm);

(vii) minimum selenium in parts per million (ppm);

(viii) minimum zinc in parts per million (ppm);

(ix) minimum vitamin A, other than the precursors of vitamin A, in international units per pound (if added).

(c) guaranteed analysis for equine mineral feeds (all animal classes):

(i) minimum and maximum percentage of calcium;

(ii) minimum percentage of phosphorus;

(iii) minimum and maximum percentage of salt (if added);

(iv) minimum and maximum percentage of sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee;

(v) minimum copper in parts per million (ppm);

(vi) minimum selenium in parts per million (ppm);

(vii) minimum zinc in parts per million (ppm);

(viii) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(6) Required guarantees for goat formula feeds.

(a) animal classes:

(i) starter;

(ii) grower;

(iii) finisher;

(iv) breeder;

(v) lactating;

(b) guaranteed analysis for goat complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) minimum and maximum percentage of calcium;

(vi) minimum percentage of phosphorus;

(vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum and maximum copper in parts per million (ppm) (if added);

(x) minimum selenium in parts per million (ppm);

(xi) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(7) Required guarantees for sheep formula feeds:

(a) animal classes:

(i) starter;

(ii) grower;

(iii) finisher;

(iv) breeder;

(v) lactating;

(b) guaranteed analysis for sheep complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

- (iii) minimum percentage of crude fat;
- (iv) maximum percentage of crude fiber;
- (v) minimum and maximum percentage of calcium;
- (vi) minimum percentage of phosphorus;
- (vii) minimum and maximum percentage of salt (if added);

(viii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm);

(x) minimum selenium in parts per million (ppm);

(xi) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(8) Required guarantees for duck and geese formula feeds.

(a) animal classes:

(i) ducks: 1) starter - 0 to 3 weeks of age; 2) grower - 3 to 6 weeks of age; 3) finisher - 6 weeks to market; 4) breeder developer - 8 to 19 weeks of age; 5) breeder - 22 weeks to end of lay;

(ii) geese: 1) starter - 0 to 4 weeks of age; 2) grower - 4 to 8 weeks of age; 3) finisher - 8 weeks to market; 4) breeder developer - 10 to 22 weeks of age; 5) breeder - 22 weeks to end of lay.

(b) guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes):

- (i) minimum percentage of crude protein;
- (ii) minimum percentage of crude fat;
- (iii) maximum percentage of crude fiber;
- (iv) minimum and maximum percentage of calcium;
- (v) minimum percentage of phosphorus;

(vi) minimum and maximum percentage of salt (if added);

(vii) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(9) Required guarantees for fish complete feeds and supplements.

(a) animal species shall be declared in lieu of animal class:

(i) trout;

(ii) catfish;

(iii) species other than trout or catfish;

(b) guaranteed analysis for all fish complete feeds and supplements:

(i) minimum percentage of crude protein;

(ii) minimum percentage of crude fat;

(iii) maximum percentage of crude fiber;

(iv) minimum percentage of phosphorus.

(10) Required guarantees for rabbit complete feeds and supplements.

(a) animal classes:

(i) grower - 4 to 12 weeks of age;

(ii) breeder - 12 weeks of age and over;

(b) guaranteed analysis for rabbit complete feeds and supplements (all animal classes):

(i) minimum percentage of crude protein;

(ii) minimum percentage of crude fat;

(iii) minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units);

(iv) minimum and maximum percentage of calcium;

(v) minimum percentage of phosphorus;

(vi) minimum and maximum percentage of salt (if added);

(vii) minimum and maximum percentage of total sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee;

(viii) minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(11) The required guarantees of grain mixtures with or without molasses and feeds other than those described in Paragraphs (1) through (9) of Subsection D of 21.18.3.9 NMAC shall include the following items, unless exempt in Paragraph 12 of Subsection D of 21.18.3.9 NMAC, in the order listed:

(a) animal class(es) and species for which the product is intended.

(b) guaranteed analysis:

(i) minimum percentage crude protein;

(ii) maximum or minimum percentage of equivalent crude protein from non-protein nitrogen as required in Subsection E of 21.18.3.10 NMAC;

(iii) minimum percentage of crude fat;

(iv) maximum percentage of crude fiber;

(v) minerals in formula feeds, to include in the following order: 1) minimum and maximum percentages of calcium; 2) minimum percentage of phosphorus; 3) minimum and maximum percentage of salt (if added); 4) minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; 5) other minerals;

(vi) minerals in feed ingredients - as specified by the official definitions of the association of American feed control officials;

(vii) vitamins in such terms as specified in Subsection C of 21.18.3.10 NMAC;

(viii) total sugars as invert on dried molasses products or products being sold primarily for their sugar content;

(ix) viable lactic acid producing microorganisms for use in silages in terms specified in Subsection G of 21.18.3.10 NMAC;

(x) a commercial feed (e.g. vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

(12) Exemptions.

(a) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when:

(i) the feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal; or

(ii) the feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total mineral.

(b) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

(c) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

(d) Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product and no specific label claims are made.

(e) The indication for animal class(es) and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or species.

E. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Subsection 4 of Section 76-19A-9A NMSA 1978.

(1) The name of each ingredient as defined in the official publication of the association of American feed control officials, common or usual name, or one approved by the department.

(2) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the

association of American feed control officials in lieu of the individual ingredients; provided that:

(a) when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label;

(b) the manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

(3) The registrant may affix the statement, "ingredients as registered with the state" in lieu of ingredient list on the label. The list of ingredients must be on file with the department. This list shall be made available to the feed purchaser upon request.

F. Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by 21.18.3.13 NMAC and 21.18.3.14 NMAC appear elsewhere on the label.

G. Name, city, state, and zip code of the manufacturer or person responsible for distributing the feed.

H. Quantity statement.

(1) Net quantity shall be declared in terms of weight, liquid measure, or count based on applicable requirements under the Fair Packaging and Labeling Act (Title 15 U.S.C. 1453).

(2) Net quantity labeled in terms of weight shall be expressed both in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound and in appropriate Si metric system units; or in the case of liquid measure, both in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint of quart and in appropriate Si metric system units.

(3) When the declaration of quantity of contents by count does not give adequate information as to the quantity of feed in the container, it shall be combined with such statement of weight, liquid measure, or size of the individual units as will provide such information.

[21.18.3.9 NMAC - Rp, 21.18.3.9 & 10 NMAC, 9/30/2013; A, 1/01/2021]

21.18.3.10 EXPRESSION OF GUARANTEES:

A. The guarantees for crude protein, equivalent crude protein from non-protein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber, and acid detergent fiber shall be in terms of percentage.

B. Mineral guarantees

(1) When the calcium, salt, and sodium guarantees are given in the guaranteed analysis, such shall be stated and conform to the following:

(a) When the minimum is below 2.5%, the maximum shall not exceed the minimum by more than 0.5 percentage point.

(b) When the minimum is 2.5% but less than 5.0%, the maximum shall not exceed the minimum by more than one percentage point.

(c) When the minimum is above 5.0% or greater, the maximum shall not exceed the minimum by more than 20% of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

(2) When stated, guarantees for minimum and maximum total sodium and salt: minimum potassium, magnesium, sulfur, phosphorus, and maximum fluorine shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1%) or greater.

(3) Products labeled with a quantity statement (e.g., tablets, capsules, granules, or liquid) may state mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

C. Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and are stated in mg/lb or in units consistent with those employed for the quantity statement unless otherwise specified:

(1) vitamin A, other than precursors of vitamin A, in international units per pound.

(2) vitamin D-3 in products offered for poultry feeding, in international chick units per pound.

(3) vitamin D for other uses, international units per pound.

(4) vitamin E, in international units per pound.

(5) concentrated oils and feed additive premixes containing vitamins A, D or E may, at the option of the distributor, be stated in units per gram instead of units per pound.

(6) vitamin B-12, in milligrams or micrograms per pound.

(7) all other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavin; d-pantothenic acid; thiamine; niacin; vitamin B-6; folic acid; choline; biotin; inositol; p-amino benzoic acid; ascorbic acid; and carotene.

D. Guarantees for drugs shall be stated in terms of percent by weight, except:

(1) antibiotics, present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed;

(2) antibiotics present at 2,000 or more grams per ton (total) of commercial feed, shall be stated in grams per pound of commercial feed;

(3) the term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

(1) For ruminants

(a) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

(i) crude protein, minimum, _____ %

(ii) This includes not more than _____ % equivalent crude protein from non-protein nitrogen.

(b) Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

equivalent crude protein from non-protein nitrogen, minimum, _____ %

(c) Ingredient sources of non-protein nitrogen such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic non-protein nitrogen ingredients defined by the association of American feed control officials shall be guaranteed as follows:

(i) nitrogen, minimum, _____ %

(ii) equivalent crude protein from non-protein nitrogen, minimum, _____ %

(2) For non-ruminants

(a) Complete feeds, supplements, and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

(i) crude protein, minimum _____ %

(ii) this includes not more than _____ % equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

(b) Premixes, concentrates, or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "**WARNING: This feed must be used only in accordance with directions furnished on the label.**"

F. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

G. Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

H. Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: protease (bacillus subtilis) 5.5 mg amino acids liberated/min./milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

[21.18.3.10 NMAC - Rp, 21.18.3.11 NMAC, 09/30/2013; A, 1/01/2021]

21.18.3.11 SUBSTANTIATION OF NUTRITIONAL SUITABILITY:

A. A commercial feed, other than a customer-formula feed, shall be nutritionally suitable for its intended purpose as represented by its labeling.

B. If the department has reasonable cause to believe a commercial feed is not nutritionally suitable, the department may request the feed manufacturer to either submit an "Affidavit of Suitability" or an alternative procedure acceptable to the department, certifying the nutritional adequacy of the feed. The affidavit of suitability or alternate procedure of suitability shall serve as substantiation of the suitability of the feed.

C. If an affidavit of suitability or alternative procedure acceptable to the department is not submitted by the feed manufacturer within 30 days of written notification, the

department may deem the feed adulterated in accordance with 76-19A-8M NMSA 1978 and order the feed removed from the marketplace.

D. The affidavit of suitability shall contain the following information:

- (1) the feed company's name;
- (2) the feed's product name;
- (3) the name and title of the affiant submitting the document;
- (4) a statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;
- (5) the date of submission; and,
- (6) the signature of the affiant notarized by a certified notary public.

[21.18.3.11 NMAC - N, 09/30/2013]

21.18.3.12 INGREDIENTS:

A. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the official publication of the association of American feed control officials, the common or usual name, or one approved by the department.

B. The name of each ingredient must be shown in letters or type of the same size.

C. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

D. The term "dehydrated" may precede the name of any product that has been artificially dried.

E. A single ingredient product defined by the association of American feed control officials is not required to have an ingredient statement.

F. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar) unless approved by the department.

G. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007% iodine, uniformly distributed.

[21.18.3.12 NMAC - Rp, 21.18.3.12 NMAC, 09/30/2013]

21.18.3.13 DIRECTIONS FOR USE AND PRECAUTIONARY STATEMENTS:

A. Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

(1) be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and

(2) include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic Act.

B. Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in 21.18.3.14 NMAC.

C. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

[21.18.3.13 NMAC - Rp, 21.18.3.13 NMAC, 09/30/2013]

21.18.3.14 NON-PROTEIN NITROGEN:

A. Urea and other non-protein nitrogen products defined in the official publication of the association of American feed control officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "**CAUTION: USE AS DIRECTED.**" The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

B. Non-protein nitrogen defined in the official publication of the association of American feed control officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

C. On labels such as those for medicated feeds, which bear adequate feeding directions and warning statements, the presence of added non-protein nitrogen shall not

require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

[21.18.3.14 NMAC - Rp, 21.18.3.14 NMAC, 09/30/2013]

21.18.3.15 DRUG AND FEED ADDITIVES:

A. Prior to approval of a registration application or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

B. Satisfactory evidence of safety and efficacy of a commercial feed may be:

(1) when the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the "Code of Federal Regulations, Title 21", or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or

(2) when the commercial feed is itself a drug as defined in 76-19A-2I, NMSA 1978 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the food and drug administration under Title 21 U.S.C. 360 b; or

(3) when one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended; or

(4) when the commercial feed is a direct fed microbial product and:

(a) the product meets the particular fermentation product definition; and

(b) the microbial content statement, as expressed in the labeling, is limited to the following: "contains a source of live (viable) naturally occurring microorganisms;" this statement shall appear on the label; and

(c) the source is stated with a corresponding guarantee expressed in accordance with Subsection G of 21.18.3.10 NMAC;

(5) when the commercial feed is an enzyme product and:

(a) the product meets the particular enzyme definition defined by the association of American feed control officials; and

(b) the enzyme is stated with a corresponding guarantee expressed in accordance with Subsection H of 21.18.3.10 NMAC.

[21.18.3.15 NMAC - Rp, 21.18.3.15 NMAC, 09/30/2013]

21.18.3.16 ADULTERANTS:

A. For the purpose of 76-19A-8A NMSA 1978, a commercial feed shall be deemed adulterated if:

(1) it bears or contains any added poisonous, deleterious, or non-nutritive substance that is unsafe within the meaning of Section 406 of the federal Food, Drug and Cosmetic Act, other than one that is a pesticide chemical in or on a raw agricultural commodity or a food additive;

(2) it is or it bears or contains any food additive that is unsafe pursuant to Section 409 of the federal Food, Drug and Cosmetic Act;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of Section 408 (a) of the federal Food, Drug and Cosmetic Act; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of that act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of the pesticide chemical remaining in or on such processed commercial feed shall not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal that is unsafe within the meaning of Section 408 (a) of the federal Food, Drug and Cosmetic Act;

(4) it is or it bears or contains any color additive that is unsafe within the meaning of Section 721 of the federal Food, Drug and Cosmetic Act;

(5) it is or it bears or contains any new animal drug that is unsafe within the meaning of Section 512 of the federal Food, Drug and Cosmetic Act;

(6) it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter that is unsafe within the meaning of Section 402 (a)(1) or (2) of the federal Food, Drug and Cosmetic Act;

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the federal Food, Drug and Cosmetic Act;

B. For the purpose of 76-19A-8A NMSA 1978, the terms "poisonous or deleterious substances" include, but are not limited to, the following:

(1) Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine; and 0.60% for poultry.

(2) Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine, and 0.03% for poultry.

(3) Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage with or without limited amounts of grain that results in a daily fluorine intake in excess of 50 milligrams of fluorine per 100 pounds of body weight.

(4) Soybean meal, flakes, or pellets or other vegetable meals, flakes, or pellets which have been extracted with trichloroethylene or other chlorinated solvents.

(5) Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B1 (Thiamine).

C. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product complies with 21.18.4.8 NMAC concerning prohibited weed seeds per pound and 21.18.4.9 NMAC concerning viable restricted weed seeds per pound.

[21.18.3.16 NMAC - Rp, 21.18.3.16 NMAC, 09/30/2013]

21.18.3.17 GOOD MANUFACTURING PRACTICES:

For the purposes of enforcement of 76-19A-8N NMSA 1978 the board adopts the following as current good manufacturing practices:

A. The regulations prescribing good manufacturing practices for type B and type C medicated feeds as published in the "Code of Federal Regulations, Title 21", Part 225, Sections 225.1 through 225.202.

B. The regulations prescribing good manufacturing practices for type A Medicated Articles as published in the "Code of Federal Regulations, Title 21," Part 226, Sections 226.1 through 226.115.

[21.18.3.17 NMAC - Rp, 21.18.3.17 NMAC, 09/30/2013]

21.18.3.18 CERTAIN MAMMALIAN PROTEINS PROHIBITED IN RUMINANT FEED:

A. Pursuant to 76-19A-8A or 76-19A-8C, NMSA 1978, the board adopts the requirements of "Code of Federal Regulations, Title 21", 589.2000.

B. Pursuant to 76-19A-8A or 76-19A-8C, NMSA 1978, the board adopts the requirements of "Code of Federal Regulations, Title 21", 589.2001.

[21.18.3.18 NMAC - N, 09/30/2013]

21.18.3.19 PET FOOD AND SPECIALTY PET FOOD LABEL FORMAT AND LABELING:

A. Pet food and specialty pet food shall be labeled with the following information:

(1) product name and brand name, if any, on the principal display panel as stipulated in 21.18.3.20 NMAC;

(2) a statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel;

(3) quantity statement, as defined in Section 76-19A-9A(1) NMSA 1978 and Subsection H of 21.18.3.9 NMAC, by weight (pounds and ounces and metric), liquid measure (quarts, pints, and fluid ounces and metric), or by count on the principal display panel;

(4) guaranteed analysis as stipulated in 21.18.3.21 NMAC;

(5) ingredient statement as stipulated in 21.18.3.22 NMAC;

(6) a statement of nutritional adequacy or purpose, if required, under 21.18.3.24 NMAC;

(7) feeding directions if required under 21.18.3.25 NMAC; and

(8) name and address of the manufacturer or distributor as stipulated in 21.18.3.28 NMAC.

B. When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

C. A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

D. The use of the word "proven" in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence.

E. No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product.

F. A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading.

G. A statement on a pet food or specialty pet food label stating "improved," "new," or similar designation shall be substantiated and limited to 6 months production.

H. A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to 1 year production, after which the claim shall be removed or re-substantiated.

[21.18.3.19 NMAC - N, 09/30/2013]

21.18.3.20 PET FOOD AND SPECIALTY PET FOOD BRAND AND PRODUCT NAMES:

A. The words "100%" or "All" or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments.

B. An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food:

(1) When the ingredient(s) constitutes at least 95% of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient(s) shall constitute at least 70% of the total product weight.

(2) When any ingredient(s) constitutes at least 25% of the weight of the product, provided that:

(a) water sufficient for processing may be excluded when calculating the percentage; however, the ingredients(s) shall constitute at least 10% of the total product weight; and

(b) a descriptor is used with the ingredient name(s); this descriptor shall imply other ingredients are included in the product formula; examples of descriptors include "dinner," "platter," "entrée," "formula," and "recipe"; and

(c) the descriptor shall be in the same size, style, and color print as the ingredient name(s).

(3) When a combination of ingredients, which are included in the product name in accordance with Subsection B of 21.18.3.20 NMAC, meets all of the following:

(a) Each ingredient constitutes at least 3% of the product weight, excluding water sufficient for processing; and,

(b) The names of the ingredients appear in the order of their respective predominance by weight in the product; and,

(c) All such ingredient names appear on the label in the same size, style, and color print.

C. When the name of any ingredient appears in the product name of a pet food, specialty pet food, or elsewhere on the product label and includes a descriptor such as "with" or similar designation, the named ingredient(s) must each constitute at least 3% of the product weight exclusive of water for processing. If the names of more than one ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The 3% minimum level shall not apply to claims for nutrients such as, but not limited to, vitamins, minerals, and fatty acids as well as condiments. The word "with," or similar designation and named ingredients shall be in the same size, style, color, and case print and be of no greater size than:

Panel Size	Max "with claim" Type Size
< 5 sq. in.	1/8"
5-25 sq. in.	1/4"
25-100 sq. in	3/8"
100-400 sq. in	1/2"
400 sq. in +	1"

D. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following:

(1) the flavor designation:

(a) conforms to the name of the ingredient as listed in the ingredient statement; or

(b) is identified by the source of the flavor in the ingredient statement; and

(2) the word "flavor" is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

(3) substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

E. The product name of the pet food or specialty pet food shall not be derived from one or more ingredients unless all ingredients are included in the name, except as specified by Subsections B or C of 21.18.3.20 NMAC; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

(1) the ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

(2) it does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

F. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Subsections B, C, or D of 21.18.3.20 NMAC.

G. When pet food or specialty pet food consists of raw milk, the words "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (Blank is to be completed by using the species of animal from which the raw milk is collected.)

[21.18.3.20 NMAC - N, 09/30/2013]

21.18.3.21 PET FOOD AND SPECIALTY PET FOOD EXPRESSION OF GUARANTEES:

A. The "Guaranteed Analysis" shall be listed in the following order and format unless otherwise specified in these regulations:

(1) A pet food or specialty pet food label shall list the following required guarantees;

(a) minimum percentage of crude protein;

(b) minimum percentage of crude fat;

(c) maximum percentage of crude fat, if required by 21.18.3.27 NMAC;

- (d) maximum percentage of crude fiber;
- (e) maximum percentage of moisture; and
- (f) additional guarantees shall follow moisture.

(2) When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture.

(3) A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the association of American feed control officials dog (or cat) food nutrient profiles. Guarantees for substances not listed in the association of American feed control officials dog (or cat) food nutrient profiles or not otherwise provided for in these regulations, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the association of American feed control officials dog (or cat) food nutrient profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees.

(4) A specialty pet food label shall list other required or voluntary guarantees in the same order and units of the nutrients in an association of American feed control officials recognized nutrient profile for the specific species; however, if no species-specific association of American feed control officials recognized nutrient profile is available, the order and units shall follow the same order and units of nutrients in the association of American feed control officials cat food nutrient profile. Guarantees for substances not listed in an association of American feed control officials recognized nutrient profile for the specific species of animal shall immediately follow the listing of recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the _____." (Blank is to be completed by listing the specific association of American feed control officials recognized nutrient profile.) This disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. No such disclaimer shall be required unless an association of American feed control officials recognized nutrient profile is available for the specific species of specialty pet.

B. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein 15-18%") is prohibited.

C. The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include:

(1) minimum guarantees for all minerals from sources declared in the ingredient statement and established by an association of American feed control officials recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or

(2) minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in the association of American feed control officials cat food nutrient profiles when no species-specific nutrient profile has been recognized by the association of American feed control officials; and

(3) mineral guarantees required by Paragraphs (1) and (2) of Subsection C of 21.18.3.21 NMAC may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(4) a weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

D. The label of a pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement shall include:

(1) minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an association of American feed control officials recognized nutrient profile, expressed in units specified in the nutrient profile; or

(2) minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in the association of American feed control officials cat food nutrient profiles when no species-specific nutrient profile has been recognized by the association of American feed control officials; and provided that

(3) vitamin guarantees required by Paragraphs (1) and (2) of Subsection D of 21.18.3.21 NMAC may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(4) a weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

E. When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an association of American feed control officials recognized nutrient profile (such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels) the following apply;

(1) the product shall meet the association of American feed control officials recognized nutrient profile; and

(2) the statement of comparison shall be preceded by a statement that the product meets the association of American feed control officials recognized profile; however, the statement that the product meets the association of American feed control officials recognized nutrient profile is not required provided that the nutritional adequacy statement as per Paragraph (1) of Subsection A of 21.18.3.24 NMAC or Subparagraph

(a) of Paragraph (2) of Subsection B of 21.18.3.24 NMAC appears elsewhere on the product label; and

(3) the statement of comparison of the nutrient content shall constitute a guarantee but need not be repeated in the guaranteed analysis; and

(4) the statement of comparison may appear on the label separate and apart from the guaranteed analysis.

F. The maximum moisture declared on a pet food or specialty pet food label shall not exceed 78.00% or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer and which are so labeled, may contain moisture in excess of 78.00%.

G. Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product such as a mineral or vitamin supplement.

H. Guarantees for microorganisms and enzymes shall be stated in the format as stipulated in Subsections G and H of 21.18.3.10 NMAC.

[21.18.3.21 NMAC - N, 09/30/2013]

21.18.3.22 PET FOOD AND SPECIALTY PET FOOD INGREDIENTS:

A. Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows:

(1) the names of all ingredients in the ingredient statement shall be shown in letters or type of the same size, style, and color;

(2) the ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms;

(3) ingredients shall be listed and identified by the name and definition established by the association of American feed control officials; and

(4) any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

B. The ingredients "meat" or "meat by-products" shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof.

For example, ingredients derived from horses shall be listed as "horsemeat" or "horsemeat by-products."

C. Brand or trade names shall not be used in the ingredient statement.

D. A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following:

- (1) the designation is not false or misleading;
- (2) the ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and
- (3) a reference to quality or grade of the ingredient does not appear in the ingredient statement.

[21.18.3.22 NMAC - N, 09/30/2013]

21.18.3.23 PET FOOD AND SPECIALTY PET FOOD DRUGS AND PET FOOD ADDITIVES:

A. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States food and drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets.

B. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food, which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established:

(1) When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the "Code of Federal Regulations, Title 21," or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or

(2) When the pet food or specialty pet food itself is a drug or contains a drug as defined in 76-19A-2I, NMSA 1978 and is "generally recognized as safe and effective" for the labeled use or is marketed subject to an application approved by the food and drug administration under Title 21, U.S.C. 360(b).

C. When a drug is included in a pet food or specialty pet food, the format required by Subsection B of 21.18.3.9 NMAC for labeling medicated feeds shall be used.

[21.18.3.23 NMAC - N, 09/30/2013]

21.18.3.24 PET FOOD AND SPECIALTY PET FOOD NUTRITIONAL ADEQUACY:

A. The label of a pet food or specialty pet food which is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if at least one of the following apply:

(1) the product meets the nutrient requirements for all life stages established by an association of American feed control officials recognized nutrient profile; or,

(2) the product meets the criteria for all life stages as substantiated by completion of the appropriate association of American feed control officials recognized animal feeding protocol(s); or

(3) the product is a member of a product family which is nutritionally similar to a lead product, which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by the association of American feed control officials for all life stages, provided that:

(a) the nutritional similarity of the family product can be substantiated according to the procedures for establishing pet food product families developed by the association of American feed control officials; and,

(b) the family product meets the criteria for all life stages; and

(c) under circumstances of reasonable doubt, the department may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

B. The label of a pet food or specialty pet food which is intended for a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as "complete and balanced," "perfect," "scientific," or "100% nutritious" when the product and claim meets all of the following:

(1) The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, "complete and balanced for puppies (or kittens)." The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style, and color print; and

(2) The product meets at least one of the following:

(a) the nutrient requirements for the limited purpose or specific life stage established by an association of American feed control officials recognized nutrient profile; or,

(b) the criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate association of American feed control officials recognized animal feeding protocol(s); or,

(c) the requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and provided that:

(i) the nutritional similarity of the family product can be substantiated according to the procedures for establishing pet food product families developed by the association of American feed control officials; and,

(ii) the family product meets the criteria for such limited purpose; and,

(iii) under circumstances of reasonable doubt, the department may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy.

C. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a "snack," "treat," or "supplement." The statement shall consist of one of the following:

(1) a claim that the dog or cat food meets the requirements of one or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one of the following:

(a) "(name of product) is formulated to meet the nutritional levels established by the association of American feed control officials dog (or cat) food nutrient profiles for _____. ." (blank is to be completed by using the stage or stages of the pet's life, such as gestation/lactation, growth, maintenance, or the words "All Life Stages"); or

(b) "animal feeding tests using association of American feed control officials procedures substantiate that (name of product) provides complete and balanced nutrition for _____. ." (blank is to be completed by using the stage or stages of the pet's life tested, such as gestation/lactation, growth, maintenance, or the words "All Life Stages"); or

(c) "(name of product) provides complete and balanced nutrition for _____ (blank is to be completed by using the stage or stages of the pet's life, such as

gestation, lactation, growth, maintenance or the words "All Life Stages") and is comparable in nutritional adequacy to a product which has been substantiated using association of American feed control officials feeding tests;"

(2) a nutritional or dietary claim for purposes other than those listed in Subsection A or B of 21.18.3.24 NMAC if the claim is scientifically substantiated; or

(3) the statement: "this product is intended for intermittent or supplemental feeding only," if a product does not meet the requirements of Subsection A or B of 21.18.3.24 NMAC or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

D. A product intended for use by or under the supervision or direction of a veterinarian shall make a statement in accordance with Paragraphs (1) or (3) of Subsection C of 21.18.3.24 NMAC.

E. A signed affidavit attesting that the product meets the requirements of Subsection A or Paragraph (2) of Subsection B of 21.18.3.24 NMAC shall be submitted to the department upon request.

F. If the nutrient content of a product does not meet those nutrient requirements established by an association of American feed control officials recognized nutrient profile or if no requirement has been established by an association of American feed control officials recognized nutritional authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated.

G. The following association of American feed control officials recognized nutritional authority, nutrient profile, or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy:

(1) As an association of American feed control officials recognized nutrient profile or nutritional authority:

(a) for dogs, the association of American feed control officials dog food nutrient profiles;

(b) for cats, the association of American feed control officials cat food nutrient profiles;

(c) for specialty pets, the nutrient recommendations approved by the committee on animal nutrition of the national research council of the national academy of sciences, provided that this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended.

(2) As an association of American feed control officials recognized animal feeding protocol(s), the association of American feed control officials dog and cat food feeding protocols.

[21.18.3.24 NMAC - N, 09/30/2013]

21.18.3.25 PET FOOD AND SPECIALTY PET FOOD FEEDING DIRECTIONS:

A. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Paragraph (1) of Subsection C of 21.18.3.24 NMAC, except those pet foods labeled in accordance with Subsection D of 21.18.3.24 NMAC, shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., "adult formula"). These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state, "Feed (weight/unit of product) per (weight only) of dog (or cat)." The frequency of feeding shall also be specified.

B. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

C. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection A of 21.18.3.24 NMAC, shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the association of American feed control officials recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified.

[21.18.3.25 NMAC - N, 09/30/2013]

21.18.3.26 PET FOOD AND SPECIALTY PET FOOD STATEMENTS OF CALORIE CONTENT:

A. Except as required in 21.18.3.27 NMAC, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following:

(1) The statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content";

(2) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed as "kilocalories per kilogram" ("kcal/ kg") of product and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and,

(3) The calorie content is determined by one of the following methods:

(a) by calculation using the following "modified atwater" formula:

$$\text{ME(kcal/ kg)} = 10[(3.5 \times \text{CP}) + (8.5 \times \text{CF}) + (3.5 \times \text{NFE})]$$

where: ME = metabolizable energy

CP = % crude protein "as fed"

CF = % crude fat "as fed"

NFE = % nitrogen-free extract (carbohydrate) "as fed"

and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four production batches of the product; and the NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF); or,

(b) in accordance with a testing procedure established by the association of American feed control officials.

(4) An affidavit shall be provided upon request to the department substantiating that the calorie content was determined by:

(a) Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC in which case the results of all the analyses used in the calculation shall accompany the affidavit; or

(b) Subparagraph (b) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The calorie content statement shall appear as one of the following:

(a) The claim on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC; or

(b) The value of calorie content stated on the label which is determined in accordance with Subparagraph (b) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC shall not exceed or understate the value determined in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC by more than 15%.

B. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared.

[21.18.3.26 NMAC - N, 09/30/2013; A, 1/01/2021]

21.18.3.27 PET FOOD AND SPECIALTY PET FOOD DESCRIPTIVE TERMS:

A. Calorie terms

(1) "Light"

(a) A dog food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

(i) contain no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

(ii) include on the label a calorie content statement: 1) in accordance with the format provided in 21.18.3.26 NMAC; and 2) which states no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(b) A cat food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

(i) contain no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

(ii) include on the label a calorie content statement: 1) in accordance with the format provided in 21.18.3.26 NMAC; and 2) which states no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(2) "Less" or "reduced calories"

(a) A dog or cat food product which bears on its label a claim of "less calories," "reduced calories," or words of similar designation shall include on the label:

(i) the name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(ii) the comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(iii) a calorie content statement in accordance with the format provided in 21.18.3.26 NMAC; and

(iv) feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison.

(b) A comparison between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

B. Fat terms

(1) "Lean"

(a) A dog food product which bears on its label the terms "lean," "low fat," or words of similar designation shall:

(i) contain no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture;

(ii) include on the product label in the guaranteed analysis: 1) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Paragraph (1) of Subsection A of 21.18.3.21; and 2) A maximum crude fat guarantee which is no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture.

(b) A cat food product which bears on its label the terms "lean," "low fat," or words of similar designation shall:

(i) contain a maximum percentage of crude fat which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture; and

(ii) include on the product label in the guaranteed analysis: 1) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Paragraph (1) of Subsection A of 21.18.3.21; and 2) A maximum crude fat guarantee which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture.

(4) "Less" or "reduced fat"

(a) A dog or cat food product which bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label:

(i) the name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(ii) the comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(iii) a maximum crude fat guarantee in the guaranteed analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Paragraph (1) of Subsection A of 21.18.3.21 NMAC.

(b) A comparison on the label between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

[21.18.3.27 NMAC - N, 09/30/2013]

21.18.3.28 PET FOOD AND SPECIALTY PET FOOD MANUFACTURER OR DISTRIBUTOR; NAME AND ADDRESS:

A. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label.

B. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed.

[21.18.3.28 NMAC - N, 09/30/2013]

21.18.3.29 REGISTRATION EXPIRATION DATE:

For the purpose of 76-19A-4A, NMSA 1978, all registrations shall expire annually on December 31.

[21.18.3.29 NMAC - Rp, 21.18.3.18 NMAC, 09/30/2013]

21.18.3.30 INSPECTION FEES:

A. An inspection fee of fifteen cents (\$0.15) per ton is hereby established to be effective on all commercial feeds sold on and after September 30, 2013; except that feed for which the department has not developed an inspection service at this time.

B. An inspection fee of twenty-five dollars (\$25.00) is hereby established for each brand of commercial feed distributed in individual packages of ten (10) pounds or less sold after September 30, 2013, in New Mexico.

[21.18.3.30 NMAC - Rp, 21.18.3.19 NMAC, 09/30/2013]

21.18.3.31 SPAY AND NEUTER PROGRAM FEE:

A. Additional Fees:

In addition to the commercial feed registration fee, an additional annual fee shall be collected on each pet food registered with the department. This fee shall be implemented as follows:

(1) Beginning January 1, 2021 and ending December 31, 2021, fifty dollars (\$50.00)

(2) Beginning January 1, 2022 and ending December 31, 2022, seventy-five dollars (\$75.00)

(3) Beginning January 1, 2023, one hundred dollars (\$100.00)

B. Exemptions:

(1) A pet food manufacturer shall be exempt of the spay and neuter program fees upon submission of a notarized affidavit attesting that tax-year annual gross revenue from the distribution of pet food is no more than three million dollars. The spay and neuter program fee exemption affidavit shall be submitted to the department on a form furnished by the department.

(2) A pet food manufacturer shall be exempt of the spay and neuter program fees for a specific product upon submission of a notarized affidavit attesting that the specific product meets the definition of prescription diet. The spay and neuter program fee exemption affidavit shall be submitted to the department on a form furnished by the department.

C. Distribution, ninety-six percent of this additional fee collected shall be deposited with the state treasurer to credit the statewide spay and neuter subaccount of the animal care and facility fund. Four percent of this additional fee collected shall be distributed to the department to administer the New Mexico Commercial Feed Act.

[21.18.3.31 NMAC - N, 1/01/2021]

PART 4: SEED STANDARDS AND CLASSIFICATIONS

21.18.4.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.18.4.1 NMAC - Rn & A, 21 NMAC 18.4.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.18.4.2 SCOPE:

Part 4 shall apply to any person selling commercial seeds in New Mexico.

[7/1/97; 21.18.4.2 NMAC - Rn, 21 NMAC 18.4.2, 05/29/09]

21.18.4.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Seed Law, Chapter 76, Article 10, Sections 11 through 22, New Mexico Statutes Annotated 1978 Compilation.

[7/1/97; 21.18.4.3 NMAC - Rn, 21 NMAC 18.4.3, 05/29/09]

21.18.4.4 DURATION:

Permanent.

[7/1/97; 21.18.4.4 NMAC - Rn, 21 NMAC 18.4.4, 05/29/09]

21.18.4.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.18.4.5 NMAC - Rn, 21 NMAC 18.4.5, 05/29/09]

21.18.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 18 is to establish a list of prohibited and restricted noxious weed seeds, set germination standards for vegetable seeds, set tolerances for the testing of seeds, set guidelines for the sampling and testing of seeds, and set fees to be charged for seed testing when done at the request of or for the benefit of persons, firms or individuals, and designate the seed certification agency for New Mexico.

[7/1/97; 21.18.4.6 NMAC - Rn, 21 NMAC 18.4.6, 05/29/09]

21.18.4.7 DEFINITIONS:

[RESERVED]

21.18.4.8 PROHIBITED NOXIOUS WEED SEEDS:

The following weed seeds are declared to be prohibited noxious weed seeds. Seeds containing any of the weed seeds listed herein shall not be sold in New Mexico.

- A. Bindweed (*Convolvulus arvensis*)
- B. Camelthorn (*Alhagi camelorum*)
- C. Halogeton (*Halogeton glomeratus*)
- D. Nutgrass (*Cyperus esculentus*, *C. rotundus*)
- E. Poverty Weed (*Franseria discolor*)
- F. Quackgrass (*Agropyron repens*)
- G. Russian Knapweed (*Centaurea repens*)
- H. Thistle, Canada (*Cirsium arvense*)
- I. Whitetop (*Cardaria draba*, *C. pubescens*)

[7/1/97; 21.18.4.8 NMAC - Rn, 21 NMAC 18.4.8, 05/29/09]

21.18.4.9 RESTRICTED NOXIOUS WEED SEEDS:

The following weed seeds are declared to be restricted noxious weed seeds. Seeds containing any of the weed seeds listed herein shall not be sold in New Mexico if the number of restricted noxious weed seeds exceeds those established in this section.

	Maximum allowed per pound
dodder (<i>Cuscuta</i> spp.)	45
goatgrass (<i>Aegilops</i> spp.)	1
Johnsongrass (<i>Sorghum halepense</i>) and other perennial sorghums	45
morning glory (<i>Ipomoea</i> spp.)	45
Texas blueweed (<i>Helianthus ciliaris</i>)	45
white horse nettle (Bullnettle) (<i>Solanum elaeagnifolium</i>)	90
wild oat (<i>Avena fatua</i>)	90

[7/1/97; 21.18.4.9 NMAC - Rn, 21 NMAC 18.4.9, 05/29/09]

21.18.4.10 GERMINATION STANDARDS FOR VEGETABLE SEEDS:

The germination standards for vegetable seeds shall be as follows:

	Percent		Percent
artichoke	60	eggplant	60
asparagus	70	endive	70
asparagus-bean	75	kale	75
bean, garden	70	kale, Chinese	75
bean, lima	70	kohlrabi	75
bean, runner	75	leek	60
beet	65	lettuce	80
broadbean	75	muskmelon	75
broccoli	75	mustard	75
brussels sprouts	70	mustard, spinach	75
burdock, great	60	okra	50
cabbage	75	onion	70
cabbage, tronchuda	75	onion, welsh	70
cantaloupe (see muskmelon)		pak-choi	75
cardoon	60	parsley	60
carrot	55	parsnip	60
cauliflower	75	pea	80
celeriac	55	pepper	55
celery	55	pumpkin	75
chard, swiss	65	radish	75
chicory	65	rhubarb	60

chinese cabbage	75	rutabaga	75
chives	50	salsify	75
citron	65	sorrel	65
collards	80	soybean	75
corn, sweet	75	spinach	60
cornsalad	70	spinach, New Zealand	40
cowpea	75	squash	75
cress, garden	75	tomato	75
cress, upland	60	tomato, husk	50
cress, water	40	turnip	80
cucumber	80	watermelon	70
dandelion	60		

[7/1/97; 21.18.4.10 NMAC - Rn, 21 NMAC 18.4.10, 05/29/09]

21.18.4.11 METHODS OF SAMPLING AND TESTING:

The methods of sampling, inspecting, analyzing, testing, and examining agricultural and vegetable seed shall be the methods adopted by the association of official seed analysts. Methods of testing seeds for which the association of official seed analysts has not adopted methods of testing shall be determined by the state seed analyst.

[7/1/97; 21.18.4.11 NMAC - Rn, 21 NMAC 18.4.11, 05/29/09]

21.18.4.12 TOLERANCES:

Tolerances shall be the applicable tolerances established by the association of official seed analysts. In the case of prohibited noxious weed seeds, the tolerance shall be based on declaration of "none". In the case of vegetable seed in amounts of one pound or less not labeled as to actual germination, it will be interpreted that vegetable seeds must meet or exceed the minimum germination established by Section 10, germination standards for vegetable seeds.

[7/1/97; 21.18.4.12 NMAC - Rn, 21 NMAC 18.4.12, 05/29/09]

21.18.4.13 FEE SCHEDULE FOR SEED TESTING:

A. The following fees shall be charged to persons bringing seed into the laboratory for testing:

	Complete Test	Purity Only	Germ Only	Weed Only
grass seed	\$20.00	\$12.00	\$12.00	\$6.00
seed other than grass	\$10.00	\$6.00	\$6.00	\$6.00

B. Special charges.

TZ test for viability	\$20.00
rush service	\$5.00
mail purity first	\$1.50
extra copy	\$1.00
carry-over vegetable samples submitted in lots of ten or more	\$1.00

C. Hourly charges. Whenever the seed to be tested is unusually dirty or poses other problems so as not to be routine in its testing, the state seed analyst may elect to charge for the testing at the rate of \$10.00 per hour for the time involved in testing for purity and/or conducting the germination test, but not to include the time in the germinator.

[7/1/97; 21.18.4.13 NMAC - Rn, 21 NMAC 18.4.13, 05/29/09]

21.18.4.14 SEED CERTIFICATION AGENCY:

New Mexico state university seed certification is hereby designated to be the seed certification agency for the state.

[7/1/97; 21.18.4.14 NMAC - Rn, 21 NMAC 18.4.14, 05/29/09; A, 01/29/10]

**PART 5: ORGANIC PRODUCTION METHODS AND MATERIALS
[REPEALED]**

[This part was repealed effective 2/29/2012]

CHAPTER 19: PECAN BUYERS LICENSURE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PECAN BUYERS LICENSURE

21.19.2.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture, MSC 3189, Box 30005, Las Cruces New Mexico 88003-8005, Telephone No. (575) 646-3007.

[21.19.2.1 NMAC - N, 11/01/2018]

21.19.2.2 SCOPE:

The rule shall apply to all persons buying in-shell pecans in New Mexico, except where stated in statute.

[21.19.2.2 NMAC - N, 11/01/2018]

21.19.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under Chapter 47, SB 217, 2018 legislature.

[21.19.2.3 NMAC - N, 11/01/2018]

21.19.2.4 DURATION:

Permanent

[21.19.2.4 NMAC - N, 11/01/2018]

21.19.2.5 EFFECTIVE DATE:

November 1, 2018, unless a later date is cited at the end of a section.

[21.19.2.5 NMAC - N, 11/01/2018]

21.19.2.6 OBJECTIVE:

The rule establishes licensing fees, licensing requirements, and licensing period for persons buying in-shell pecans.

[21.19.2.6 NMAC - N, 11/01/2018]

21.19.2.7 DEFINITIONS:

A. "Fixed Buying Location" means locations in which the purchase of in-shell pecans is conducted from a building or other structure.

B. "Mobile Buying Location" means location in which the purchase of in-shell pecans is conducted from a vehicle or a location not defined as a fixed buying location.

[21.19.2.7 NMAC - N, 11/01/2018]

21.19.2.8 LICENSE YEAR:

The license year shall be a twelve month period from October 1 to September 30. Licenses, certificates or permits issued at any time during the license year, for a current licensing period, shall expire on September 30 following issuance. Licenses, certificates or permits shall be issued by New Mexico Department of Agriculture.

[21.19.2.8 NMAC - N, 11/01/2018]

21.19.2.9 LICENSE APPLICATION:

A. For fixed buying locations, a pecan buyer's license shall be required for each buying location. An application form for a fixed buying location shall include the following:

- (1) name of the business submitting for a license;
- (2) name of the owner of the businesses submitting for a license;
- (3) valid mailing address, telephone number, and email of person authorized to request a license for each buying location;
- (4) physical address or directions for each buying location to include sufficient information to be located for on-site inspections;
- (5) physical address or directions where buying records are maintained to include sufficient information to be located for on-site inspections; and
- (6) days and hours of operation to include seasonal deviations.

B. For mobile buying locations, a license will be required for each mobile unit engaged in the purchase of in-shell pecans at each permitted location. Additionally, a pecan buyer's location permit will be required for each location that a mobile unit will be parked and engaged in the purchase of in-shell nuts. An application form for mobile buying locations shall include the following:

- (1) name of the business submitting for a license;
- (2) name of the owner of the businesses submitting for a license;
- (3) valid mailing address, telephone number, and email of person authorized to request a license for each buying location;
- (4) mobile unit description including make, model, year, license plate, and color that will be parked and used for the purchase of in-shell pecans;
- (5) physical address or directions where buying records are maintained to include sufficient information to be located for on-site inspections;
- (6) physical address(es) or directions where each mobile unit will be parked for the purpose of purchasing in-shell pecans;

(7) a mobile license holder shall be required to register and obtain additional location permits, prior to engaging in the business of purchasing in-shell pecans, for locations not identified in a current and valid license application; and

(8) days and hours of operation to include seasonal deviations.

C. Incomplete or improperly completed applications will be identified by the department and shall be returned to the applicant for completion or correction.

[21.19.2.9 NMAC - N, 11/01/2018]

21.19.2.10 BUYERS' RECORD REQUIREMENTS:

Shall include the following:

A. information obtained by each buyer of in-shell pecans from the seller shall include:

- (1) location and date of the purchase;
- (2) name, telephone number, and address of the seller;
- (3) street address or physical location of the tree or the farm from where the in-shell pecans originated;
- (4) personal identification number obtained from either a drivers' license, military identification card, or passport issued by the United States;
- (5) license plate number, make and model of the seller's motor vehicle; and
- (6) total weight of the in-shell purchased.

B. Ensure record of the purchase of in-shell pecans are available for inspection by the department or a peace officer within 48 hours of a transaction.

C. Retain records of purchase of in-shell pecans for a minimum of two years.

[21.19.2.10 NMAC - N, 11/01/2018]

21.19.2.11 FEES:

Acceptable forms of payment shall be identified by the department. Licenses and location permits shall be displayed at each licensed or permitted location for public viewing.

A. For fixed locations, the annual pecan buyer's license fee shall be three hundred dollars (\$300) per physical location.

B. For mobile buying locations, the annual pecan buyer's license fee shall be two hundred and seventy five dollars (\$275) per mobile unit engaged in the purchase of in-shell pecans. For each buying location that a vehicle operates from, the annual fee for a location permit shall be twenty five dollars (\$25).

C. Fees are not refundable after a pecan buyer's license or location permit has been issued by the department.

[21.19.2.11 NMAC - N, 11/01/2018]

21.19.2.12 LICENSE TRANSFERS:

Fees and licenses are not transferable between locations or businesses.

[21.19.2.12 NMAC - N, 11/01/2018]

PART 3-5: [RESERVED]

CHAPTER 20: HEMP CULTIVATION RULE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: HEMP CULTIVATION RULE

21.20.2.1 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.

[21.20.2.1 NMAC - N, 12/11/2018]

21.20.2.2 SCOPE:

All individuals, businesses, agencies, institutions, or other entities engaged in the production of hemp in New Mexico.

[21.20.2.2 NMAC - N, 12/11/2018]

21.20.2.3 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.

[21.20.2.3 NMAC - N, 12/11/2018]

21.20.2.4 EFFECTIVE DATE:

December 11, 2018, unless a later date is cited at the end of the section.

[21.20.2.4 NMAC - N, 12/11/2018]

21.20.2.5 DURATION:

Permanent.

[21.20.2.5 NMAC - N, 12/11/2018]

21.20.2.6 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.

[21.20.2.6 NMAC - N, 12/11/2018]

21.20.2.7 DEFINITIONS:

A. "Annual Production License" means license issued for the production of a single crop that is destroyed within 240 days of planting.

B. "Applicant" means individuals, businesses, agencies, institutions, or other entities that have submitted an application to the department.

C. "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.

D. "Business Day" means normal business hours and days as defined by New Mexico State University policy.

E. "Cannabis" means a plant of the genus cannabis.

F. "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.

G. "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.

H. "Department" means the New Mexico Department of Agriculture.

I. "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 director.

J. "Director" means the director/secretary of New Mexico Department of Agriculture or designee.

K. "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.

L. "License" means document issued to an applicant by the department authorizing a licensee to produce hemp at a location.

M. "Licensee" means individuals, businesses, agencies, institutions, or other entities that possess a valid hemp production license.

N. "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.

O. "THC" means delta-9 tetrahydrocannabinol.

P. "Variety" means cannabis cultivar or strain with known or unknown THC levels.

[21.20.2.7 NMAC - N, 12/11/2018]

21.20.2.8 APPLICATION/LICENSE:

A. 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 an 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 until crop destruction, whichever occurs first, for specified cannabis varieties grown annually at the specified location identified in the application.

B. 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.

[21.20.2.8 NMAC - N, 12/11/2018]

21.20.2.9 LICENSEE REQUIREMENTS:

Licensee shall:

- A.** submit all required documents by due dates specified by the department;
- B.** not reassign or transfer to another business, location, individual, or other entity a license;
- C.** destroy cannabis varieties covered under this rule and found not to be in compliance with requirements set forth in this rule or department policy;
- D.** 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;
- E.** remit payment to the department for fees associated with enforcement of this rule within 20 calendar days of receipt of notice; and
- F.** follow all state and federal requirements relevant to hemp production.

[21.20.2.9 NMAC - N, 12/11/2018]

21.20.2.10 FEES:

A. 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.

B. 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.

[21.20.2.10 NMAC - N, 12/11/2018]

21.20.2.11 INSPECTION/SAMPLING/TESTING:

A. 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.

B. 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 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 in policy.

[21.20.2.11 NMAC - N, 12/11/2018]

21.20.2.12 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.

[21.20.2.12 NMAC - N, 12/11/2018]

21.20.2.13 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.

[21.20.2.13 NMAC - N, 12/11/2018]

21.20.2.14 EXEMPTIONS:

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

[21.20.2.14 NMAC - N, 12/11/2018]

21.20.2.15 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.

[21.20.2.15 NMAC - N, 12/11/2018]

PART 3: HEMP MANUFACTURING RULE

21.20.3.1 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.

[21.20.3.1 NMAC; N, 10/15/2019]

21.20.3.2 SCOPE:

All persons engaged in:

A. Testing of raw hemp for regulatory purposes as identified by New Mexico Department of Agriculture or;

B. Plant breeding for the purpose of developing improved or new hemp varieties in which breeding activities involve the possession of viable plants that are in excess of three-tenths percent and less than five percent THC.

[21.20.3.2 NMAC; N, 10/15/2019]

21.20.3.3 STATUTORY AUTHORITY:

Granted to the Board of Regents of New Mexico State University under the Hemp Manufacturing Act, Chapter 76, Article 24, Section 1, NMSA 1978 Compilation.

[21.20.3.3 NMAC; N, 10/15/2019]

21.20.3.4 DURATION:

Permanent.

[21.20.3.4 NMAC; N, 10/15/2019]

21.20.3.5 EFFECTIVE DATE:

October 15, 2019, unless a later date is cited at the end of a section.

[21.20.3.5 NMAC; N, 10/15/2019]

21.20.3.6 OBJECTIVE:

Establish licensing and operational standards for persons testing raw hemp for regulatory purposes, as identified by the department, or persons engaged in the breeding of new or breeding for improving existing hemp varieties in which practices may involve the possession of viable plants and plant material in excess of three-tenths percent and less than five percent THC.

[21.20.3.6 NMAC; N, 10/15/2019]

21.20.3.7 DEFINITIONS:

A. "Applicant" means individual, business, agency, institution, or other entity that is in the process of or has submitted an application to the department for a Laboratory Hemp Testing License, or a Special Hemp Breeding License.

B. "Cannabis" means a plant of the genus cannabis.

C. "Department" means the New Mexico Department of Agriculture.

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

E. "Hemp Harvest Certificate" means a certificate, license, permit or other document pursuant to rules adopted under the Hemp Manufacturing Act for use during transportation of hemp or hemp-derived material, whether in the possession of a person or electronically verified by a law enforcement agency.

F. "Hemp Testing" means testing of cannabis for regulatory purposes identified by New Mexico Department of Agriculture for total THC concentrations.

G. "License" means document issued to an applicant by the department authorizing a person to engage in activities identified by the department.

H. "Director" means New Mexico Director/Secretary of Agriculture or designee.

I. "SOP" means written standard operating procedures detailing instructions related to specific tasks.

J. "THC" means delta-9-tetrahydrocannabinol as measured using a post-decarboxylation method and based on percentage dry weight.

K. "Varieties" means cannabis cultivar or strain with known or unknown THC levels.

[21.20.3.7 NMAC; N, 10/15/2019]

21.20.3.8 LICENSE YEAR:

The license year for a Laboratory Hemp Testing License or for the Special Hemp Breeding License shall be a 12-month period from February 1 through January 31. Licenses, certificates or permits issued at any time during the license year shall expire on January 31 following issuance.

[21.20.3.8 NMAC; N, 10/15/2019]

21.20.3.9 FEES:

A. The annual fee for a Laboratory Hemp Testing License shall not exceed five-hundred dollars (\$500).

B. The annual fee for a Special Hemp Breeding License shall not exceed five-hundred dollars (\$500).

C. Once an appropriate license has been issued by the department, fees collected for licenses or certificates are nonrefundable.

D. Double fees required because of late renewal of licenses in Subsections A and B 21.20.3.9 NMAC shall be twice the amount stated for the appropriate license.

E. Fees may be waived by the director, when, in their discretion, special circumstance warrant such a waiver.

[21.20.3.9 NMAC; N, 10/15/2019]

21.20.3.10 EFFECTIVE DATE OF APPLICATION AND PAYMENT OF DOUBLE FEES:

A. The effective date of application for license renewals by mail shall be the date postmarked on the applicant's properly completed application package. Renewal packages postmarked January 31 or before may be considered for renewal at single fee rates as described in Subsections A and B of 21.20.3.9 NMAC. Renewal packages postmarked February 1 or later are considered late; these packages will be returned to the applicant along with appropriate paperwork for renewal at double fee rates as described in Subsection D of 21.20.3.9 NMAC.

B. The effective date of application for license and permit renewals done in person shall be the actual calendar date when the properly completed application or renewal package is presented to the department. These application or renewal packages may be received by the department only during regular business hours.

C. Incomplete or improperly completed application or renewal packages will be so identified by the department and returned to the applicant for completion or correction. The effective date of application shall be the date postmarked on the original envelope for packages received by mail; the effective date of application for packages submitted in person shall be the actual calendar date the applicant first presents the package to the department office. This presentation shall occur during regular business hours only.

[21.20.3.10 NMAC; N, 10/15/2019]

21.20.3.11 LABORATORY HEMP TESTING LICENSE REQUIREMENTS:

A. Persons engaged in the testing of raw hemp for the purpose of supporting regulatory requirements established by the department shall be licensed by the department.

B. Prior to issuance of a Laboratory Hemp Testing License by the department, applicants shall demonstrate expertise directly related to quantification of specific compounds in cannabis under the following requirements:

(1) Analytical proficiency directly related to the quantification of THC by qualifying under one or more of the following:

(a) Have successfully completed a proficiency test administered by a department approved entity using department approved methodologies within the past six months.

(b) Currently approved for the quantification of THC in cannabis by another state agency or other entity that has been recognized by the department.

(c) Other qualifying requirements as allowed by the director or established in policy.

(2) Submission to the department for review and approval SOPs for procedures related to sample receiving, plant material storage, record retention, sample processing, extraction methodology, total THC quantification methodology, and disposal and destruction of plant material in excess of three-tenths percent THC post-decarboxylation.

(3) Submission to the department for review and approval SOPs related to reporting to, or providing the department access to THC test results related to hemp samples submitted by hemp growers in support of their hemp harvest certificate.

(4) Submission to the department for review and approval laboratory director credentials; laboratory location for fixed laboratory, license plate and vehicle description of mobile laboratory units.

(5) Other pre-license approval requirements as developed and stated in policy.

C. Persons issued a Laboratory Hemp Testing License shall comply with but not limited to the following:

(1) Only utilize SOPs approved by the department relevant to the quantification of total THC in samples received to support of the issuance of a Hemp Harvest Certificate.

(2) Participate in proficiency testing, as required and directed by the department. Number of proficiency tests required by the department during a 12-month period shall not exceed two when results are identified as satisfactory by the department.

(3) Provide department staff access to hemp THC testing facilities for the purpose of determining compliance with state rules and policies, or to observe procedures during one or more proficiency testing events.

(4) Disclose to the department potential conflicts of interest related to hemp testing including but not limited to, laboratory ownership, laboratory board members, or staff who have direct economic interests in a specific hemp production.

(5) Accept financial responsibility for costs incurred as a result of department directed proficiency testing.

(6) Understand costs associated with the testing of hemp for regulatory purposes will not be the responsibility of the department.

(7) Other requirements as developed and stated in policy.

[21.20.3.11 NMAC; N, 10/15/2019]

21.20.3.12 SPECIAL HEMP BREEDING LICENSE REQUIREMENTS:

A. Persons breeding for new or improved varieties of hemp and that may possess viable plants or plant material in excess of three-tenths percent and less than five percent THC shall be licensed by New Mexico Department of Agriculture.

B. Application requirements by persons applying for a Special Hemp Breeding License shall comply with but not limited to the following:

(1) If the applicant is a business, agency, institution, or other entity, the application shall identify the specific person the license shall be issued to and is responsible for activities covered under this rule.

(2) Submission to the department for review and approval all SOPs related to record retention for plants believed to be in excess of three-tenths percent and less than five percent THC, and disposal and destruction of plant material in excess of three-tenths percent THC.

(3) Submission to the department for review and approval plant breeder's credentials, and breeding objectives.

(4) Provide department staff access to locations licensed under the Special Hemp Breeding License for the purpose of determining compliance with state rules and policies.

(5) Other requirements as developed and stated in policy.

C. Persons licensed by the department under the Special Hemp Breeding License shall comply with, but not limited to the following:

(1) Viable plants or plant material in excess of three-tenths percent and less than five percent THC shall be required to be maintained indoors in a secure area approved by the department.

(2) Plants or plant material in excess of three-tenths percent and less than five percent THC shall not be available to the public or transferred to another person that does not possess a valid Special Hemp Breeding License.

(3) Understand that state law enforcement agencies are notified of locations licensed under the Special Hemp Breeding License.

(4) Plants or plant material in excess of three-tenths percent and less than five percent THC shall not be used for any other purpose other than plant breeding.

(5) Other requirements as developed and stated in policy.

[21.20.3.12 NMAC; N, 10/15/2019]

21.20.3.13 NON-COMPLIANCE:

If any licensee is found to have violated any of the provisions of this rule, policies, or orders of the department, the license may be revoked or suspended for a period of time identified by the director.

[21.20.3.13 NMAC; N, 10/15/2019]

PART 4-6: [RESERVED]

CHAPTER 21-24: [RESERVED]

CHAPTER 25: AGRICULTURAL MARKETING, PROCESSING AND INSPECTION

PART 1: GENERAL PROVISIONS

21.25.1.1 ISSUING AGENCY:

NM Beef Council.

[10-31-97; Recompiled 12/31/01]

21.25.1.2 SCOPE:

Members of the NM Beef Council.

[10-31-97; Recompiled 12/31/01]

21.25.1.3 STATUTORY AUTHORITY:

NM Beef Council Act 77-2A-1 to 77-2A-9; 77-2A-10; 77-2A-11.

[12-02-86, 01-10-91, 03-18-93, 10-31-97; Recompiled 12/31/01]

21.25.1.4 DURATION:

Permanent.

[10-31-97; Recompiled 12/31/01]

21.25.1.5 EFFECTIVE DATE:

March 18, 1993, unless a different date is cited at the end of a section or paragraph.

[10-31-97; Recompiled 12/31/01]

21.25.1.6 OBJECTIVE:

The objective is to prescribe the process for the election of NM Beef Council officers, to establish procedures for setting meeting dates and notification of meeting dates, to establish reimbursement procedures for NM Beef Council Directors, to establish accountability to NMDA for submission of the budget, to state procedures for adopting, amending and filing rules and regulations, to establish procedures for fiscal records and disbursements and to delineate causes for removal of members.

[10-31-97; Recompiled 12/31/01]

21.25.1.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

21.25.1.8 OFFICERS -- ELECTION -- DUTIES:

A. Election of Officers. The council shall at its annual meeting elect a chairman, vice chairman, secretary, and other officers, as it deems necessary, from among its members.

B. Eligibility. Any member of the council is eligible as an officer except ex-officio members. Ex-officio members have no voting rights.

C. Tenure and Vacancy. Each officer of the council shall be elected for a one-year term and shall not serve in that office for more than two consecutive terms. Any vacancy shall be filled by election at the next council meeting. Election to a vacant office shall be for the unexpired term of the vacancy.

D. Duties of the Chairman. The council chairman shall perform the duties stated in Section 6 of the Act, Section 77-2A-6 NMSA 1978 as amended. The chairman shall preside at council meetings and shall be vested with the same (moving and voting) privileges accorded any other member. The chairman shall sign the official Minutes of all meetings after the council has approved same. The chairman shall perform such other duties as may be stated in these regulations, the law, and as may be set by the council.

E. Duties of the Vice Chairman. In the absence or incapacity of the chairman, the vice chairman shall assume the duties of the chairman. The vice chairman shall perform such other duties as may be stated in these regulations, the law, and as may be set by the council.

F. Duties of the Secretary. The secretary shall sign the draft Minutes of the council meetings. The secretary shall sign, together with the chairman, council Minutes when officially approved. The secretary shall perform such other duties as the council may direct.

G. Bond. All council members, and employees who receive and disburse council funds, shall be bonded.

[12-02-86; 07-19-90; 03-18-93; Recompiled 12/31/01]

21.25.1.9 MEETINGS:

A. Regular Meetings. The council shall meet at least three times a year in addition to the annual meeting to be held in June of each year.

B. Special Meetings. Special council meetings may be called by the chairman at any time or the chairman shall call a special meeting when so requested by at least four council members.

C. Notice of Meetings.

(1) Regular Meetings. The council sets the date, time and place for the next meeting at the end of each meeting. Written notice of the date, time and place of each regular meeting shall be mailed to each council member at least five days prior to the date of the meeting. Notice of the regular council meetings shall be published at least five days before the meeting in a newspaper of general circulation.

(2) Special Meetings. The chairman shall set the date, time and place for any special meetings. Reasonable efforts, either written or oral, shall be made to notify each council member prior to the special meeting. If possible, notice of special council meetings shall be published in a newspaper of general circulation.

D. Agenda. A proposed agenda shall be prepared for each regular council meeting and mailed to each council member at least five days before each regular meeting. At any time prior to a regular meeting, any council member may place additional items on the agenda. The agenda shall set the order of business. During any regular or special council meeting, any council member with the approval of a majority of those members present may place an additional item on the agenda. Except as otherwise provided, the agenda provision does not apply to special council meetings.

E. Quorum. A majority of the voting members of the council shall constitute a quorum for the transaction of business.

F. Public Meeting. The council shall abide by the "Public Meetings Act" (Sections 10-15-1 to 10-15-4 NMSA 1978).

G. Mileage and Per Diem. The council may establish, by a majority of those members present at a regular meeting, mileage and per diem rates for its members and ex-officio members which shall not exceed those provided for in the "Mileage and Per Diem Act" (Sections 10-8-1 to 10-8-8 NMSA 1978).

[12-02-86; 07-19-90; 03-18-93; Recompiled 12/31/01]

21.25.1.10 ANNUAL BUDGET:

The council will submit to the secretary of the New Mexico Department of Agriculture a detailed annual budget and provide a copy of such budget upon request to any person providing proof of having been assessed under CFR7, 1260.

[03-18-93; Recompiled 12/31/01]

21.25.1.11 PROCEDURE FOR ADOPTION OF REGULATIONS:

A. The council shall hold at least one public hearing before promulgating any regulation and provide producers and other interested parties an opportunity to submit oral or written input at the council's discretion.

B. The council, at its discretion, shall set a hearing place or hearing places. In selecting a hearing site or sites the council shall consider where the proposed regulation will receive the greatest input.

C. Notices of the hearings shall be published once at least twenty (20) days prior to the date of the hearing, in a newspaper of general circulation in the state, and *The Stockman* magazine, except in emergency situations.

[12-02-86; Recompiled 12/31/01]

21.25.1.12 AMENDING OR REPEALING REGULATIONS:

A. The council is vested with the authority to amend or repeal these regulations by affirmative vote of a majority of council members.

B. Copies of proposed amendments or repeals shall be submitted to each council member at least twenty (20) days prior to the meeting at which the proposal is to be acted upon, unless waived by a majority of those council members present or in emergency situations.

[12-02-86; Recompiled 12/31/01]

21.25.1.13 PROCEDURES FOR FILING REGULATIONS:

All regulations adopted by the council shall be filed with the New Mexico Department of Agriculture and the State Records Center.

[12-02-86; Recompiled 12/31/01]

21.25.1.14 RECORDS AND DISBURSEMENTS:

The council shall keep detailed and accurate records of all receipts and disbursements, have such records audited annually, and keep such audit available for inspection at the council office.

A. All monies received by the council shall be deposited in a bank that qualifies as a depository for state funds.

B. Monies withdrawn from or paid out of such accounts shall require two authorized signatures. A receipt, voucher, or other written record showing clearly the nature and items covered by each check or other order shall be retained.

C. All monies received shall be used by the council in carrying out the "New Mexico Beef Council Act" and/or the "Cattlemen's Beef Promotion and Research Act."

[12-02-86; 03-18-93; Recompiled 12/31/01]

21.25.1.15 REMOVAL OF MEMBERS:

A. The director shall, upon petition of majority of council, immediately declare the office of any member of the council vacant whenever such member has ceased to be an active producer or feeder in this state, has become a resident of another state, or is not fulfilling the duties of his office.

B. The director shall fill vacancies by appointing a replacement to serve the unexpired term.

[03-18-93; Recompiled 12/31/01]

21.25.1.16 CONFLICT OF INTEREST:

The Beef Council shall be subject to the Conflict of Interest Act insofar as it is applicable.

[01-10-91; Recompiled 12/31/01]

21.25.1.17 SEVERABILITY CLAUSE:

If any part or application of these regulations is held invalid the remainder of it and its applications to other situations or persons shall not be affected.

[12-02-86; Recompiled 12/31/01]

PART 2: [RESERVED]

PART 3: VALENCIA PEANUT ASSESSMENT

21.25.3.1 ISSUING AGENCY:

New Mexico Peanut Research Board

[08-31-98: 21.25.3.1 NMAC – Rn & A, 21 NMAC 25.3.1, 5/15/2001]

21.25.3.2 SCOPE:

This rule establishes the commission assessment to be paid by producers and handlers of New Mexico Valencia peanuts.

[08-31-98: 21.25.3.2 NMAC – Rn, 21 NMAC 25.3.2, 5/15/2001]

21.25.3.3 STATUTORY AUTHORITY:

Granted to the New Mexico Peanut Research Board under the Agricultural Commodity Commission Act, Chapter 76, Article 21, Section 1-22, NMSA 1978 Compilation.

[08-31-98: 21.25.3.3 NMAC – Rn, 21 NMAC 25.3.3, 5/15/2001]

21.25.3.4 DURATION:

Permanent

[08-31-98: 21.25.3.4 NMAC – Rn, 21 NMAC 25.3.4, 5/15/2001]

21.25.3.5 EFFECTIVE DATE:

August 31, 1998

[08-31-98: 21.25.3.5 NMAC – Rn, 21 NMAC 25.3.5, 5/15/2001]

21.25.3.6 OBJECTIVE:

To establish the commission assessment for Valencia peanuts and provision for a refund.

[08-31-98: 21.25.3.6 NMAC – Rn, 21 NMAC 25.3.6, 5/15/2001]

21.25.3.7 DEFINITIONS:

- A. "Commission" means the New Mexico Peanut Research Board.
- B. "Handler" means any producer, processor, distributor, or other person engaged in the handling or marketing of Valencia peanuts.
- C. "Producer" means any person engaged in a proprietary capacity in the commercial production of Valencia peanuts within New Mexico.

[08-31-98: 21.25.3.7 NMAC – Rn, 21 NMAC 25.3.7, 5/15/2001]

21.25.3.8 ASSESSMENT:

- A. The commission assessment rate for the 1998 crop will be ninety-two cents (\$.92) per ton for producers and nineteen cents (\$.19) per ton for handlers.
- B. The commission assessment rate for the 1999 crop and beyond will fifty

cents (.50) per ton for both the producers and handlers.

C. Any producer or handler who has paid a commission assessment is entitled to a refund of the amount paid by making written application to the commission. Refunds shall be made within thirty days (30) of the date of request.

D. The refund application will be provided by the commission.

[08-31-98: 21.25.3.8 NMAC – Rn & A, 21 NMAC 25.3.8, 5/15/2001]

PART 4: [RESERVED]

PART 5: LICENSE FEES AND BONDS FOR PRODUCE BROKERS, DEALERS, AND PACKERS

21.25.5.1 ISSUING AGENCY:

New Mexico Department of Agriculture

[9/15/97; 21.25.5.1 NMAC - Rn & A, 21 NMAC 25.5.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.25.5.2 SCOPE:

This rule establishes license fees and bonds for produce brokers, dealers and packers doing business in New Mexico.

[9/15/97; 21.25.5.2 NMAC - Rn, 21 NMAC 25.5.2, 05/29/09]

21.25.5.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university and the New Mexico department of agriculture under the New Mexico Produce Marketing Act, Chapter 76, Article 15, Sections 10 through 22 NMSA 1978.

[9/15/97; 21.25.5.3 NMAC - Rn, 21 NMAC 25.5.3, 05/29/09]

21.25.5.4 DURATION:

Permanent

[9/15/97; 21.25.5.4 NMAC - Rn, 21 NMAC 25.5.4, 05/29/09]

21.25.5.5 EFFECTIVE DATE:

September 15, 1997

[9/15/97; 21.25.5.5 NMAC - Rn, 21 NMAC 25.5.5, 05/29/09]

21.25.5.6 OBJECTIVE:

To establish yearly license fees and bond requirements for produce brokers, dealers and packers.

[9/15/97; 21.25.5.6 NMAC - Rn, 21 NMAC 25.5.6, 05/29/09]

21.25.5.7 DEFINITIONS:

A. "Produce" means the food produced from any vine, tree or plant which produces fruits or vegetables for human consumption.

B. "Broker" means a commission merchant or any other person engaged in the business of receiving any produce for sale, on commission, for or on behalf of another.

C. "Packer" means any person engaged in the business of grading, packing, cooling or storing of any produce other than his own production.

D. "Dealer" means any person engaged in the business of buying any produce from the grower for processing or resale.

E. "Person" means individuals, partnerships, corporations and grower cooperative associations or any other legal entities.

F. "Grower" means any person engaged in the growing of any produce crop.

[9/15/97; 21.25.5.7 NMAC - Rn, 21 NMAC 25.5.7, 05/29/09]

21.25.5.8 LICENSE FEES AND BONDS:

A. Broker

(1) license fee: \$50/year

(2) bond: \$10,000

B. Dealer

(1) license fee: \$50/year

(2) bond: \$10,000

C. Packer

(1) license fee: \$25/year

(2) bond: \$5,000

[9/15/97; 21.25.5.8 NMAC - Rn, 21 NMAC 25.5.8, 05/29/09]

**PART 6: ORGANIC LABELING AND MARKETING,
PROCESSING/HANDLING OPERATIONS, APPLICATION PROCESS AND
INSPECTIONS [REPEALED]**

[This part was repealed effective 2/29/2012]

CHAPTER 26: PRODUCE MARKETING BOARDS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: CHILE ASSESSMENT

21.26.2.1 ISSUING AGENCY:

Dave Layton, Chairman, New Mexico Chile Commission, 4065 J Street. SE, Deming, NM 88030, Telephone (575) 546-8863.

[9/15/97; 21.26.2.1 NMAC - Rn & A, 21 NMAC 26.2.1, 08/01/08]

21.26.2.2 SCOPE:

This rule establishes the commission assessment for New Mexico chile peppers.

[9/15/97; 21.26.2.2 NMAC - Rn, 21 NMAC 26.2.2, 08/01/08]

21.26.2.3 STATUTORY AUTHORITY:

Granted to the New Mexico chile commission under the Agricultural Commodity Commission Act, Chapter 76, Article 21, Section 1-22, NMSA 1978 Compilation.

[9/15/97; 21.26.2.3 NMAC - Rn, 21 NMAC 26.2.3, 08/01/08]

21.26.2.4 DURATION:

Permanent

[9/15/97; 21.26.2.4 NMAC - Rn, 21 NMAC 26.2.4, 08/01/08]

21.26.2.5 EFFECTIVE DATE:

September 15, 1997

[9/15/97; 21.26.2.5 NMAC - Rn, 21 NMAC 26.2.5, 08/01/08]

21.26.2.6 OBJECTIVE:

To establish the commission assessment for chile peppers and a provision for a refund.

[9/15/97; 21.26.2.6 NMAC - Rn, 21 NMAC 26.2.6, 08/01/08]

21.26.2.7 DEFINITIONS:

A. "Commission" means the New Mexico chile commission.

B. "Handler" means any producer, processor, distributor or other person engaged in the handling or marketing of chile peppers.

C. "Chile peppers" includes green chile varieties, jalapenos, red chile varieties, cayenne, pimento and bell peppers.

D. "Producer" means any person engaged in a proprietary capacity in the commercial production of chile peppers within New Mexico.

[8/30/97; 9/15/97; 21.26.2.7 NMAC - Rn, 21 NMAC 26.2.7, 08/01/08]

21.26.2.8 ASSESSMENT:

A. The commission assessment rate is set at \$.625 per ton of fresh chile peppers and \$1.25 per ton of dry chile peppers.

B. The first handler shall deduct the assessment from the amount paid to the producer.

C. The first handler shall make payment of the assessment to the New Mexico chile commission. Payment dates for fresh chile peppers shall be prior to December 1. Payment dates for dry chile peppers shall be prior to April 1.

D. Producers may obtain assessment refunds by making an application to the commission. Application shall be made on forms approved by the commission within thirty (30) days after the sale of assessed chile. The commission shall make refunds within thirty (30) days of the date the application is received, unless the proceeds and the necessary information have not been received by the commission, in which case the refund will be made within fifteen (15) days after receipt of the proceeds and necessary information.

[9/15/97; 21.26.2.8 NMAC - Rn & A, 21 NMAC 26.2.8, 08/01/08]

PART 3: DRY ONION ASSESSMENT

21.26.3.1 ISSUING AGENCY:

Joe Nelson, Chairman; New Mexico Dry Onion Commission, P. O. Box 30005, MSC 3189, Las Cruces, NM 88003-8005, Telephone (505) 646-4929.

[09/15/97; Recompiled 12/31/01]

21.26.3.2 SCOPE:

This rule establishes the commission assessment for New Mexico dry onions.

[09/15/97; Recompiled 12/31/01]

21.26.3.3 STATUTORY AUTHORITY:

Granted to the New Mexico dry onion commission under the Agricultural Commodity Commission Act, Chapter 76, Article 21, Section 1-22, NMSA 1978 Compilation.

[09/15/97; Recompiled 12/31/01]

21.26.3.4 DURATION:

Permanent

[09/15/97; Recompiled 12/31/01]

21.26.3.5 EFFECTIVE DATE:

September 15, 1997

[09/15/97; Recompiled 12/31/01]

21.26.3.6 OBJECTIVE:

To establish the commission assessment for dry onions and a provision for a refund.

[09/15/97; Recompiled 12/31/01]

21.26.3.7 DEFINITIONS:

A. "Commission" means the New Mexico dry onion commission.

B. "Handler" means any producer, processor, distributor or other person engaged in the handling or marketing of dry onions.

C. "Producer" means any person engaged in a proprietary capacity in the commercial production of dry onions within New Mexico.

[09/15/97; Recompiled 12/31/01]

21.26.3.8 ASSESSMENT:

A. The commission assessment rate is set at two cents (\$.02) per fifty (50) pounds of dry onions.

B. The first handler shall deduct the assessment from the amount paid to the producer.

C. The first handler shall make payment of the assessment to the New Mexico dry onion commission. Payment dates shall be August 31, October 31, and April 30.

D. Producers may obtain assessment refunds by making an application to the commission. Application shall be made on forms approved by the commission within thirty (30) days after the sale of assessed dry onion. The commission shall make refunds within thirty (30) days of the date the application is received, unless the proceeds and the necessary information have not been received by the commission, in which case the refund will be made within fifteen (15) days after receipt of the proceeds and necessary information.

[09/15/97; Recompiled 12/31/01]

PART 4: NEW MEXICO APPLE ASSESSMENT

21.26.4.1 ISSUING AGENCY:

Longino Vigil, Chairman; New Mexico Apple Commission, 7120 Wyoming, NE, Suite 327, Albuquerque, NM 87109, Telephone (505) 822-9646.

[10/29/99; Recompiled 12/31/01]

21.26.4.2 SCOPE:

This rule establishes the commission assessment to be paid by producers of New Mexico apples.

[10/29/99; Recompiled 12/31/01]

21.26.4.3 STATUTORY AUTHORITY:

Granted to the New Mexico apple commission under the New Mexico Apple Commission Act, Chapter 76, Article 23, Section 1-9, NMSA 1978 Compilation.

[10/29/99; Recompiled 12/31/01]

21.26.4.4 DURATION:

Permanent

[10/29/99 Recompiled 12/31/01]

21.26.4.5 EFFECTIVE DATE:

October 29, 1999

[10/29/99; Recompiled 12/31/01]

21.26.4.6 OBJECTIVE:

To establish the commission voluntary assessment for New Mexico apples.

[10/29/99; Recompiled 12/31/01]

21.26.4.7 DEFINITIONS:

A. "Commission" means the New Mexico apple commission.

B. "Producer" means an apple grower who farms one or more acres of apples and who sells fresh apples to retail food outlets.

C. "Fresh Apples" means apples used for other than processed food.

[10/29/99; Recompiled 12/31/01]

21.26.4.8 ASSESSMENT:

A. The commission assessment rate for the crop will be fifty cents (\$.50) per 100 lb for producers.

B. The assessment on fresh apples shall be calculated by the participating producer and forwarded to the commission within thirty days of sale.

[10/29/99; Recompiled 12/31/01]

CHAPTER 27: APIARIES (BEEKEEPING)

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: COMMERCIAL APIARIES

21.27.2.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.27.2.1 NMAC - Rn & A, 21 NMAC 27.2.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.27.2.2 SCOPE:

Part 2 shall apply to all commercial beekeepers and commercial apiaries.

[7/1/97; 21.27.2.2 NMAC - Rn, 21 NMAC 27.2.2, 05/29/09]

21.27.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Bee Law, Chapter 76, Article 9, Sections 1 through 13, New Mexico Statutes Annotated 1978 Compilation.

[7/1/97; 21.27.2.3 NMAC - Rn, 21 NMAC 27.2.3, 05/29/09]

21.27.2.4 DURATION:

Permanent.

[7/1/97; 21.27.2.4 NMAC - Rn, 21 NMAC 27.2.4, 05/29/09]

21.27.2.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.27.2.5 NMAC - Rn, 21 NMAC 27.2.5, 05/29/09]

21.27.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 27 is to establish the registration of commercial apiaries, govern the importation of commercial honey bees, provide for pollination permits and provide for the disposal of abandoned apiaries and apiary equipment.

[7/1/97; 21.27.2.6 NMAC - Rn, 21 NMAC 27.2.6, 05/29/09]

21.27.2.7 DEFINITIONS:

A. "Commercial apiary" means any location:

(1) north of interstate highway 40 where fifteen (15) or more bee colonies are located; and

(2) south of interstate highway 40 where twenty-five (25) or more bee colonies are located.

B. "Commercial beekeeper" means any person who has in any one location the number of colonies necessary to comprise a commercial apiary as defined in this section of the rule.

[7/1/97; 21.27.2.7 NMAC - Rn, 21 NMAC 27.2.7, 05/29/09]

21.27.2.8 APIARY EQUIPMENT:

To facilitate the inspection for contagious bee disease each established colony shall be kept in a hive with movable frames to permit the inspection of the brood.

[7/1/97; 21.27.2.8 NMAC - Rn, 21 NMAC 27.2.8, 05/29/09]

21.27.2.9 REGISTRATION OF COMMERCIAL APIARIES:

A. Each commercial apiary shall be registered:

(1) annually on or before November 1 for each established apiary, or

(2) prior to the establishment of a commercial apiary not registered at the time of the last annual registration.

B. The annual registration fee of each commercial apiary shall be three dollars (\$3.00), provided that no commercial beekeeper shall pay more than two-hundred dollars (\$200) in apiary registration fees. Any apiary not re-registered within thirty (30) days of the expiration of its previous registration shall be available for registration by another commercial beekeeper.

C. The department shall transfer a registration of a commercial apiary to another beekeeper when notified in writing by the registered owner.

D. The registration for any commercial apiary shall be forfeited if the commercial beekeeper does not place at least the required number colonies for a commercial apiary at the location for a minimum of fifteen (15) days during any one of two consecutive registration periods.

[7/1/97; 21.27.2.9 NMAC - Rn, 21 NMAC 27.2.9, 05/29/09]

21.27.2.10 IMPORTATION OF BEES:

A. Commercial beekeepers shall obtain a registration for any planned apiary prior to importing or locating bees in the state.

B. A certificate of inspection shall be filed with the department ten (10) days prior to the movement of bees or used equipment into the state by any commercial beekeeper.

C. The certificate of inspection for a colony of bees shall be based on an inspection by an authorized apiary inspector of the state of origin within thirty (30) days prior to date of movement into the state.

D. Bees or used equipment imported from states which do not regulate bees shall be inspected by the department, at the expense of the commercial beekeeper, prior to a commercial apiary registration being granted.

E. The department shall be notified within ten (10) days after arrival of the bees in the state.

F. Any violation of this section of the rule may result in the forfeiture of the registered apiary location or denial of an apiary registration by the department.

[7/1/97; 21.27.2.10 NMAC - Rn, 21 NMAC 27.2.10, 05/29/09]

21.27.2.11 POLLINATION PERMITS:

A. Commercial beekeepers shall obtain a pollination permit for any colonies moved for pollination purposes within one and a half (1 1/2) miles of another beekeepers registered apiary.

B. The permit shall be on a form supplied by the department and shall be filed with the department not more than twenty-four (24) hours after placing the colonies for pollination.

C. Colonies placed by a commercial beekeeper without a pollination permit shall be a violation of this rule and subject the beekeeper to the penalties in 76-9-13 of the Bee Act.

[7/1/97; 21.27.2.11 NMAC - Rn, 21 NMAC 27.2.11, 05/29/09]

21.27.2.12 ABANDONED COLONIES:

A. A colony or equipment shall be declared abandoned when the beekeeper owner or his representative cannot be located and notified in person or by registered letter and

publication for at least two successive weeks in a newspaper of wide distribution in the county where the colony or equipment is located.

B. If a colony or equipment continues to be abandoned after thirty (30) days notice by registered letter and forty-one (41) days from the first publication in a newspaper, the department shall destroy or sell at public auction the abandoned colony or equipment.

C. The department may reject any and all bids when, in their opinion, the sale of the abandoned colonies or equipment constitutes a threat to the beekeeping industry. Each person purchasing a colony or equipment at the auction shall receive from the department a bill of sale that includes a description of the colony or equipment purchased and the amount paid. After deducting the expense of inspecting the colony or equipment and conducting the sale, the balance of the proceeds shall be used in administering the Bee Act.

[7/1/97; 21.27.2.12 NMAC - Rn, 21 NMAC 27.2.12, 05/29/09]

PART 3: ORGANIC HONEY, PROPOLIS AND BEESWAX PRODUCTION [REPEALED]

[This part was repealed effective 2/29/2012]

CHAPTER 28: NURSERY, FLORIST, AND COLLECTED PLANTS [RESERVED]

CHAPTER 29: [RESERVED]

CHAPTER 30: ANIMALS AND ANIMAL INDUSTRY GENERAL PROVISIONS

PART 1: ORGANIC PRODUCTION METHODS AND MATERIALS [REPEALED]

[This part was repealed effective 2/29/2012]

PART 2: NEW MEXICO LIVESTOCK BOARD GENERAL PROVISIONS

21.30.2.1 ISSUING AGENCY:

New Mexico Livestock Board; 300 San Mateo, NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505) 841-6161.

[3/1/99; 21.30.2.1 NMAC - Rn, 21 NMAC 30.2.1, 2/26/10]

21.30.2.2 SCOPE:

All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21 NMAC 32, 33 and 35.

[3/1/99; 21.30.2.2 NMAC - Rn, 21 NMAC 30.2.2, 2/26/10]

21.30.2.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9 and 12 NMSA 1978.

[3/1/99; 21.30.2.3 NMAC - Rn, 21 NMAC 30.2.3, 2/26/10]

21.30.2.4 DURATION:

Permanent

[3/1/99; 21.30.2.4 NMAC - Rn, 21 NMAC 30.2.4, 2/26/10]

21.30.2.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of a section.

[3/1/99; 21.30.2.5 NMAC - Rn & A, 21 NMAC 30.2.5, 2/26/10]

21.30.2.6 OBJECTIVE:

To establish rules governing the general operation of the New Mexico livestock board.

[3/1/99; 21.30.2.6 NMAC - Rn, 21 NMAC 30.2.6, 2/26/10]

21.30.2.7 DEFINITIONS:

- A. "Board" means the New Mexico livestock board.
- B. "Director" means the executive director of the New Mexico livestock board.
- C. "Inspector" means any duly authorized or commissioned officer of the livestock board.
- D. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

E. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

F. "Person" means an individual, partnership, association or operation.

[3/1/99; 21.30.2.7 NMAC - Rn, 21 NMAC 30.2.7, 2/26/10]

21.30.2.8 REMOVING ANIMALS FROM THE CUSTODY OF THE BOARD:

A. No one shall be allowed to remove any animal, animals or carcasses thereof, from the custody of any livestock inspector, or any person designated by the board, who has taken up, seized or impounded the said animal, animals, or carcasses, for the purpose of determining ownership, preventing theft, trespass or the spread of disease or for any reason covered by the existing laws of the state of New Mexico or rules and regulations of the board.

B. The provisions of sub-section 8.1 [now Subsection A of 21.30.2.8 NMAC] above shall also apply to any livestock being held by the board, under federal regulations, to prevent the spread of dangerous disease.

C. The penalty for removing an animal, animals or carcasses from the custody of the board shall be that which is set by statute for violating a rule of the board.

[3/1/99; 21.30.2.8 NMAC - Rn, 21 NMAC 30.2.8, 2/26/10]

21.30.2.9 OFFICE OF THE NEW MEXICO LIVESTOCK BOARD:

A. The main office of the board shall be open for business eight and one-half hours each day that state offices are open, unless otherwise determined by the executive director, the appointed board or the governor.

B. The office will be open from 8:00 am until 4:30 pm and will remain open through the noon hour, unless the hours are otherwise announced by the executive director for some special situation.

[3/1/99; 21.30.2.9 NMAC - Rn, 21 NMAC 30.2.9, 2/26/10]

21.30.2.10 MEETING BY TELEPHONE:

Pursuant to Section 10-15-1 (C) NMSA 1978, any number of board members may participate in a meeting of the board by means of a conference telephone or other communications equipment under the following conditions:

A. meeting by telephone will not be considered the normal accepted form of board business, and is intended only as an alternative to the normal board meeting when conditions warrant;

B. meetings by telephone can only be authorized at the discretion of the chairman of the board;

C. this part shall only apply when it is otherwise impossible, difficult or impractical for the member or members to attend the meeting in person;

D. such meetings will be advertised and facilitated in the same manner as a normal board meeting under the public notice requirements;

E. each member participating by conference telephone must be identified when speaking;

F. all participants must be able to hear each other at the same time; members of the public attending the meeting must be able to hear any board member who speaks during the meeting.

[21.30.2.10 NMAC - N, 2/26/10]

PART 3: BOVINE BRUCELLOSIS

21.30.3.1 ISSUING AGENCY:

New Mexico Livestock Board; 300 San Mateo, NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505) 841-6161

[3-1-99; Recompiled 12/31/01]

21.30.3.2 SCOPE:

All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21 NMAC 33, 33, & 35 [now 21.33 and 21.35 NMAC]. Additional requirements for brucellosis testing and transporting livestock can be found in 21 NMAC 32.4 [21.32.4 NMAC].

[3-1-99; Recompiled 12/31/01]

21.30.3.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9, & 12, Section 77-3, 77-4, 77-5, 77-8, and 77-9, NMSA 1978.

[3-1-99; Recompiled 12/31/01]

21.30.3.4 DURATION:

Permanent

[3-1-99; Recompiled 12/31/01]

21.30.3.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of the section or paragraph.

[3-1-99; Recompiled 12/31/01]

21.30.3.6 OBJECTIVE:

To establish rules governing transportation and handling of livestock in New Mexico that have been infected with or exposed to bovine brucellosis.

[3-1-99; Recompiled 12/31/01]

21.30.3.7 DEFINITIONS:

- A. "Board" means the New Mexico Livestock Board.
- B. "Director" means the executive director of the New Mexico Livestock Board.
- C. "Holstein cross" means bovines that have some percentage of holstein or other dairy breed in their genetic lineage.
- D. "Inspector" means any duly authorized or commissioned officer of the Livestock Board.
- E. "Livestock" means cattle, sheep, swine, goats, horses, mules, and asses. This includes privately owned buffalo (bison).
- F. "New Mexico Livestock" means any livestock raised or pastured or fed within the State of New Mexico.
- G. "Person" means an individual, partnership, association, or operation.
- H. "Quarantine" or "Quarantined Area" means any area within the State of New Mexico whose physical boundaries have been established by order of the Board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.
- I. "Quarantined Livestock" means any livestock found by the Board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

J. "Sealed vehicle" means a vehicle for transporting livestock that has its gates or doors closed and which gates or doors have an attached strip of metal, which is numbered for identification. The metal strip is attached to the gates or doors in a manner that would break the "seal" if the vehicle were to be opened.

[3-1-99; Recompiled 12/31/01]

21.30.3.8 BRUCELLOSIS INFECTED AND/OR EXPOSED CATTLE:

A. All cattle known to be infected with brucellosis, or cattle that have been exposed to infected cattle, shall be tested for brucellosis within forty-five (45) days of a notice in writing directed to the owner of the cattle by the board.

B. The board of its duly authorized representative shall, upon issuance of a written notice as provided in sub-section 8.1 above [now Subsection A of 21.30.3.8 NMAC], strictly quarantine the cattle in a designated area.

C. No cattle shall be allowed to be moved or transported from said quarantine area without prior approval of the board or its authorized representative.

D. In the event the owner of the cattle does not proceed to have cattle under his ownership, possession, or contract tested for brucellosis within the given forty-five (45) day period, the quarantine shall continue in full force and effect.

E. Should any cattle prove to be positive or suspect to the brucellosis test, subsequent tests shall be given until such time as the board certifies that none of the cattle in the quarantine area are carriers of the disease or a menace to the other herds.

F. All cattle that are positive to the brucellosis test shall immediately be branded with a "B" on the left jaw or tailhead and disposed of in a manner prescribed by the board.

G. All tests shall be administered under the supervision of the board at the owners expense, unless the board waives such expense.

H. The owner shall make available all cattle at a place designated by the board or its authorized agent and furnish adequate physical facilities to conduct such tests.

I. In all areas, an additional blood test of all non-neutered cattle over six (6) months of age in the herd is required either not less than six months or more than twelve months after release of an affected herd from quarantine or not less than ten months or more than sixteen months after removal of the last reactor.

J. Adjacent herds, or herds sharing common pasture, or having other contact with the affected herd, and herds containing previous purchases from or exchanges with the affected herd shall have an adjacent herd plan within thirty (30) days of disclosure of the

affected herd. If a disagreement occurs, consultation between the herd owner, state veterinarian, the epidemiologist, and the owners veterinarian, may be requested and held to resolve the situation, with the final approval of the plan resting with the director.

[3-1-99; Recompiled 12/31/01]

21.30.3.9 MOVEMENTS OF BRUCELLOSIS EXPOSED CATTLE:

A. Cattle classified as exposed may move with approval of the board or its authorized agent, from a livestock market to:

(1) Quarantined feedlot or approved slaughtering establishment after having been identified with an approved metal eartag, be hot-iron branded with the letter "S" on the left jaw or on the tail head, and accompanied by a completed VS Form 127 or similar permit; or

(2) Herd of origin premises without "S" branding, provided that the exposed animals and the premises shall be under quarantine pending further testing.

B. Cattle classified as "exposed" may move with the approval of the board or its authorized representative, from the herd of origin premises:

(1) To a quarantined feedlot or approved slaughtering establishment after having been identified with an approved metal eartag, be hot-iron branded with the letter "S" on the left jaw or the tail head, and accompanied by a completed VS Form 127 or similar permit, except that in extraordinary circumstances the director may waive the "S" branding requirement for intrastate movements; or

(2) Directly to one livestock auction market and sell for movement directly to a quarantined feedlot, or approved slaughtering establishment.

[3-1-99; Recompiled 12/31/01]

21.30.3.10 BRUCELLOSIS REACTOR HERDS:

A. All classes of cattle in a brucellosis reactor herd shall be placed under quarantine by the New Mexico Livestock Board, or its authorized representative. Such animals under quarantine shall not be removed from the quarantine, unless granted permission by the Board, or its authorized representative.

B. Whenever it is officially determined by the Livestock Board that a Market Cattle Identification (MCI) reactor is directly from a New Mexico origin herd, the New Mexico Livestock Board, or its authorized representative, shall quarantine the herd of origin.

C. Any subsequent movement of an animal, or animals, from the quarantined herd, must be by special permit of the Board, or its authorized agent, until the herd is declared negative and the quarantine lifted.

[3-1-99; Recompiled 12/31/01]

21.30.3.11 DISPOSITION OF REACTORS AND INFECTED HERDS; INDEMNITY PAYMENTS:

A. All cattle testing positive to the brucellosis test shall go directly to slaughter and be slaughtered within three business days.

B. The balance of the cattle may, with the proper permit and an S brand, go to slaughter or to an approved feedlot, or they may be returned to the ranch of origin under quarantine.

C. All New Mexico cattle positive to the brucellosis test will be eligible for indemnity payments from the federal government, as stated in Part 51, Title 9 of the Code of Federal Regulations, as amended.

[3-1-99; Recompiled 12/31/01]

PART 4: EXOTIC PESTS AND FOREIGN ANIMAL DISEASES

21.30.4.1 ISSUING AGENCY:

New Mexico Livestock Board, 300 San Mateo, NE, Suite 1000, Albuquerque, New Mexico 87108, Telephone: (505) 841-6161.

[3-1-99; 21.30.4.1 NMAC - Rn, 21 NMAC 30.4.1, 5-15-2001]

21.30.4.2 SCOPE:

All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21 NMAC 32, 33, & 35.

[3-1-99; 21.30.4.2 NMAC - Rn, 21 NMAC 30.4.2, 5-15-2001]

21.30.4.3 STATUTORY AUTHORITY:

Section 77-2-7, 77-3-1, 77-3-13 and Article 3 of Chapter 77, NMSA 1978.

[3-1-99; 21.30.4.3 NMAC - Rn & A, 21 NMAC 30.4.3, 5-15-2001; A/E, 8-1-2012]

21.30.4.4 DURATION:

Permanent.

[3-1-99; 21.30.4.4 NMAC - Rn, 21 NMAC 30.4.4, 5-15-2001]

21.30.4.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of a section or paragraph.

[3-1-99; 21.30.4.5 NMAC - Rn, 21 NMAC 30.4.5, 5-15-2001]

21.30.4.6 OBJECTIVE:

To declare certain diseases and parasites to be exotic and of significant economic impact to the livestock industry, pursuant to Section 77-3-1, NMSA 1978 and provide rules for their control and extirpation.

[3-1-99; 21.30.4.6 NMAC - Rn, 21 NMAC 30.4.6, 5-15-2001]

21.30.4.7 DEFINITIONS:

- A. "Board" means the New Mexico livestock board.
- B. "Director" means the executive director of the New Mexico livestock board.
- C. "Inspector" means any duly authorized or commissioned officer of the livestock board.
- D. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.
- E. "Hold order" means a directive by the New Mexico livestock board by or through the state veterinarian to stop movement of certain livestock because of the possibility those livestock are diseased or exposed to a contagious disease, but the disease has not been confirmed in those livestock.
- F. "Premises" means a place where livestock is held for personal or commercial purposes.
- G. "Restricted zone" a defined geographic portion of the state.

[3-1-99; 21.30.4.7 NMAC - Rn & A, 21 NMAC 30.4.7, 5-15-2001; A, 2-27-2004]

21.30.4.8 EXOTIC PESTS OF SIGNIFICANT ECONOMIC IMPACT:

Any disease of significant economic impact to the livestock industry or public health.

[3-1-99; 21.30.8 NMAC - Rn, 21 NMAC 30.4.8, 5-15-2001; A, 7-15-2013]

21.30.4.9 NEW MEXICO REPORTABLE DISEASE LIST:

In addition to the diseases listed in 21.30.4.8 NMAC above, the following diseases and conditions are considered to be of significant economic impact and when discovered or diagnosed are to be immediately reported to the New Mexico livestock board's state veterinarian:

A. Reportable conditions:

- (1) any disease of unusual morbidity or mortality that does not fit a normally expected clinical picture;
- (2) any condition suspected of being a foreign or emerging animal disease, or possible bioterrorism;
- (3) any disease condition in livestock exhibiting vesicular lesions;
- (4) undiagnosed neurologic, mucosal, and hemorrhagic conditions;
- (5) contamination by toxic substances, including unexplained increase in aflatoxin, botulism, or T2 toxin;
- (6) abortion storms of unknown etiology;
- (7) highly infectious conditions of any etiology;
- (8) any disease or condition of public health significance.

B. Reportable diseases: Any disease listed as notifiable by the USDA or OIE, including but not limited to: diseases of significance to public health and zoonoses such as:

- (1) anthrax*;
- (2) avian influenza;
- (3) botulism;
- (4) brucellosis*;
- (5) dermatophilosis (club lamb disease) and other fungal diseases of livestock with zoonotic potential;

- (6) plague (*yersinia pestis*)*;
- (7) q fever (*coxiella burnetii*)*;
- (8) rabies*;
- (9) swine influenza;
- (10) tuberculosis;
- (11) tularemia*;
- (12) west Nile virus and other arboviral diseases*.

C. Diseases of concern to livestock such as (but not limited to):

- (1) anthrax;
- (2) bluetongue and epizootic hemorrhagic disease in deer, elk or cattle;
- (3) botulism;
- (4) brucellosis*;
- (5) classical swine fever (hog cholera);
- (6) contagious bovine or caprine pleuropneumonia;
- (7) foot and mouth disease;
- (8) fungal diseases of livestock with zoonotic potential such as dermatophilosis;
- (9) heartwater;
- (10) malignant catarrhal fever;
- (11) plague*;
- (12) pseudorabies;
- (13) q fever (*coxiella burnetii*)*;
- (14) rabies*;
- (15) scabies in livestock;

- (16) screwworm;
- (17) swine influenza;
- (18) Texas cattle fever (*boophilus* ticks); and
- (19) trichomoniasis.
- (20) All transmissible spongiform encephalopathies (TSEs), including but not limited to:
 - (a) bovine spongiform encephalopathy (BSE); chronic wasting disease (CWD); scrapie;
 - (b) tuberculosis*;
 - (c) vesicular stomatitis or any other vesicular disease of livestock.

D. Diseases of concern to equines such as (but not limited to):

- (1) african horse sickness;
- (2) anthrax;
- (3) contagious equine metritis (CEM);
- (4) equine encephalopathies such as: eastern equine encephalitis (EEE);
- (5) western equine encephalitis (WEE);
- (6) venezuelan equine encephalitis (VEE);
- (7) west Nile virus (WNV);
- (8) equine herpesvirus (neurologic form) (EHV-1, EHV-4);
- (9) equine infectious anemia (EIA);
- (10) equine piroplasmiasis;
- (11) glanders;
- (12) rabies*;
- (13) screwworm;

(14) strangles (*streptococcus equi*);

(15) vesicular stomatitis or any other vesicular disease in equines.

E. Diseases of concern to poultry such as (but not limited to):

(1) avian influenza;

(2) newcastle disease;

(3) psittacosis*. *Must be reported to New Mexico department of health; if occurring in livestock also notify New Mexico livestock board.

[3-1-99; 21.30.4.9 NMAC - Rn & A, 21 NMAC 30.4.9, 5-15-2001; A, 7-15-2013]

21.30.4.10 NEW MEXICO FOOT AND MOUTH PREVENTION & RESPONSE PROTOCOL:

A. Preventive Procedures:

(1) Cloven-hoofed animals from a known Foot and Mouth (FMD) country or region shall not be allowed to enter New Mexico until the Office of International des Epizooties (OIE) and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services (USDA, APHIS, VS) have declared the country or region FMD-free.

(2) Horses from a known FMD country or region may be allowed to enter New Mexico if they have not originated from or been on a known FMD premises and if they meet other requirements for an entry permit issued by the Board. A person who wants to bring a horse into New Mexico pursuant to this paragraph shall apply for an entry permit in person at the Board's office at 300 San Mateo NE, Suite 1000, Albuquerque, New Mexico or by calling 505-841-6161, 8:00 a.m. to 4:30 p.m., Mountain Time, Monday through Friday. The applicant shall provide the following information with his application for an entry permit:

(a) A copy of the USDA health certification for importation of horses into the United States from the European Union and countries affected with FMD, a copy of the USDA certification of disinfection for tack trunks and containers, and any other certifications required by the State Veterinarian;

(b) Evidence satisfactory to the State Veterinarian that the horse has been held in quarantine outside the state for a minimum of seven days; and

(c) The State Veterinarian may specify other restrictions consistent with the Board's duty to protect the health and integrity of the livestock industry in New Mexico, including limiting any destinations of the horse.

(3) Animals other than livestock from a known FMD country or region that originate from rural areas or that have had contact with cloven-hoofed animals from a known FMD country or region and that would be destined for a New Mexico rural location or competition involving cloven-hoofed animals shall not be allowed into New Mexico either by direct or indirect shipment. Those animals other than livestock that originate from an urban area of an FMD country and are destined to a New Mexico urban area may be granted an exception at the discretion of the State Veterinarian and allowed to enter the state. An entry permit issued by the Board is required on such animals.

(4) Immediately upon arrival at its destination in New Mexico, an animal that has been allowed to enter the state under the exception provided in Paragraph (3) of this subsection shall be treated with a sponge application or heavy misting with a one-to-one vinegar and water solution to the entire body of the animal and then thoroughly bathed. The animal shall be quarantined at the destination premises for a minimum of ten days with no contact with any cloven-hoofed animal during the quarantine period. A follow-up contact shall be made by the Board or USDA, APHIS, VS to ensure that the quarantine is maintained.

(5) Livestock and other animals originating from a European Union (EU) country shall not be allowed into New Mexico until the country's FMD status is determined to the satisfaction of the Board. EU countries are: the Republic of Ireland, the United Kingdom (Northern Ireland, England, Scotland, Wales and the Isle of Mann), Sweden, Finland, Austria, Denmark, Germany, The Netherlands, Belgium, France, Spain, Portugal, Italy, Luxembourg, and Greece.

(6) Livestock or other animals originating from another state of the United States that has an FMD outbreak shall not be allowed into New Mexico until the state has been declared FMD-free by USDA, APHIS, VS. The Board may ban or restrict the entry into New Mexico of livestock or other animals originating from a state other than an FMD state until that state's FMD status has been determined to the satisfaction of the Board. The State Veterinarian may issue an entry permit to allow animals other than livestock to enter New Mexico from a state whose FMD status has not been determined under the following conditions:

(a) The animal has been quarantined for a minimum of seven days immediately preceding application for an entry permit;

(b) The decontamination procedures provided in paragraph (7) of this subsection have been followed.

(7) Decontamination procedures required to obtain an entry permit pursuant to Paragraph (6) of this subsection are:

(a) The animal shall be groomed to remove dirt and debris and then wiped, sprayed, or sponged down with vinegar or a solution of six and one-half ounces of

concentrated glacial acetic acid in one gallon of water and its hooves or feet shall be cleaned and disinfected with a four percent sodium carbonate solution in such a manner as to ensure that the hooves are free of dirt, manure, and debris;

(b) Prior to loading the animal for transport into New Mexico, the crate and transportation vehicle shall be cleaned and disinfected with an approved disinfectant. Any equipment, including leashes, blankets, and sheets, that will accompany the animal into New Mexico must be laundered or cleaned to remove dirt and debris and then disinfected with acetic acid, sodium carbonate, or Vikron; and

(c) Prior to entry into New Mexico, personnel accompanying the animal must launder or dry clean their clothing and outerwear; footwear must be cleaned of all dirt and debris and then disinfected as required by the State Veterinarian.

(8) If FMD is found in a state of the United States or in Canada or Mexico, the Director shall convene the Board's Emergency Response Plan State Primary Core Decision Group to consider actions to be taken to protect New Mexico's livestock industry from FMD, including the need to request that the governor declare a state of emergency.

B. Vesicular Disease Response

(1) Vesicular diseases in cloven-hoofed animals shall be handled as FMD unless vesicular stomatitis (VS) has been recently diagnosed in horses during the current season for VS. The New Mexico VS protocol shall be followed in these cases unless the Board directs otherwise.

(2) A cloven-hoofed animal suspected of a vesicular disease shall be given the highest priority for examination. A Foreign Animal Disease Diagnostician (FADD) shall collect appropriate specimens. The FADD or other designated courier shall personally escort the specimens to Plum Island, NY.

(3) If the disease is not FMD, the case shall be handled as appropriate for the diagnosis.

C. Foot and Mouth Disease Response

(1) If a vesicular disease is present and the VS protocol does not apply, the premises, and all animals on the premises shall be quarantined. A five-mile "High Risk Zone" shall be established around the suspect premises, and a fifteen-mile "Buffer Zone" shall be established around the High Risk Zone. Animals in the High Risk Zone shall not be moved until the suspect case has been diagnosed and movement is allowed by the Board. Animals in the Buffer Zone shall be under a hold order and shall be moved by permit only. Livestock operators and other animal owners within the High Risk, and Buffer Zones shall be advised immediately about the suspect case and the rules governing quarantine, and movement of animals.

(2) The Board shall provide biosecurity information to the operators and owners whose premises and animals have been quarantined within the High Risk, and Buffer Zones.

(3) All area slaughter facilities and livestock markets shall be closed until the Board releases the quarantine. If FMD is confirmed, the slaughter facilities and livestock markets shall remain closed to control the movement of livestock. The Board shall determine when it is safe to re-open slaughter facilities, and livestock markets and any limitations that may apply.

(4) The Board shall notify veterinarians, cooperative extension agents, livestock owners, and operators, and other interested persons about the quarantine, the establishment of quarantine zones, and any hold orders on animals.

(5) An FMD diagnosis shall result in the continued quarantine of the High Risk Zone. The animals within the Buffer Zone shall be on a hold order and vaccinated with appropriate FMD strain vaccine, if it is available.

(6) Upon notification of an FMD diagnosis, the Board shall initiate an immediate epidemiological investigation. The epidemiological efforts shall be in concert with USDA, APHIS, VS.

(7) The Board may request that USDA, APHIS, VS, Regional Emergency Animal Disease Eradication Organization (READEO) be in charge of all FMD operations and procedures with state animal health officials assisting READEO in its efforts.

(8) The director of the Board shall immediately advise the director of the New Mexico Department of Agriculture of the FMD diagnosis. The director of the Board shall contact the governor for an emergency declaration. National Guard personnel, New Mexico State Police, and appropriate county sheriffs shall be requested to aid in enforcement of the quarantine, and zone integrity to stop movement of animals and to minimize human movement into or out of the FMD zone.

(9) FMD vaccination is the preferred action over destruction of livestock. In the case of destruction, incineration sites shall be selected by the Board.

(10) Indemnity for destroyed livestock shall be sought from the United States Secretary of Agriculture. Records of destroyed livestock shall include the owner's name, address and phone number, and the number of destroyed livestock, and their species, class, sex, age, and brands.

D. The following agencies and people shall be notified of the New Mexico FMD Prevention and Response Protocol, and shall be provided with updates on a periodic basis when a foreign or national FMD outbreak presents a real or potential risk to New Mexico livestock:

- (1) USDA, APHIS, VS Emergency Programs, and Import/Export staff in Riverdale, MD;
- (2) New Mexico veterinarians;
- (3) New Mexico Board of Veterinary Medicine;
- (4) New Mexico Veterinary Medical Association;
- (5) New Mexico livestock industry organizations;
- (6) Local and national Plant Protection Quarantine (PPQ) staff;
- (7) Airline companies with flights originating from an FMD country or region;
- (8) New Mexico public livestock markets; and
- (9) New Mexico State University, Department of Agriculture and Cooperative Extension Service.

[21.30.4.10 NMAC - N, 5-15-2001]

21.30.4.11 TUBERCULOSIS ERADICATION:

A. The New Mexico livestock board will adhere to the Code of Federal Regulations and the Uniform Methods and Rules for Bovine Tuberculosis Eradication.

B. Restricted zone livestock movement protocol.

(1) All livestock movement must be approved by the New Mexico livestock board (NMLB) state veterinarian or by a NMLB approved agent. All livestock movement requires an official certificate of livestock inspection.

(2) Livestock check points are deliberate obstructions of traffic by physical means on a roadway for the specific purpose of livestock movement control.

(3) Livestock check points will be established by executive order based on location, authorization and safety.

(4) Livestock check points will be operated by a NMLB livestock inspector or by a NMLB approved agent.

(5) All livestock, in transition, upon approaching a livestock check point, will be stopped for transportation validation.

(6) All livestock, in transition near the geographical location of the restricted zone, will be stopped for transportation validation, at the discretion of the livestock inspector.

(7) All road stops will be initiated by a livestock inspector that has been certified as law enforcement peace officer or by any certified peace officer of the state.

[21.30.4.11 NMAC - N, 2-27-2004]

21.30.4.12 VESICULAR STOMATITIS; RESTRICTIONS AND SAFEGUARDS DEEMED PROPER TO PROTECT LIVESTOCK IN NEW MEXICO:

A. Livestock cannot be removed from a VS-quarantined premise. Any livestock introduced onto VS-quarantined premises will be subject to the quarantine restrictions and remain on the premises until the quarantine has been lifted.

B. Transporters hauling any New Mexico origin livestock in New Mexico must have in possession a current brand inspection (form 1) or a permanent equine hauling card (form 1-H).

C. Participants in public events in which all livestock attending originate from New Mexico must:

(1) present and have verified by event officials a certificate of veterinary inspection (CVI), commonly known as a *health certificate*, for each animal brought by that participant and that has been issued within five days prior to arrival at the event, or

(2) have the livestock examined upon arrival at the event by designated officials as specified and provided by the event organizers; the designated official should be a veterinarian whose background and experience with livestock would allow them to recognize abnormalities in tissues that could be consistent with vesicular stomatitis.

(3) The state veterinarian may specify other restrictions consistent with the board's duty to protect the health and integrity of the livestock industry in New Mexico, including limiting any destinations of the horse.

D. Participants with livestock that originate in New Mexico attending public events in New Mexico where livestock from states other than New Mexico will be present must:

(1) present and have verified by event officials a certificate of veterinary inspection (CVI), commonly known as a *health certificate*, for each animal brought by that participant and that has been issued within five days prior to arrival at the event, and

(2) have the livestock examined upon arrival at the event by a NM accredited veterinarian.

E. All livestock entering New Mexico public auctions facilities must receive a health examination prior to sale by a NM accredited veterinarian.

F. Out of state livestock entering New Mexico from any other state or territory must meet all current New Mexico entry requirements. Owners of livestock temporarily entering New Mexico are urged to contact their state animal health officials for requirements and restrictions to return to their home state from New Mexico.

[21.30.4.12 NMAC - N/E, 8-1-2012]

PART 5: HORSE RESCUE OR RETIREMENT FACILITIES

21.30.5.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.30.5.1 NMAC - N, 7-15-05; A, 07/15/14]

21.30.5.2 SCOPE:

All premises that promote themselves as a horse rescue or retirement facility, including a private preserve or private reserve, and that advertises or solicits for horses and provides lifelong care or finds new owners for horses that are unwanted or have been neglected or abused or captured wild horses that cannot be returned to their range.

[21.30.5.2 NMAC - N, 7-15-05]

21.30.5.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9 and 12, NMSA 1978.

[21.30.5.3 NMAC - N, 7-15-05]

21.30.5.4 DURATION:

Permanent.

[21.30.5.4 NMAC - N, 7-15-05]

21.30.5.5 EFFECTIVE DATE:

July 15, 2005, unless a later date is cited at the end of a section.

[21.30.5.5 NMAC - N, 7-15-05]

21.30.5.6 OBJECTIVE:

To establish rules governing the registration, operation, licensing and collection of fees of facilities operating as horse rescue or retirement facilities.

[21.30.5.6 NMAC - N, 7-15-05]

21.30.5.7 DEFINITIONS:

A. "Agent" means the executive director, deputy director, veterinarian, livestock inspectors or employee of the board.

B. "American association of equine practitioners" or AAEP, is an internationally recognized authority on equine care composed of equine veterinarians.

C. "Board" means the New Mexico livestock board.

D. "Facility" means a horse rescue or retirement facility, including a private preserve or private reserve, that advertises or solicits for horses and provides lifelong care or finds new owners for horses that are unwanted or have been neglected or abused or captured wild horses that cannot be returned to their range.

E. "Person" means an individual, partnership, association or operation.

F. "Wild horses" means feral horses. Feral horses are horses existing in an untamed state having returned to a wild state from domestication.

[21.30.5.7 NMAC - N, 7-15-05]

21.30.5.8 HORSE RESCUE OR RETIREMENT FACILITY REGISTRATION:

A. The board shall register facilities that meet the requirements of 21.30.5 NMAC. The board will follow the guidelines as established by the American association of equine practitioners (AAEP), an internationally recognized authority on equine care. Prior to registration, agents of the board will inspect said premise for adherence to the AAEP prescribed standards of care guidelines for equine rescue and retirement facilities, with the exception of wild horse facilities. Wild horse facilities will be inspected using the requirements set out in Subsection C of 21.30.5.10 NMAC.

(1) Any person desiring to operate a horse rescue or retirement facility in New Mexico shall file an application for registration with the board on such form(s) as the board shall prescribe, which application shall be signed by the applicant. The form(s) will contain at the very minimum the information as listed in the AAEP veterinary checklist for equine rescue and retirement facilities and any other information the board

shall prescribe. The form(s) will be available at the board's office or may be downloaded from the board's website (www.newmexicolivestockboard.com).

(2) Every registration issued by the board to a horse rescue or retirement facility shall expire one year from the date of issuance. Renewal of such registration shall be made on renewal forms as prescribed by the board.

(3) The board shall provide an official registration document to registered facilities, and each facility owner shall display that registration document in a prominent place visible to the public.

(4) The board may extend registrations for a portion of a calendar year, in order to synchronize the periods of all registrations, so that the one year period of issue coincides with the calendar year.

(5) A facility shall use only humane horsemanship training methods.

(6) A facility shall not exceed the number of horses allowed by any applicable state, county, municipal, or zoning ordinances.

(7) A facility shall notify the board within fourteen (14) days of the introduction of any new horse to the facility.

(8) Foals born to horses owned by the facility shall be considered owned by the facility. Upon the birth of a foal from a horse not owned by the facility, the facility shall notify the board within fourteen (14) days, so the board can establish ownership.

B. The board shall annually consult with representatives from the equine industry, equine rescue organizations and veterinarians on facility standards.

[21.30.5.8 NMAC - N, 7-15-05; A, 07/15/14]

21.30.5.9 HORSE RESCUE OR RETIREMENT FACILITY REGISTRATION FEES:

A. The initial inspection and registration fee is two hundred fifty dollars (\$250.00) per facility.

B. The annual inspection and registration fee is one hundred dollars (\$100.00) per facility.

C. The re-inspection fee is one hundred dollars (\$100.00) per facility.

[21.30.5.9 NMAC - N, 7-15-05; A, 07/15/14]

21.30.5.10 HORSE RESCUE OR RETIREMENT FACILITIES, INSPECTIONS, RE-INSPECTION:

A. Prior to annual registration conducted in January of each year, each facility will be inspected by agents of the board.

B. The board or its agents may enter the premises of a facility to conduct unannounced inspections.

(1) The board or its agents may request, and the registrant must provide, all records pertaining to ownership, transportation, feed and care for all horses in the facility.

(2) Any violations of Chapters 30 or 77, NMSA 1978, or NMLB rule violations, may be reason to revoke the facility's registration.

C. Prior to annual registration of wild horse facilities, each facility will be inspected by agents of the board for adherence to standard of care guidelines in the following areas:

(1) Environment, including access to water, forage, salt and supplemental feeding with hay in winter;

(2) Veterinary care, including at least one annual visual check per horse and all other care as needed in consultation with an experienced veterinarian;

(3) Sanctuary maintenance, including proper fencing in accordance with Sections 77-16-4 through 77-16-8, NMSA 1978.

(4) Policies regarding quarantine, euthanasia, reproduction and emergencies specific to wild horses.

D. If, following an inspection, the board's agent determines that the facility does not meet the requirements as established by the American association of equine practitioners or the requirements for wild horse facilities established in Subsection C of 21.30.5.10 NMAC, the board's agent shall give the registrant written notice of the deficiencies on site. Within ten (10) days, the registrant must submit to the agent performing the inspection a written plan to remedy the deficiencies. The registrant and agent will then determine a mutually agreeable timeframe for the registrant to correct the deficiencies and schedule a re-inspection, which must occur no later than one hundred twenty (120) days after the initial inspection.

E. If the board determines that the health or safety of the horses is at risk because of the deficiencies, the board may authorize the removal of the horses.

F. The registrant shall remedy the deficiencies and submit written evidence to the board demonstrating compliance with board rules for the facility.

G. If on re-inspection the board determines that the facility is still deficient in those areas for which it has been given written notice, the horses may be impounded in accordance with the provisions of Section 77-18-2 NMSA 1978, and the board shall hold a hearing as provided in the Uniform Licensing Act to determine if the registration should be suspended or revoked.

[21.30.5.10 NMAC - N, 7-15-05; A, 07/15/14]

PART 6: BOVINE TRICHOMONIASIS

21.30.6.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.30.6.1 NMAC - N, 7/15/2005; A, 7/15/2014]

21.30.6.2 SCOPE:

All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing Livestock business activities can be found in 21 NMAC 32, 33, & 35.

[21.30.6.2 NMAC - N, 7/15/2005]

21.30.6.3 STATUTORY AUTHORITY:

Section 77-2-7 Article 3 of Chapter 77, NMSA 1978.

[21.30.6.3 NMAC - N, 7/15/2005]

21.30.6.4 DURATION:

Permanent.

[21.30.6.4 NMAC - N, 7/15/2005]

21.30.6.5 EFFECTIVE DATE:

July 15, 2005, unless a later date is cited at the end of a section.

[21.30.6.5 NMAC - N, 7/15/2005]

21.30.6.6 OBJECTIVE:

To prevent introduction and to control the bovine venereal disease trichomoniasis, specifically *Tritrichomonas foetus* (*T. foetus*) infection.

[21.30.6.6 NMAC - N, 7/15/2005; A, 7/15/2014]

21.30.6.7 DEFINITIONS:

A. "Acceptable specimen" means a specimen determined satisfactory for diagnostic testing by the testing laboratory, including complete documentation.

B. "Accredited veterinarian" means an individual who is currently licensed to practice veterinary medicine and is accredited by the United States department of agriculture, animal plant health inspection service, veterinary services in the state of New Mexico.

C. "Agent" means the executive director, deputy director, veterinarian, livestock inspector or employee of the board.

D. "Approved laboratory" means any laboratory designated and approved by the state veterinarian for examining *T. foetus* samples.

E. "Approved veterinarian" means an accredited veterinarian who has attended trichomoniasis training that is approved by the New Mexico state veterinarian. Such training must include preputial sampling, sample handling and shipping, appropriate record keeping and official bull trichomoniasis identification. A trained and certified designee, in the employ of the veterinarian of record for a New Mexico licensed sale yard, may work under the guidance of said approved veterinarian. These lay trich testers are limited to working at licensed New Mexico sale yards.

F. "Board" means the New Mexico livestock board.

G. "Bovine" means any sexually intact male or female animal of the genus *bos*.

H. "Certificate of veterinary inspection (CVI)" means the form issued by the state of origin that records the consignor, consignee, identity, origin, destination and health status of animals, issued by an accredited veterinarian of that state. It is commonly known as a health certificate.

I. "Commingle" means bovids of opposite sex and belonging to different owners in the same enclosure or pasture with a reasonable opportunity for sexual contact.

J. "Complete bull herd test" means an official *T. foetus* test from each non-virgin bull in the herd.

K. "Confined feeding" means a dry lot feeding facility (not grazing) where there is no sexual contact among bovine therein.

L. "Direct slaughter" means transporting an animal to a slaughter plant without unloading prior to arrival at the slaughter plant.

M. "Disease management plan" means a plan developed to eradicate the disease from a positive herd. The disease management plan will be developed by the producer and shall be approved by the state veterinarian.

N. "Exposed herd" means a herd adjacent to a premises occupied by an affected herd, herds sharing common pasture or having contact with affected herd(s) as determined by the state veterinarian.

O. "Herd" means the group of animals consisting of all bovines over 12 months of age (male and female) which have commingled during the last 12 months.

P. "Import permit" means a document issued by the state veterinarian's office authorizing specific livestock movements into New Mexico. Permits expire 30 days after issuance and are not transferable.

Q. "'N' brand" means the official brand registered to New Mexico livestock board, used to designate any livestock which must be shipped to slaughter or an approved feedlot.

R. "Negative *T. foetus* bull" means a bull which qualifies by one of the following:

(1) originates from a herd not known to be infected and has had a negative official *T. foetus* bull test within the last 60 days;

(2) originates from a positive herd but has a series of three negative official *T. foetus* bull tests at intervals of at least one week; or

(3) qualified with a negative import or negative in-state official *T. foetus* bull test.

S. "Negative *T. foetus* herd" means a herd which has received a complete bull herd test with negative results within the last twelve months.

T. "New Mexico commuter permit" means a permit issued by the New Mexico state veterinarian's office to New Mexico livestock producers who utilize pasture lands and other livestock operations in one or multiple states that are contiguous with New Mexico.

U. "Official *T. foetus* bull test" means the sampling of the preputial content of a bull by a licensed, accredited and *T. foetus* test certified veterinarian or a veterinarian from the New Mexico livestock board. Such test must be conducted after at least one (1) week separation from all female bovine. The bull and sample must be positively and individually identified and documented for laboratory submission. The official laboratory

test shall be a genetic based test such as polymerase chain reaction (PCR), either standard or real time, or other technologies as approved by the state veterinarian. Test is not considered official until results are reported by the testing laboratory.

V. "Official *T. foetus* laboratory testing" means the laboratory procedures that shall be approved by the state veterinarian for identification of *T. foetus*.

W. "Positive *T. foetus* bull" means a bull that has had a positive *T. foetus* test.

X. "Positive *T. foetus* herd" means the group of all bovines which have had any opportunity for sexual contact in the previous breeding season and in which any animal (male or female) has had a positive diagnosis for *T. foetus*.

Y. "Quarantine" means movement restriction issued by a New Mexico livestock inspector that shall be placed on all cattle in a positive *T. foetus* herd. Such restriction shall specify the identity of the animals and the premises where the animals shall be confined.

Z. "Quarantine feedlot" means a dry lot feeding facility approved by the state veterinarian where positive *T. foetus* bulls or bovine females from a positive *T. foetus* herd may be fed prior to slaughter and there is no sexual contact with the opposite sex bovine.

AA. "Quarantine release" means that a herd has completed all regulatory requirements to eliminate *T. foetus* infection in that herd and is no longer classified as a positive herd.

BB. "Regulatory veterinarian" means the state veterinarian or his designee. This may be a state or USDA employed veterinarian or any accredited veterinarian holding a current state license.

CC. "State veterinarian" means the veterinarian designated by the New Mexico livestock board.

DD. "Suspect *T. foetus* bull" means a bull from a positive *T. foetus* herd that has not yet had three consecutive negative official *T. foetus* bull tests.

EE. "Tritrichomonas foetus (or *T. foetus*)" means a protozoan parasite that is the causative agent to the contagious venereal disease trichomoniasis. The disease exhibits as infertility, pyometra, abortions and reproductive inefficiency in the female bovine.

FF. "Unacceptable sample" means a sample that is deemed not diagnostic by the official testing laboratory.

GG. "Virgin bull" means a sexually intact male bovine less than 12 months of age.

[21.30.6.7 NMAC - N, 7/15/2005; A, 2/26/2010; A, 7/15/2013; A, 7/15/2014; A, 2/1/2020]

21.30.6.8 IMPORT REQUIREMENTS:

A. Breeding bull.

(1) All non-virgin bulls entering New Mexico must be accompanied by a certificate of veterinary inspection (CVI) and an import permit. All non-virgin bulls, except as noted in Paragraph (7) of this subsection (below), shall be accompanied by a certificate of veterinary inspection (CVI), import permit and a negative official *T. foetus* test within 60 days prior to entry and no sexual contact between testing and entry.

(2) If the pre-entry test is not an official *T. foetus* test and is not conducted at a laboratory approved by the American association of veterinary laboratory diagnosticians or the New Mexico state veterinarian, an in-state, post-entry test shall be required within 10 days of entry into New Mexico.

(3) No bull which has ever previously tested positive for *T. foetus* shall enter New Mexico unless the bull is consigned directly to slaughter and is individually identified for movement by a NMLB approved method.

(4) Each CVI issued for bulls covered under this rule shall bear one of the following statements:

(a) "*T. foetus* has not been diagnosed in the herd of origin"; or

(b) "The bull(s) represented on this CVI have had a negative official *T. foetus* bull test within 60 days prior to entry and there has been no female contact since the last qualifying test."

(5) The veterinarian issuing the CVI shall forward a copy of all official negative *T. foetus* tests for the bull(s) represented on the CVI to the New Mexico state veterinarian's office.

(6) No bull from a known positive *T. foetus* herd shall enter New Mexico unless the bull has three consecutive negative official *T. foetus* bull tests at least a week apart within 60 days prior to entry. The post-entry official test is also required. Bulls must be isolated from all females until the in-state test results are known. Identification procedures are listed below.

(7) Exceptions to the importation testing and slaughter surveillance requirements are:

(a) transient rodeo or exhibition (show) bulls, which shall have no sexual contact with a female bovine and are held in a secure facility to prevent such contact (does not include pasture) while in New Mexico;

(b) bulls consigned direct to slaughter; or

(c) bulls consigned to confined feeding; or

(d) bulls originating from a certified trichomoniasis-free herd, in a state with requirements equivalent to those New Mexico has in place for such a herd designation, as determined by the New Mexico state veterinarian. This exemption requires documentation of current trichomoniasis-free certification in the state of origin and a copy of the program requirements for certification.

B. Reproductive bovine female.

(1) No female bovine originating from a known positive *T. foetus* herd will be allowed to enter New Mexico. Exceptions include the following:

(a) on the premises of origin, there were three consecutive official negative *T. foetus* tests of the entire bull population and the only allowed females are those which:

(i) have a calf at side and no exposure to other than known negative bulls since parturition; or

(ii) are at least 120 days pregnant; or

(iii) are known virgin heifers; or

(iv) are heifers exposed only to known negative bulls and not yet 120 days pregnant; or

(v) are documented to have had at least 120 days of sexual isolation;
and

(vi) no other female will be allowed entry into New Mexico for breeding purposes from such herds;

(b) consigned directly to slaughter or to a quarantined feedlot.

(2) Bovine breeding females must have the following statement placed on the CVI and signed by the owner/manager of the herd of origin:

(a) "the cows listed on this CVI did not originate from a known positive *T. foetus* herd"; or

(b) "the cows listed on this CVI are at least 120 days pregnant"; or

(c) "the cows listed on this CVI originated from a positive *T. foetus* herd and are consigned for slaughter"; or

(d) "the heifers listed on this CVI were exposed for their first breeding only to a known negative *T. foetus* bull or artificially inseminated and are not yet 120 days pregnant"; or

(e) "the females listed on this CVI have had at least 120 days of sexual isolation immediately preceding the date of their movement into New Mexico."

C. Commuter permitted cattle.

(1) All bulls must be negative to an official *T. foetus* test within 60 days prior to entry. There shall be no commingling between testing and entry. All purchased bulls added to herd shall comply with test provisions.

(2) In any herd, should a bull be a positive *T. foetus* bull, he shall be identified and sold to slaughter only.

(a) All remaining bulls must test negative on three consecutive official tests at least one week apart.

(b) Only females which have a calf at side and no exposure to other than known negative *T. foetus* bulls since parturition, are at least 120 days pregnant, are known virgin heifers or are heifers exposed only to known negative bulls and not yet 120 days pregnant shall be allowed to accompany the commuting herd. Other open cows shall be sold to slaughter, moved under quarantine to be fed for slaughter or artificial insemination or held in sexual isolation for a 120 day period.

D. Import permit.

(1) All cattle must obtain an import permit, which will be recorded on the CVI.

(2) All cows originating from a premises where *T. foetus* has been diagnosed within the last year must obtain an import permit, and prior approval for entry from the New Mexico state veterinarian, which will be recorded on the CVI.

E. Public livestock sales (auctions).

(1) All out-of-state bulls must be accompanied by an import permit.

(2) All non-virgin bulls (imported) shall be accompanied by an official laboratory negative *T. foetus* test, conducted within 60 days prior to sale with no exposure to bovine females from the time of sample collection until sold. Any bull

without a test will be placed under quarantine and tested at the livestock sale premises within 10 days of sale or will be sold for slaughter purposes only. Bulls shall be isolated from all females until the in-state test results are known. Identification procedures are listed below.

(3) All bulls not qualifying as above will be announced in the sale ring as having "unknown *T. foetus* status" and shall be so designated on the buyer's documents. Such bulls shall be identified with a back tag designating them as having no *T. foetus* test prior to being offered for sale.

(4) Untested bulls may be sold for confined feeding. To be removed from confined feeding, bulls must go directly to slaughter or have a negative official *T. foetus* bull test or have been castrated.

(5) Bovine breeding females shall be accompanied by one of the following statements signed by the owner/manager of the herd of origin on the CVI or other suitable document. In the absence of one of these statements, any female bovine over the age of 12 months shall be consigned and sold to slaughter (or quarantined feed for slaughter) only:

(a) "The cows listed on this document did not originate from a known positive *T. foetus* herd."

(b) "The heifers on this document have been exposed to only known negative *T. foetus* bulls and are not yet 120 days pregnant."

(c) "The cows listed on this document are at least 120 days pregnant." or

(d) "The cows listed on this document originate from a positive *T. foetus* herd and are consigned for slaughter."

[21.30.6.8 NMAC - N, 7/15/2005; A, 2/26/2010; A, 7/15/2013; A, 7/15/2014; A, 2/1/2020]

21.30.6.9 INTRASTATE BREEDING BULLS:

A. All non-virgin bulls including culled herd sires sold for slaughter, must have a negative *T. foetus* test within 60 days prior to:

(1) change of ownership (sold to slaughter buyers),

(a) all slaughter bulls can be *N* branded and have a Trich sample collected, but may go to slaughter with results pending. Slaughter surveillance bulls do not need to be held for test results.

(b) any New Mexico producer that tests for Trichomoniasis annually (whole herd bull test), and has a defined breeding season, will be exempt from slaughter surveillance, upon presentation of the annual trichomoniasis test results.

(2) change of possession under lease or rental, sharing or

(3) any other agreement that would place the bull in a different breeding herd.

B. There shall be no sexual contact between the time of testing and change of possession. A NMLB inspection shall be required to verify change of possession and appropriate *T. foetus* testing. The owner presenting the bull for sale is financially responsible for the testing.

C. Cutter bulls, out of state cull bulls and slick bulls, may be castrated rather than tested, and sent for confined feeding.

D. Culled herdsires with medical conditions (broken penis, lameness, etc.) shall be tested at the owner's expense. If it appears it would be inhumane (at the discretion of the NMLB inspector or herd veterinarian) to put the bull through the chute, crippled and chronic broken penis bulls will be exempt.

E. The need for slaughter surveillance will be reevaluated by the working Trichomoniasis Committee, every two years.

F. Bulls shall not be exposed to females at the new premises until the results of the test are known.

G. Any bull with a positive test shall be immediately quarantined and the positive bull(s) shall be identified with the official New Mexico livestock board "N" fire brand or other NMLB approved method.

H. The positive *T. foetus* bull's herd of origin will be placed under quarantine.

I. The quarantine will be released in accordance to the regulatory section of this rule.

[21.30.6.9 NMAC - N, 7/15/2005; A, 2/26/2010; A, 7/15/2013; A, 7/15/2014; A, 2/1/2020]

21.30.6.10 VOLUNTARY NEW MEXICO *T. FOETUS* FREE HERD CERTIFICATION REQUIREMENTS - MAY BE AN INDIVIDUAL HERD, RANCH, GRAZING ASSOCIATION OR FEDERAL LAND PERMITEE:

A. Breeding bulls.

(1) All non-virgin breeding bulls shall be tested annually for *T. foetus* for the three years following the adoption of this rule.

(2) During the three year inception period, all non-virgin breeding bulls with changes of ownership, leased, rented or otherwise, shall be tested for *T. foetus* within 60 days prior to such change unless consigned direct to slaughter. The test will be completed and test results known prior to the time a bull is physically transferred to the receiving premises or herd.

(3) Negative *T. foetus* bulls will be identified with the official New Mexico negative *T. foetus* tag described in the identification section of this part.

(4) All slaughter bulls removed from the herd will be tested for *T. foetus*. The test may be performed at a slaughter facility if prior arrangement with a veterinarian and an appropriate agreement with the slaughter facility management is made.

(5) Bovine females added to a certified herd shall not originate from a known *T. foetus* infected herd. Female herd additions must originate from a New Mexico certified *T. foetus*-free herd or qualify in one of the following categories:

- (a)** calf at side and no exposure to other than known negative *T. foetus* bulls;
- (b)** checked by an accredited veterinarian, at least 120 days pregnant and so recorded;
- (c)** virgin; or
- (d)** heifers exposed as virgins only to known negative *T. foetus* infected bulls and not yet 120 days pregnant.

(6) Records must be maintained for all tests including all non-virgin bulls entering the herd and made available for inspection by an accredited veterinarian or state animal health official.

(7) Following successful completion of the three-year testing requirement, the participating entity shall receive a *T. foetus*-free certification from the New Mexico state veterinarian's office. Annual re-certification will require documented evidence that all male herd additions were virgin or that non-virgin breeding bulls added to the herd had three official negative *T. foetus* tests within 60 days prior to commingling with female bovine and that all slaughter bulls removed from the herd have been negative for *T. foetus* prior to or at slaughter.

(8) A herd in which a bull has a confirmed *T. foetus* infection will be classified as a positive *T. foetus* herd and shall be removed from the "free" status. The herd will be quarantined until positive *T. foetus* bulls are sent to slaughter and all other bulls in the herd test negative to three consecutive official *T. foetus* tests at least seven days apart. The third *T. foetus* test will be completed within 12 months of the initial *T. foetus* confirmation in the herd and will be conducted after the bulls have had breeding exposure to the cow herd. The bulls will be removed from the cow herd at least seven

days prior to the official *T. foetus* test. If more than 12 months have passed since confirmation of *T. foetus* in the herd, the state veterinarian may require additional *T. foetus* testing prior to release of quarantine. The initial negative *T. foetus* test is included in the three negative tests.

B. A non-tested, non-virgin bull that commingles with a herd that holds or is actively working toward the New Mexico certified *T. foetus*-free status, by fence breach or any commingled situation, shall obligate the owner of the non-tested bull to test the bull from one to three times at the option of the state veterinarian in consultation with the owner and veterinarian of the negative herd.

C. A bull from a herd which holds a current or has pending a *T. foetus*-free certification and which commingles with a non-tested herd, shall undergo one to three official *T. foetus* test(s) prior to return to his herd of origin. Shall such test be positive, all bulls from both herds may be subject to testing. The state veterinarian in consultation with the herd owner and herd veterinarian will determine the appropriate number of tests and number of bulls to be tested.

[21.30.6.10 NMAC - N, 7/15/2005; A, 2/26/2010; A, 7/15/13; A, 7/15/2014]

21.30.6.11 REGULATORY ACTION:

A. Commingled grazing. All non-virgin bulls commingling in grazing associations or multiple permittee allotments or leases, shall have the official *T. foetus* bull test conducted annually prior to turn out. A new official test will be required each time the bull(s) enter a different grazing association or multiple permittee allotment or lease. If a bull is found positive, the entire bull population present on the allotment or lease, regardless of ownership, will be required to have an official *T. foetus* test conducted. All positive bulls shall be identified with the official New Mexico livestock board "N" fire brand or NMLB approved method, and be sold for slaughter only. All test negative bulls belonging to the same owner(s) will be required to have a second negative test prior to turn out and a third negative official test after the bull(s) are removed from the grazing association or multiple permittee allotment or lease.

B. Positive *T. foetus* bull & herd. Any confirmed *T. foetus* bovine and its herd (as defined by state animal health officials) shall immediately be placed under quarantine and will continue under quarantine until the following rules are completed.

(1) Positive *T. foetus* bulls shall be identified with the official New Mexico livestock board "N" fire brand or other NMLB approved method.

(2) Positive *T. foetus* bulls shall be quarantined and sent directly to slaughter or to public livestock market for slaughter only. Positive bulls may be required to move on a NMLB approved method. Confined feeding may be allowed provided bulls are "N" branded.

(3) All other bulls in a positive *T. foetus* herd shall test negative to three consecutive official *T. foetus* tests at least seven days apart. The third *T. foetus* test will be completed within 12 months of *T. foetus* confirmation in the herd and will be conducted after the bulls have had breeding exposure to the cow herd for a minimum of 65 consecutive days. A shorter breeding season must be approved by the State Veterinarian, and be provided for in the Herd Management Plan. The bulls will be removed from the cow herd at least seven days prior to the official *T. foetus* test. If more than 12 months have passed since confirmation of *T. foetus* in the herd, the state veterinarian may require additional *T. foetus* testing prior to release of quarantine.

(4) If a disease management plan has not been developed and activated within 45 days of confirmation of *T. foetus* infection in the herd, all bovids, except steers and spayed heifers, will be required to go directly to slaughter upon leaving the ranch.

(5) Any bull entering a quarantined premise will be required to test negative prior to re-introduction to its herd of origin.

C. Reproductive bovine females from a positive *T. foetus* herd.

(1) Females over 12 months of age (not known to be virgin heifers) from a positive *T. foetus* herd may be sold direct to slaughter or quarantined on the premises of origin. Individual females may be released from quarantine when either all requirements of Paragraph 3 of Subsection B of 21.30.6.11 NMAC have been met or the cow(s) has a calf at side with no exposure to other than known negative *T. foetus* bulls since parturition, has documented 120 days of sexual isolation or is determined by an accredited veterinarian to be at least 120 days pregnant. Heifers known to be virgin at the time of turnout or heifers exposed only to known negative *T. foetus* bulls and not yet 120 days pregnant are allowed unrestricted movement.

(2) Open females shall be sold to slaughter or held in isolation from all bulls for 120 days. Any female sold to slaughter through a livestock market shall be identified with an official New Mexico positive *T. foetus* tag or NMLB approved method during the quarantine period.

(3) Breeding by artificial insemination is allowed during the quarantine period and cows confirmed by an accredited veterinarian to be at least 120 days pregnant as well as cows documented to have 120 days sexual isolation will be released from quarantine.

(4) If a disease management plan has not been developed and activated within 45 days of confirmation of *T. foetus* infection in the herd, all bovids, except steers and spayed heifers, will be required to go directly to slaughter upon leaving the ranch.

D. Regulatory action.

(1) Any stray non-virgin bull of unknown *T. foetus* status, or from a positive *T. foetus* herd, that enters the land of a neighboring premise, and may have commingled with the herd on that premise, will be quarantined until the bull(s) has one or more official *T. foetus* test(s) conducted. A NMLB livestock inspector shall be involved in the interaction.

(2) The test(s) shall be the responsibility of the bull(s) owner. The conditions of the quarantine and the number of tests will be determined by the state veterinarian.

E. Neighboring facilities of a positive *T. foetus* herd.

(1) All facilities that share a common boundary with a positive *T. foetus* herd will be notified by the NMLB and will be required to test, due to the fact that *T. foetus* is a regional disease, and all neighbors testing will facilitate a more rapid regional eradication. Certified New Mexico *T. foetus* free herds in compliance with the provisions of 21.30.6.10 NMAC, will be exempt from testing, as well as instances where the state veterinarian has determined such testing to be unnecessary based on epidemiological investigation. This requirement will be reevaluated by the working Trichomoniasis Committee every two years.

(2) Any exposed herds found positive upon testing will be designated as a positive *T. foetus* herd.

[21.30.6.11 NMAC - N, 7/15/2005; A, 2/26/2010; A, 7/15/2014; A, 4/24/2018; A, 2/1/2020]

21.30.6.12 IDENTIFICATION:

A. Bulls which have been sampled for the official *T. foetus* bull test shall be identified with an official New Mexico *T. foetus* tag. Tags will be supplied by the New Mexico livestock board and be assigned to approved veterinarians, who shall apply such tags at the time samples are collected. The approved veterinarian shall record any form of positive official identification worn by the bull or apply a standard USDA metal tag as a secondary identification if none exists. Bulls so identified pending test results shall be isolated from all females until the test result is reported. The official New Mexico *T. foetus* tag color shall be changed annually.

B. Positive *T. foetus* bulls shall be identified with the official New Mexico livestock board "N" fire brand or other identification approved by the state veterinarian and applied by the attending livestock inspector. Existing standard USDA metal ear tag and the official *T. foetus* tag shall be recorded when the "N" brand is applied.

C. Any quarantined bovids moved from the original premises of quarantine shall be identified with the official New Mexico livestock board "N" fire brand or other identification approved by the state veterinarian.

[21.30.6.12 NMAC - N, 7/15/2005; A, 2/26/2010; A, 7/15/2013; A, 7/15/2014]

21.30.6.13 SPECIMEN COLLECTION FACILITIES:

A. The bull owner must provide adequate corrals and restraint, or transport the bull(s) to a location with such corrals and restraint, to protect the animal and veterinarian from undue injury risk.

B. The approved veterinarian shall determine the adequacy of such facilities and may require the bulls be delivered to a mutually agreed facility if the owner's facility is deemed inadequate.

[21.30.6.13 NMAC - N, 7/15/2005; A, 7/15/2013]

21.30.6.14 APPROVED LABORATORY RESPONSIBILITIES:

A. An approved laboratory is required to immediately report any positive specimen to the state veterinarian's office. Such report will include the animal identification, brand, owner name, address, telephone number and the submitting veterinarian's name, address and telephone number.

B. The laboratory shall report unacceptable samples to the state veterinarian. If any sample is deemed unacceptable, the submitting veterinarian shall submit a retest specimen. The state veterinarian may require the offending veterinarian to attend an approved trichomoniasis training session and submit acceptable specimens to continue as an approved trichomoniasis veterinarian.

[21.30.6.14 NMAC - N, 7/15/2005; A, 7/15/2014]

21.30.6.15 RULE EXCEPTION:

The New Mexico state veterinarian may grant a written exception to this rule only on an individual basis.

[21.30.6.15 NMAC - N, 7/15/2005]

21.30.6.16 COMPLIANCE:

Livestock Inspectors who are certified peace officers, in accordance with Section 30-18-14 NMSA 1978 shall enforce the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock. Livestock inspectors may arrest persons found in the act or whom they have probable cause to believe are guilty of driving, holding or slaughtering stolen livestock. Any person who violates the provisions of these rules may be subject to the criminal and civil penalties pursuant to NMSA 1978, sections 77-2-9, 77-2-22. Penalties for misdemeanor crimes can include imprisonment of less than one year or fines up to \$1000 or both. Penalties for petty misdemeanors can include

imprisonment not to exceed six months or fines up to \$500 or both. Furthermore, any person who violates a rule adopted under the power granted to the board unless the penalty has been fixed by law is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

[21.30.6.16 NMAC - N, 7/15/2005; A, 2/1/2020]

PART 7: EQUINE VIRAL ARTERITIS (EVA)

21.30.7.1 ISSUING AGENCY:

New Mexico Livestock Board; 300 San Mateo NE, Suite 1000; Albuquerque, New Mexico 87108: Telephone (505) 841-6161.

[21.30.7.1 NMAC - N/E, 11/17/06]

21.30.7.2 SCOPE:

All owners, transporters or handlers of equine or equine semen in the state of New Mexico and those that apply to bring equine or equine semen into the state for any reason. All accredited veterinarians handling EVA vaccine.

[21.30.7.2 NMAC - N/E, 11/17/06]

21.30.7.3 STATUTORY AUTHORITY:

Section 77-2-7, A, F, H, NMSA 1978.

[21.30.7.3 NMAC - N/E, 11/17/06]

21.30.7.4 DURATION:

Permanent.

[21.30.7.4 NMAC - N/E, 11/17/06]

21.30.7.5 EFFECTIVE DATE:

November 17, 2006, unless a later date is cited at the end of a section.

[21.30.7.5 NMAC - N/E, 11/17/06]

21.30.7.6 OBJECTIVE:

To establish restrictions to protect the equine industry of the state of New Mexico. Clinical disease due to EVA infection is a reportable disease to the New Mexico state

veterinarian. Equine viral arteritis (EVA) is an infectious contagious disease of horses caused by the equine arteritis virus (EAV). EVA is of special economic concern because it can result in abortion in pregnant mares, illness and death in young foals and the establishment of the carrier state in stallions. Further, to prevent the introduction of EAV and control subsequent spread of EAV within New Mexico.

[21.30.7.6 NMAC - N/E, 11/17/06]

21.30.7.7 DEFINITIONS:

A. "Accredited veterinarian" means a veterinarian approved by the deputy administrator of USDA-APHIS-VS in accordance with provisions of Part 161, Title 9, Code of Federal Regulations (CFR). An accredited veterinarian is pre-approved to perform certain functions of federal and cooperative state/federal programs.

B. "Animal and plant health inspection service (APHIS)" means the agency providing leadership in ensuring the health and care of animals and plants. The agency improves agricultural productivity and competitiveness and contributes to the national economy and public health.

C. "Approved laboratory" means a state, federal or private diagnostic laboratory that must be approved for EVA testing by the USDA-AHPIS-VS.

D. "Approved laboratory tests" means laboratory tests for the diagnosis of EVA infection that are approved by the office of the state veterinarian and USDA-AHPIS-VS.

E. "Area veterinarian in charge (AVIC)" means the veterinary official of USDA-APHIS-VS, who is assigned by the deputy administrator of VS to supervise and perform the official animal health work of APHIS in the states or states concerned.

F. "Board" means the New Mexico livestock board.

G. "Book or booking" means the contracting or scheduling of a mare to breed to a stallion by natural service.

H. "Carrier" means a clinically normal stallion that sheds EAV continuously in its semen.

I. "Certificate" means an official document issued by the chief livestock health official or a VS representative or accredited veterinarian at the point of shipment of equine. It includes all of the following:

(1) the description, including age, breed, color, sex, distinctive markings or unique and permanent forms of identification, when present (e.g. brands, tattoos, EID, scars or blemishes), of each of the restricted equine to be moved;

- (2) the number of restricted equine covered by the document;
- (3) the purpose for which the equine are to be moved;
- (4) the points of origin and destination;
- (5) the consignor; and
- (6) the consignee.

J. "Certificate of veterinary inspection (CVI)" means the form issued by the state of origin that records the consignor, consignee, identity, origin, destination and health status of animals, issued by an accredited veterinarian of that state. It is commonly known as a health certificate.

K. "Chief livestock health official" means the state veterinarian of New Mexico.

L. "Commercial stallion" means a stallion that is utilized for breeding mares which are owned by someone other than the owner of the stallion.

M. "Cover" means the act of breeding a stallion to a mare.

N. "Director" means the executive director of the New Mexico livestock board.

O. "Electronic identification device (EID)" means an electronic implant with a transponder, inserted into the nuchal ligament of an equid. The transponder contains an approved 15 digit number that uniquely corresponds to a specific equine

P. "Equine arteritis virus (EAV)" means the organism which causes the disease equine viral arteritis.

Q. "Equine" means any animal in the family equidae, including horses, asses, mules, ponies and zebras.

R. "Equine viral arteritis (EVA)" means an infectious communicable disease in equine.

S. "Exposed animals" means animals in the family equidae that have been exposed to EAV by reason of associating or commingling with equine known to be infected with the virus.

T. "Herd" means all animals of the family equidae, such as horses, asses or zebras: under common ownership or supervision that are:

- (1) grouped on more than one or more parts of any single premises (lot, farm or ranch);or

(2) on two or more premises that are geographically separated but between which equine have been interchanged or had contact with equine from the other premises; it will be assumed that contact between animals of the family equidae on the different premises has occurred unless the owner can establish otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between the premises; or

(3) on common premises, such as community pastures or grazing association units, but owned by different persons; other groups of equine owned by the persons involved that are located on the other premises are considered to be part of a herd unless epidemiologic investigation establishes that the equine from an affected herd have not had the opportunity for direct or indirect contact with equine from that specific premises.

U. "Herd of origin" means a farm or ranch or other premises where equine were born or where they have been kept for 30 days or more before the date of shipping. For the purpose of this rule, herd of origin has the same meaning as place of origin, premise of origin, farm of origin and ranch of origin.

V. "Identification" means any modality that provides a unique and permanent identification of an individual equine.

W. "Mare" means the intact female of the equine species.

X. "Nurse mare" means a mare that has lost her foal and has adequate milk for supplementing an orphaned foal.

Y. "Official seal" means a serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end that forms a loop when the ends are engaged. An official seal is tamperproof and cannot be reused if opened. It is applied to the doors of a transport vehicle by a representative of APHIS AVIC or the chief livestock health official. A serially numbered, self-locking button that cannot be reused may be substituted for the metal or plastic strip type of seal.

Z. "Official test" means the virus neutralization test and virus isolation test (in cell culture) are the official laboratory procedures currently employed for the diagnosis of EVA infection.

AA. "Owner" means any person with the legal right of possession or having legal control over any equidae and shall include but not limited to agents, caretakers and other persons acting on behalf of that person.

BB. "Permit" means an official document (VS form 1-27 or comparable state form) issued by the chief livestock health official, federal representative or by an accredited veterinarian. The permit must accompany all EAV carrier stallions and those EVA exposed equine being moved under official seal to a specified destination.

CC. "Quarantine" means the act of placing exposed or infected animals into isolation from other animals to prevent the transmission of an infection.

DD. "Quarantined area" means a confined area under the direct supervision and control of chief livestock health official or federal animal health official who establishes procedures for the monitoring and recording of all animals entering or leaving the area. All equine under EVA quarantine are considered to have been exposed to EAV.

EE. "Polymerase chain reaction test (PCR)" means a test to detect EAV in samples.

FF. "Reactor" means any horse, ass, mule, pony or zebra that has been subjected to an officially

approved laboratory test that is confirmed positive for antibodies to EAV.

GG. "Reference laboratory" means the national reference laboratory for the serological testing of EAV infection is the diagnostic virology laboratory in Ames, Iowa, a part of USDA-APHIS-VS' National Veterinary Services Laboratories (NVSL).

HH. "Semen" means secretion or ejaculate from the reproductive organs of a stallion containing spermatozoa and seminal fluid from the accessory sex glands.

II. "Sero-conversion" means the development of neutralizing antibodies to EAV in response to natural infection with EAV or to the administration of EVA vaccine.

JJ. "Sero-negative" means a horse that has a serum neutralizing antibody titer of 1:4 to EAV using the virus neutralization test.

KK. "Sero-positive" means a horse that has a serum neutralizing antibody titer of 1:4 or greater to EAV using the virus neutralization test.

LL. "Shedder or shedding" means an equine has been determined to have EAV in its body. Specifically a term used to refer to a carrier stallion that has been determined to have EAV present in his semen and is capable of transmitting the infection to other equine through the act of breeding either by natural service or the use of artificial insemination.

MM. "Standard insemination volume" means 10 ml of semen.

NN. "Teaser stallion" means the intact male equid utilized in equine reproduction to aid in determination of estrus in a mare.

OO. "United States department of agriculture (USDA)" means, a federal agency charged with protecting American agriculture.

PP. "Vaccinated or vaccination" means an equine has been vaccinated with an approved EVA modified virus vaccine and for which the vaccination status has been kept current in accordance with the manufacturer's recommendation.

QQ. "Vaccinated sero-positive stallion" means a stallion that was sero-negative prior to receiving a vaccine for EVA that demonstrates a sero-positive titer post vaccination.

RR. "Veterinary services (VS)" means the animal health arm of APHIS, VS protects and improves the health, quality and marketability of our nations animals, animal products and veterinary biologicals by preventing, controlling or eliminating animal disease and monitoring and promoting animal health and productivity.

SS. "VS form 1-27" means an official restriction of livestock movement. This form is issued by a regulatory veterinarian and specifies the owner, owner's address, owner's telephone, premises affected, number, breed, age, sex, positive unique individual identification and destination of animals included.

TT. "Virus isolation test" means a test to isolate EAV. This test shall be conducted by an approved laboratory.

UU. "Virus neutralization test (VN)" means an assay for determining serum neutralizing antibodies to a particular virus, in this case EAV. This test shall be conducted by an approved laboratory.

[21.30.7.7 NMAC - N/E, 11/17/06; A, 2/26/10]

21.30.7.8 INCORPORATION BY REFERENCE OF FEDERAL UNIFORM METHODS AND RULES:

The USDA Uniform Methods and Rules, APHIS 91-55-075 is incorporated by reference as presently in effect and subsequent revisions.

[21.30.7.8 NMAC - N/E, 11/17/06]

21.30.7.9 GENERAL EVA INFORMATION:

A. All laboratory samples, pertaining to this rule, shall be submitted by an accredited veterinarian to an approved laboratory.

B. All commercial breeding stallions shall be tested for EAV prior to use as a breeding stallion or collection for artificial insemination.

C. All semen (fresh or frozen, imported semen or semen for export) from uncertified stallions shall test negative by virus isolation or PCR prior to being used for artificial insemination.

D. All commercial breeding stallions shall be tested within 180 days prior to the breeding season or sooner, if indicated.

[21.30.7.9 NMAC - N/E, 11/17/06]

21.30.7.10 COMMERCIAL BREEDING STALLIONS:

All commercial breeding stallions shall be registered annually with the New Mexico livestock board, where the current EAV status shall be recorded. It is recommended that all commercial breeding stallions be permanently identified either by brands, EID, tattoos or photographs.

[21.30.7.10 NMAC - N/E, 11/17/06]

21.30.7.11 IMPORTATION OF STALLIONS:

A. No commercial breeding stallion shall be imported into New Mexico for breeding purposes unless found serologically negative to an EVA test (serum neutralization) within 30 days prior to importation or serologically negative prior to vaccination and subsequently proven not a shedder of the disease. The results of these tests must be attached to the interstate CVI.

B. Stallions 36 months of age and older will be required to have a negative EVA test drawn by a licensed and accredited veterinarian. The test is to be conducted by an approved diagnostic laboratory. Age will be determined based on a January 1 birth date on all stallions.

C. Positive EAV stallions may be imported into New Mexico or moved within the state on a permit issued by the office of the state veterinarian and may be subject to quarantine. Official laboratory serum and semen culture results shall accompany the interstate CVI. In addition, the consignee shall be advised of the stallion's EAV status and consents to shipment. Imported stallions shall be registered annually with the New Mexico livestock board.

[21.30.7.11 NMAC - N/E, 11/17/06; A, 07/15/13]

21.30.7.12 EXPORTATION OF EAV CARRIER STALLIONS:

Commercial stallions to be exported outside of New Mexico must have consent of the state of final destination and consent of the farm owner receiving the stallion

[21.30.7.12 NMAC - N/E, 11/17/06]

21.30.7.13 SEMEN AND EMBRYO IMPORT AND EXPORT:

A. Fresh, cooled or frozen semen shall be culture negative for EVA within 180 days or sooner of import. An official semen import certificate completed by an accredited veterinarian accompanied by the official laboratory culture test shall be sent to the office of the state veterinarian 7 days prior to the first importation of semen for the current breeding season. Fresh, cooled or frozen semen or embryos from a shedding stallion shall only be used on vaccinated or sero-positive mares. These mares shall be isolated for 21 days following insemination or implantation.

B. EVA positive semen shall only be allowed by state permit through the office of the state veterinarian. In addition, release documentation of informed consent is required from the farm owner stating they will accept EVA positive semen.

[21.30.7.13 NMAC - N/E, 11/17/06]

21.30.7.14 EVA SHEDDING STALLIONS:

A. A stallion is considered to be a shedder if any of the following apply:

- (1)** the virus can be cultured from his semen; or
- (2)** if the virus can be detected in his semen by PCR test; or
- (3)** if sero-negative mares seroconvert to sero-positive status following breeding or insemination.

B. A stallion known to be shedding EAV shall not be permitted to breed or be collected for artificial insemination until the state veterinarian determines that the stallion does not pose a risk of transmitting EVA. In making this determination, the state veterinarian shall consider whether the requirements of paragraphs (2) and (3) of this subsection will be complied with by the premises on which the shedding stallion is located. The following restrictions shall apply to a shedding stallion that is permitted to breed or be collected for artificial insemination:

(1) the owner or agent of an EAV shedding stallion shall notify in writing, the owner or agent of a mare booked or seeking to book a mare to that stallion which has been classified as an EAV shedder; a written copy of the booking confirmation shall be sent to the state veterinarian;

(2) a shedding stallion shall be housed, handled and bred or collected for artificial insemination in a facility isolated from non-shedding stallions;

(3) a shedding stallion shall be bred to a mare(s) that:

- (a)** have been vaccinated against EVA at least 21 days prior to being bred; or

(b) demonstrate an existing EVA titer from vaccination or natural exposure to EAV, if the serological EVA test was performed at least 28 days prior to date of breeding;

(c) a mare shall be isolated for 21 days after being covered by a shedding stallion.

[21.30.7.14 NMAC - N/E, 11/17/06]

21.30.7.15 SERO-POSITIVE NONSHEDDING STALLIONS:

A. A stallion may be considered to be a vaccinated sero-positive stallion if a blood sample collected within 10 days prior to administration of an approved vaccine was negative for antibodies against EAV. See 21.30.7.19 NMAC for recommended vaccination protocols.

B. It is required that a sero-positive vaccinated stallion that did not have an EVA negative test prior to vaccination comply with one of the following testing procedures to ensure that the stallion is not at risk of transmitting the virus:

(1) a standard insemination volume (10ml) of semen should be collected and either cultured for EAV or evaluated using a PCR test; or

(2) the stallion should be bred to two mares negative for EAV antibodies; the two mares shall be isolated from other equine for 28 days and have blood collected for an EVA test 28 days after breeding or artificially inseminated from two ejaculates, separately collected;

(3) the sero-positive stallion would be considered a non-shedder if the semen culture, semen PCR or test breeding results are negative.

C. A stallion may be considered a non-vaccinated sero-positive stallion, if the stallion has sero-converted following a natural exposure to the virus. It is recommended that a non-vaccinated sero-positive stallion be tested as outlined below prior to breeding to ensure that he is not at risk of transmitting the virus:

(1) semen should be collected and either cultured for EAV or evaluated using a PCR test; or

(2) the stallion should be bred to two mares negative for EAV antibodies; the two mares shall have blood collected for an EVA test 28 days after breeding or artificially inseminated; the two mares shall remain isolated from other equine for 28 days following breeding;

(3) the sero-positive stallion would be considered a non-shedder if the semen culture, semen PCR or test breeding results are negative.

D. A stallion previously classified as a shedding stallion may be reclassified as a non-shedding stallion if the following criteria are met:

(1) during the first breeding season following the stallion's classification as a non-shedder, the first five sero-negative mares bred or artificially inseminated using semen collected from separate ejaculates from this stallion shall be test negative to a blood sample collected for an EVA test 28 days after breeding or artificial insemination;

(2) during the second breeding season, the stallion shall be bred to two mares negative for EAV antibodies that will be tested 28 days after breeding or have its semen collected and cultured negative for EAV or have the semen tested negative by PCR for EAV; if the semen culture report or PCR test and blood samples are negative for EAV, there shall not be restrictions placed on a future breeding season.

E. The final determination that a stallion is not an EAV shedder shall be made based on scientific procedures described in this section and approved by the state veterinarian. Until this determination is made, the stallion shall be considered an EAV shedder.

[21.30.7.15 NMAC - N/E, 11/17/06]

21.30.7.16 REQUIREMENTS FOR BREEDING MARES TO A SHEDDING STALLION:

The following guidelines are required when breeding mares to a stallion shedding EAV.

A. If a sero-negative mare is to be bred to a shedding stallion for the first time:

(1) it is required that the mare be vaccinated a minimum of 21 days prior to the first breeding or artificial insemination by a EAV shedding stallion and subsequently isolated a minimum of 21 days after the breeding or artificial insemination;

(2) during isolation, the mare shall be physically separated from other equine in a separate isolation area approved by the state veterinarian or designated personnel;

(3) after the isolation period, the mare may move without restriction.

B. Mares that have been vaccinated against EAV or have been bred to an EAV shedding stallion within the previous two years may be re-bred to a shedding stallion, but should be isolated for a minimum of 21 days after breeding, as noted in Subsection A above.

C. When a mare bred to a shedding stallion is returned to the premises of origin within 21 days of breeding, it shall be in a transport vehicle or trailer by herself or with other sero-positive horses. Upon returning to the premises of origin, the transport

vehicle or trailer and equipment used to move the mare must be immediately cleaned and disinfected according to procedures approved by the state veterinarian.

[21.30.7.16 NMAC - N/E, 11/17/06]

21.30.7.17 ACTIONS FOR NEWLY DIAGNOSED SERO-POSITIVE STALLIONS:

A stallion infected with EAV during the breeding season shall immediately cease breeding or immediately cease having semen collected for artificial insemination or semen collected and stored for future use. Since EVA is a reportable disease in the state of New Mexico, the state veterinarian must be immediately notified in the event of clinical EVA disease demonstrated by a positive laboratory test of serum or semen. An owner or agent with a mare booked or bred to a stallion that became infected with EAV during the breeding season shall be immediately notified in writing by the stallion's owner or agent, that the stallion is an EAV shedder. A copy of the written notification shall be sent to the state veterinarian. A stallion infected with EAV during the breeding season shall be classified as an EAV shedder and shall be handled according to the requirements of this rule. Following the stallions classification as a shedder, the state veterinarian may reclassify the stallion as a non-shedder in accordance with this rule.

[21.30.7.17 NMAC - N/E, 11/17/06]

21.30.7.18 EAV EXPOSED MARES:

Veterinarians, owners, agents, handlers and transporters of equine shall refer to USDA APHIS 91-55-075, Equine Viral Arteritis, Uniform Methods and Rules and subsequent revisions.

[21.30.7.18 NMAC - N/E, 11/17/06]

21.30.7.19 EQUINE VACCINATED AGAINST EVA:

Veterinarians, owners, agents, handlers and transporters of equine shall refer to USDA APHIS 91-55-075, Equine Viral Arteritis, Uniform Methods and Rules and subsequent revisions. Additionally, the following are the requirements for mares or stallions to be vaccinated with EVA vaccine in New Mexico.

- A.** EVA vaccine will be issued to federally accredited New Mexico licensed veterinarians by written request through the state veterinarian.
- B.** Testing of stallions for antibodies in blood or evidence of EAV in semen shall be submitted to an approved veterinary laboratory.
- C.** Stallions vaccinated for the first time against EVA shall be test negative to a blood sample collected by an accredited veterinarian prior to vaccination.

D. Stallions vaccinated for the first time against EVA shall have the EVA vaccine administered by an accredited veterinarian within 10 days after the sample collection date.

E. An official certificate documenting that the stallion has been vaccinated by an accredited veterinarian shall be sent to the state veterinarian within 7 days of the vaccination date. The original laboratory EVA test results shall accompany the certificate.

F. The EVA vaccination certificate for stallions shall be on a form prescribed by the state veterinarian.

G. All equids vaccinated for the first time against EVA shall not have direct exposure to an EVA affected animal or pregnant mare for 28 days after vaccination.

H. A vaccinated stallion shall not be used for breeding or artificial insemination within 28 days after vaccination. A vaccinated mare shall not be bred within 21 days of vaccination.

I. A sero-negative EVA test is required prior to vaccination of intact colts between 6 and 12 months of age.

[21.30.7.19 NMAC - N/E, 11/17/06]

21.30.7.20 NURSE MARES:

A nurse mare shall be:

A. sero-negative;

B. officially vaccinated against EVA in accordance with 21.30.7.19 NMAC.

[21.30.7.20 NMAC - N/E, 11/17/06]

21.30.7.21 TEASER STALLIONS:

A teaser shall be officially vaccinated against EVA in accordance with 21.30.7.19 NMAC.

[21.30.7.21 NMAC - N/E, 11/17/06]

PART 8: USE OF LIVESTOCK DRUGS AND BIOLOGICALS

21.30.8.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.30.8.1 NMAC - N, 12/31/2012]

21.30.8.2 SCOPE:

All manufacturers, importers, distributors and users of livestock drugs and biologicals, including all serums, vaccines and other biologicals intended for administration, injection or use to or upon livestock, and including virulent blood or living virus of any disease affecting livestock.

[21.30.8.2 NMAC - N, 12/31/2012]

21.30.8.3 STATUTORY AUTHORITY:

Section 77-2-7 NMSA 1978.

[21.30.8.3 NMAC - N, 12/31/2012]

21.30.8.4 DURATION:

Permanent.

[21.30.8.4 NMAC - N, 12/31/2012]

21.30.8.5 EFFECTIVE DATE:

December 31, 2012, unless a later date is cited at the end of a section.

[21.30.8.5 NMAC - N, 12/31/2012]

21.30.8.6 OBJECTIVE:

To protect livestock in New Mexico against disease and to safeguard and promote therapeutic and efficacious livestock drugs and biologicals.

[21.30.8.6 NMAC - N, 12/31/2012]

21.30.8.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

[21.30.8.7 NMAC - N, 12/31/2012]

21.30.8.8 MANUFACTURER REGISTRATION REQUIREMENTS:

A. Permit required: No person, firm, corporation or company shall import into New Mexico, distribute, administer or use within New Mexico or manufacture within New Mexico, any livestock drugs and biologicals, including all serums, vaccines and other biologicals intended for administration, injection or use to or upon livestock, and including virulent blood or living virus of any disease affecting livestock, unless the manufacturer of the livestock drugs or biologicals has first obtained a permit from the state veterinarian of the New Mexico livestock board.

B. Application required: Any manufacturer who wishes to import into New Mexico, distribute, administer or use within New Mexico or to manufacture within New Mexico, any livestock drugs or biologicals, as provided in paragraph A, must first make a timely and proper application to the state veterinarian of the New Mexico livestock board requesting permission to do so.

C. Application form: A letter requesting permission or registration must include the name, address and primary contact telephone number of the applicant. The correspondence must also provide product name and description and protocol and labeling information. The livestock board may charge a fee for the registration permit, including a renewal fee, in an amount not to exceed \$100 pursuant to Subsection K of Section 77-2-7.

D. Approval authority: The authority to approve and to issue a permit rests with the state veterinarian of the New Mexico livestock board.

E. Duration of permit: Permits must be renewed by renewal application made annually to the state veterinarian.

F. Conditions of approval: In order to receive approval, the drugs or biologicals must first be approved by the proper federal approval authority, either the USDA, EPA or FDA, or by a state's approval authority for conditional use drugs or biologics. The drugs or biologicals must be used, injected or administered according to the protocols, conditions for use and other restrictions established by the manufacturer and the federal approval authority respecting each drug or biological. The state veterinarian may establish other conditions as he determines necessary to safeguard New Mexico's livestock and may disallow importation, distribution and use within New Mexico of drugs or biologicals if the state veterinarian determines that the use of those drugs or biologicals would undermine or threaten the board's ability to protect the health and safety of New Mexico's livestock, subject to board review if contested.

G. Investigational drugs: Investigational drugs and biologicals intended for livestock use are also subject to the prior approval and permitting requirements of this rule.

H. Fees.

(1) The same fees apply to initial registration permits and to renewed permits.

(2) For products with unrestricted licenses, the fee of each manufacturer is \$50.00 for the first product and \$25.00 for each similar product.

(3) For products with conditional use licenses, the fee for each manufacturer is \$75.00 for each product.

(4) For unlicensed, investigational use products the fee for each manufacturer is \$100.00 for each product.

[21.30.8.8 NMAC - N, 12/31/2012]

PART 9: FERAL HOGS

21.30.9.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.30.9.1 NMAC - N, 10/15/2012]

21.30.9.2 SCOPE:

Applicable to entities and persons.

[21.30.9.2 NMAC - N, 10/15/2012]

21.30.9.3 STATUTORY AUTHORITY:

Sections 77-2-1, 77-2-7 and 77-18-6 NMSA 1978.

[21.30.9.3 NMAC - N, 10/15/2012]

21.30.9.4 DURATION:

Permanent.

[21.30.9.4 NMAC - N, 10/15/2012]

21.30.9.5 EFFECTIVE DATE:

October 15, 2012, unless a later date is cited at the end of a section.

[21.30.9.5 NMAC - N, 10/15/2012]

21.30.9.6 OBJECTIVE:

To clarify the meaning of livestock and the regulatory authority of the New Mexico livestock board as it pertains to feral hogs.

[21.30.9.6 NMAC - N, 10/15/2012]

21.30.9.7 DEFINITIONS:

[RESERVED]

21.30.9.8 FERAL HOGS:

A. Section 77-18-6 NMSA 1978, pertaining to feral hogs, was enacted to protect the public health, welfare and safety and to prevent the introduction and spread of disease. That statute prohibits certain conduct as described in that section as it pertains to feral hogs.

B. Feral hogs are considered vermin, incompatible with the environment, and are noxious, pestilent, predatory, foreign and invasive, offensive and injurious to man and his domesticated animals, and are not considered livestock to be regulated under the New Mexico Livestock Code, and, as such, are not protected against removal, destruction or elimination.

[21.30.9.8 NMAC - N, 10/15/2012]

CHAPTER 31: DOGS, CATS, AND DOMESTIC ANIMALS [RESERVED]

CHAPTER 32: BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: BRANDING OF LIVESTOCK

21.32.2.1 ISSUING AGENCY:

New Mexico Livestock Board, 300 San Mateo, NE, Suite 1000, Albuquerque, New Mexico 87108, Telephone: (505) 841-6161

[3-1-99; 21.32.2.1 NMAC - Rn, 21 NMAC 32.2.1, 7-31-2000]

21.32.2.2 SCOPE:

All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21 NMAC 30, 33, & 35.

[3-1-99; 21.32.2.2 NMAC - Rn, 21 NMAC 32.2.2, 7-31-2000]

21.32.2.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9, & 12.

[3-1-99; 21.32.2.3 NMAC - Rn, 21 NMAC 32.2.3, 7-31-2000]

21.32.2.4 DURATION:

Permanent

[3-1-99; 21.32.2.4 NMAC - Rn, 21 NMAC 32.2.4, 7-31-2000]

21.32.2.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of a section.

[3-1-99; 21.32.2.5 NMAC - Rn, 21 NMAC 32.2.5, 7-31-2000; A, 09-15-2010]

21.32.2.6 OBJECTIVE:

To establish rules governing branding of livestock in New Mexico.

[3-1-99; 21.32.6 NMAC - Rn, 21 NMAC 32.2.6, 7-31-2000]

21.32.2.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Dairy" means a cattle facility in New Mexico where the primary business is milking cows and the owner has been issued a milk permit number by the New Mexico department of agriculture (NMDA) and includes any confined feeding facilities, which are part of the dairy or the dairy owner's operation under the NMDA permit number.

C. "Dairy cattle" means cattle of one of the dairy breeds developed chiefly for milk production.

D. "Director" means the executive director of the New Mexico livestock board.

E. "Feedlot" means a confined feeding facility in New Mexico where the primary business is that of feeding cattle for slaughter. For the purposes of 21.32.2.10 NMAC below, the owner must have, for the feedlot, a General Permit for Concentrated Animal Feeding Operations under the National Pollution Discharge and Elimination System (NPDES) of the United States environmental protection agency.

F. "Inspector" means any duly authorized or commissioned officer of the livestock board.

G. "Livestock or animal" means horses, asses, mules, cattle, bison, sheep, or goats.

H. "New Mexico livestock" means any livestock raised or pastured or fed within the State of New Mexico.

I. "Person" means an individual, partnership, association, or operation.

J. "Confined feeding" shall include a dairy calf or dairy heifer growing facility, in which the owner must have a General Permit for Concentrated Animal Feeding Operations under the National Pollution Discharge and Elimination System (NPDES) of the United States environmental protection agency.

[3/1/1999; 21.32.2.7 NMAC - Rn & A, 21 NMAC 32.2.7, 7/31/2000; A, 1/12/2021]

21.32.2.8 BRANDING OF LIVESTOCK:

A. BRANDING OF CATTLE: All cattle in the state of New Mexico shall be required to be branded with a recorded New Mexico brand, excepting calves with branded mother, registered animals, which are identified by a proper registration mark and whose owner has been issued a certificate of brand exemption for the registered herd, and dairy cattle, which are identified in accordance with the provisions of 21.32.2.9 NMAC, and cattle in a feedlot, which are identified in accordance with the provisions of 21.32.2.10 NMAC.

B. IDENTIFICATION OF EQUINES: All equines shall be required to be branded with a New Mexico recorded brand, or identified by a horse identification card (Form 1-H or 1HA) showing individual markings, scars, etc.

C. BRANDING OF SHEEP AND GOATS: All owners of sheep and goats in the state of New Mexico shall be required to have a wool/hair brand registered in the office of the New Mexico livestock board and such brand is to be the sole property of the recorded owner. The brand may be applied by means of paint, chalk, hot iron, tattoo, or eartags. Additionally, earmarks may be used as a means of identification and, if used as a means of identification, the earmark must be recorded in conjunction with the recorded brand. The board, at its discretion, may immediately halt the use of earmarks as a

means of identification and require branding, tattooing, or eartagging of all sheep and goats.

D. All sheep and goats being moved, transported, driven, or otherwise transferred from one premises to another or all of those presented for or requiring inspection, shall be required to bear a recorded means of identification. All such sexually intact sheep and goats, regardless of age and wethers of either species 18 months of age and older must also be identified with a permanent official identification device or a permanent method approved by USDA for use in the scrapie program unless the animals are under 18 months of age and are moving directly or through a slaughter only sale to slaughter or to a terminal feedlot or are animals of any age moving for management purposes to another premises also rented or owned by the flock owner without a change of ownership.

E. Sheep and goats destined for show or exhibition shall be exempt from paint, chalk, or fire brand regulations, provided such sheep and goats are identified with a permanent official identification device or permanent method approved by USDA for use in the scrapie program.

F. Nothing herein shall exempt any owner of livestock from possessing necessary bills of sale or proof of ownership for their livestock and presenting proof of ownership upon request.

[3-1-99; 21.32.2.8 NMAC - Rn & A, 21 NMAC 32.2.8, 7-31-2000; A, 9-15-2010; A, 7-15-2013]

21.32.2.9 ALTERNATIVE TO BRANDING CATTLE IN A NEW MEXICO DAIRY:

A. In accordance with Subsection F of Section 77-9-3 NMSA 1978, of the Livestock Code of New Mexico, the alternate means of identification for dairy cattle shall be the use of plastic eartags that meet the following specifications and contained information:

(1) The tag must not be smaller than a medium sized tag that measures two and one-half inches by three inches (2 1/2" x 3"); and

(2) Has lettering not smaller than one-fourth of an inch (1/4"); and

(3) Is solid color with contrasting color for lettering; and

(4) Is factory engraved with the brand owner's name, a correct facsimile of the owner's New Mexico registered brand, or the New Mexico department of agriculture milk permit number.

B. Owners of dairy cattle may elect to use the alternative method of identifying cattle in their dairy, or other confined feeding operation in which ownership has not changed, after having received permission from the board to do so. The owner must

first request permission to use the alternative and the board may grant that permission after confirming the owner understands the minimum requirements for the alternate form and its proper use.

C. The board shall record the owner's permission and keep record of those owner's that have requested and been granted permission to use the alternative form of identification allowed by law and this section. For registering the alternative, the board shall charge a fee equal, and in addition, to the fee for recording the New Mexico registered brand of the owner of the cattle. The registered brand and the alternative shall be re-recorded separately at the time of the re-recording.

D. The owner of the dairy must ensure that the eartags used throughout his/her dairy are consistent as to lettering, information, and layout. Within a dairy, variations in color, size, and individual animal number placed upon the tag are acceptable, provided that the tags meet the minimum requirements of Subsection A of 21.32.2.9 NMAC.

E. The appointed board has the right to revoke an owner's permission to use the alternate method of identification after a hearing and upon presentation of evidence finds just cause to do so.

F. Cattle that are removed from the dairy for pasturing in New Mexico shall be branded in accordance with Section 77-9-3, NMSA 1978, prior to removal.

G. Nothing herein shall exempt any owner of livestock from possessing necessary bills of sale or proof of ownership for their livestock and presenting proof of ownership to an inspector, or agent of the board, upon request.

[21.32.2.9 NMAC - N, 7/31/2000; A, 1/12/2021]

21.32.2.10 ALTERNATIVE TO BRANDING CATTLE IN A NEW MEXICO FEEDLOT:

A. In accordance with Section 77-9-3, Sub-section F, NMSA 1978, of the Livestock Code of New Mexico, the alternate means of identification for cattle in a feedlot shall be the use of plastic eartags that meet the following specifications and contained information:

- (1)** The tag must not be smaller than a medium sized tag that measures two and one-half inches by three inches (2 1/2" x 3"); and
- (2)** Has lettering not smaller than one-fourth of an inch (1/4"); and
- (3)** Is solid color with contrasting color for lettering; and
- (4)** Is factory engraved with the brand owner's name or a correct facsimile of the owner's New Mexico registered brand.

B. In order to qualify for use of the alternative to branding, the feedlot where the alternative is to be used must have a General Permit for Concentrated Animal Feeding Operations under the National Pollution Discharge and Elimination System of the U.S. Environmental Protection Agency.

C. Owners of cattle in a feedlot may elect to use the alternative method of identifying their cattle after having received permission from the board to do so. The owner must first request permission to use the alternative and the board may grant that permission after confirming the owner understands the minimum requirements for the alternate form and its proper use.

D. The board shall record the feedlot owner's permission and keep record of those owner's that have requested and been granted permission to use the alternative form of identification allowed by law and this section. For registering the alternative, the board shall charge a fee equal, and in addition, to the fee for recording the New Mexico registered brand of the owner of the cattle. The registered brand and the alternative shall be re-recorded separately at the time of the re-recording.

E. The owner of the feedlot must ensure that the eartags used throughout his/her feedlot are consistent as to size, lettering, information, and layout. Variations in color and individual animal number placed upon the tag are acceptable.

F. The appointed board has the right to revoke an owner's permission to use the alternate method of identification after a hearing and upon presentation of evidence finds just cause to do so.

G. Cattle that are removed from the feedlot for pasturing in New Mexico shall be branded in accordance with Section 77-9-3, NMSA 1978, prior to removal.

H. Nothing herein shall exempt any owner of livestock, or feedlot operator who has cattle branded with the alternative in their facility, from possessing necessary bills of sale or proof of ownership for their livestock, or the livestock which they have in their possession under authority of the owner, and presenting proof of ownership to an inspector, or agent of the Board, upon request.

[21.32.2.10 NMAC - N, 7-31-2000]

21.32.2.11 ADDITIONAL PROVISIONS FOR ALTERNATIVE BRANDED CATTLE:

A. Cattle identified by the alternative to branding allowed by 21.32.2.8.A NMAC, 21.32.2.9 NMAC, and 21.32.2.10 NMAC shall not be allowed to travel out of district to an auction market by use of a telephone permit under the provisions of 21.32.3.9.C NMAC. Cattle branded with the alternative must be visually inspected by an authorized agent of the Livestock Board and a certificate of inspection issued prior to being transported across a livestock inspection district line.

B. After the sale of cattle branded with the alternative, the subsequent owner has thirty days within which to remove the tags of the previous owner and brand with his/her brand, or apply the new owner's alternative to branding in accordance with Section 77-9-3 NMSA 1978 and this rule.

C. For cattle identified by the alternative at the time of sale, the authority to use the alternative to branding shall not be transferred in any way, including by written permission on the bill of sale, to the subsequent owner.

D. All cattle identified by the alternative to branding and sold must be inspected at the time of sale by an inspector, or an agent, of the Livestock Board. This inspection is required regardless of the intention to move the cattle across a district line or out of state. The inspector, or agent, shall document the inspection on the proper certificate and the charge the fees for such inspection.

E. A person shall not sell, buy or receive any cattle in New Mexico unless the cattle are branded or has other means of identification acceptable to the board, except cattle imported from another state.

F. The inspector shall hold any livestock presented for inspection that are not properly identified and the owner does not have proper documents establishing ownership, until the owner presents to the inspector documents or evidence of ownership. If the owner does not establish ownership to the satisfaction of the inspector, the inspector shall stray the livestock in question in accordance with the Livestock Code in Chapter 77, Article 13, NMSA 1978.

G. If the inspector conducting any inspection in accordance with 21.32.2.9 through 11 NMAC has cause for concern about the health status of cattle being inspected the inspector may quarantine the cattle, or require the owner of the dairy or feedlot to hold the cattle as if they were quarantined, until the state veterinarian, or his designee, makes a determination of the health status of the cattle in question.

H. If the appointed members of the Livestock Board have reason to believe that any area or region contains a health risk from dangerous and contagious diseases that could affect livestock the board may designate that area or region as one from which movement of livestock to New Mexico or within New Mexico is prohibited. For the purpose of immediate control and protection of the state's livestock, that determination may be made by the director in consultation with the state veterinarian and then ratified at the next meeting of the appointed board.

[21.32.2.11 NMAC - N, 7-31-2000]

PART 3: TRANSPORTATION OF LIVESTOCK

21.32.3.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.32.3.1 NMAC - Rp, 21 NMAC 32.3.1, 5/28/2004; A, 10/15/2012]

21.32.3.2 SCOPE:

All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21.30, 21.33 and 21.35 NMAC.

[21.32.3.2 NMAC - Rp, 21 NMAC 32.3.2, 5/28/2004]

21.32.3.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9, & 12, G, Section 77-3-1, 77-9-28, 77-9-30, 77-9-31 NMSA 1978.

[21.32.3.3 NMAC - Rp, 21 NMAC 32.3.3, 5/28/2004; A, 10/15/2012]

21.32.3.4 DURATION:

Permanent

[21.32.3.4 NMAC - Rp, 21 NMAC 32.3.4, 5/28/2004]

21.32.3.5 EFFECTIVE DATE:

May 28, 2004 unless a later date is cited at the end of a section.

[21.32.3.5 NMAC - Rp, 21 NMAC 32.3.5, 5/28/2004]

21.32.3.6 OBJECTIVE:

To establish ownership and health rules governing transportation of livestock within, into, and out of New Mexico.

[21.32.3.6 NMAC - Rp, 21 NMAC 32.3.6, 5/28/2004]

21.32.3.7 DEFINITIONS:

A. "Approved eartag" shall be any tag that has received the approval of the livestock board prior to application. The tag must clearly and conspicuously show the owner of the calf prior to sale. The owner may be shown by use of the actual name to which the brand is recorded, brand image or brand master number.

B. "Baby calf" means a bovine animal less than thirty (30) days of age.

C. "Board" means the New Mexico livestock board.

D. "Calf-raising facility and or feed yard" means an established entity in the state of New Mexico for the primary purpose of raising baby calves that are not part of a cow-calf pair that have multiple herds of origin.

E. "Cow-calf pair" means a cow and its suckling progeny; a cow nursing an adopted calf does not qualify as a "cow-calf pair."

F. "Dairy" means an established entity in the state of New Mexico in business for the primary purpose of fluid milk production and which has been assigned a dairy I.D. number by the New Mexico department of agriculture.

G. "Director" means the executive director of the New Mexico livestock board.

H. "Feedlot" means an established entity in the state of New Mexico for the primary purpose of feeding cattle.

I. "Inspector" means any duly authorized or commissioned officer of the livestock board.

J. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

K. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

L. "Person" means an individual, partnership, association, or operation.

M. "Quarantine" or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.

N. "Quarantined livestock" means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.

O. "Telephone permit" means the authorization to transport livestock to an approved New Mexico auction without prior inspection, by use of a confidential number issued to the owner or owner's agent, which identifies the specific animals and shipment to a specific auction.

P. "Transient livestock" means livestock transported through the state of New Mexico from another state or country whose destination is not within the state of New Mexico.

Q. "Transient livestock with New Mexico destination" means livestock imported in the state of New Mexico from another state or country, or being transported within the state and not having reached the final destination for feed or pasture purpose.

[21.32.3.7 NMAC - Rp, 21 NMAC 32.3.7, 5/28/2004; A, 10/30/2008; A, 07/15/2013]

21.32.3.8 CREATING DISTRICTS:

A. The board shall, as it deems necessary, create such districts within the state for the purpose of controlling the movement of livestock.

B. The districts shall be known as "livestock inspection districts" and will coincide with the boundaries of the districts shown on the "livestock inspection districts map" dated June 21, 1997 and available at the office of the New Mexico livestock board.

C. Upon approval of the livestock inspector in charge, livestock may move within the designated district without inspection. All livestock intended for shipment from one district to another must be inspected prior to leaving the district, unless the inspector in charge shall designate another location outside the district of origin where the livestock will be subsequently inspected.

D. "International livestock inspection zone within districts" are created, to include the exterior boundaries within the United States of facilities comprising international import receiving facilities and any board-designated holding facility that directly receives livestock that have been transported directly to an international import receiving facility and that have been inspected for health by the United States department of agriculture. As to those USDA-inspected livestock, which have been received by the international import receiving facility and any nearby private holding facility, no prior permit from the board is required in order to enter those facilities. The board's inspection and health requirements apply in order to permit livestock movement from within the boundaries of the international livestock inspection zone to beyond said zone. The board's inspection and health requirements apply in order to permit livestock movement from outside the boundaries of the international livestock inspection zone to within said zone. Evidence of compliance with all inspection and health requirements necessary to enter New Mexico must also accompany all livestock that move from the international inspection zone into New Mexico.

[21.32.3.8 NMAC - Rp, 21 NMAC 32.3.8, 5/28/2004; A, 10/15/2012]

21.32.3.9 DESIGNATED PLACE OF INSPECTION:

A. Any person desiring to move or transport livestock from one district to another, or beyond the limits of this state, except as provided in Section 77-9-42, NMSA 1978, and in 21.32.3.11 NMAC, must first notify the inspector in his district of his intention of move within a reasonable period of time. The inspector or his deputy shall set a time and location for inspection of such livestock and, upon inspection, shall issue the necessary certificate for livestock movement.

B. Fees for inspection of livestock shall be due and payable at the time the certificate for livestock movement is issued. Any unpaid fee shall constitute a lien on all such livestock in accordance with Section 77-9-38, NMSA 1978, until such fees are paid.

C. Notwithstanding the provisions of Subsections A and B of 21.32.3.9 NMAC above and Subsection E of 21.32.3.10 NMAC below, any person desiring to move or transport cattle, sheep, and/ or horses, from one district to another within the limits of this state may move such livestock without prior inspection, provided that:

(1) for the purposes of this paragraph "livestock" shall be horses, cattle, or sheep; and

(2) the livestock are to be moved to a licensed livestock auction market within the state to be sold; and

(3) the cattle or sheep are legally branded or in the case of horses they are branded or identified by another means in accordance New Mexico statutes or board rules; and

(4) such person first notifies the inspector or proper authority at such licensed livestock auction market prior to such intended movement and, provides that person with the brand, number, description of such livestock, the name of the person owning said livestock; and

(5) provided further the inspector, his deputy, or proper authority shall confirm the information with the person intending to transport such livestock to be sold and shall issue a non-transferable permit number to the person stating the date the livestock auction will be held and said permit will be void on this date; and

(6) upon request by any livestock inspector, the person transporting livestock under a non-transferable permit number, shall reveal such number, the name of the inspector issuing the number, and such other information as is necessary to verify the legality of the livestock movement; and

(7) upon receiving any livestock moved or transported under a telephone authorization number the person receiving such livestock to be sold shall maintain them separately and shall notify the livestock inspector that such livestock are available for inspection; such livestock shall remain separate from any other livestock until such time

as an inspector or his deputy has completed an actual inspection as provided in Sections 77-9-41 and 77-10-5, NMSA 1978, and a certificate of inspection has been issued to the owner or his agent; and

(8) should any person receiving a telephone authorization to transport livestock to be sold transport any livestock not in his ownership, said person will be responsible to the rightful owner and will transport those livestock back to the point of origin to the rightful owner, under the direction and supervision of the New Mexico livestock board; and

(9) all fees and expenses incurred in returning livestock to the rightful owner will be the responsibility of the shipper or persons who caused the animals to be shipped in error.

D. Notwithstanding the provisions of Subsections A and B of 21.32.3.9 NMAC above, any person desiring to move or transport cattle, sheep, bison, and/ or horses, from one district to another for the purpose of slaughter within the limits of this state may move such livestock without prior inspection, provided that:

(1) the livestock are to be moved to a licensed slaughter facility within the state to be slaughtered; and

(2) the slaughter facility has requested and been approved by the board to permit movement of livestock to their plant in accordance with this rule; and

(3) the cattle or sheep are legally branded or in the case of horses they are branded or identified by another means in accordance New Mexico statutes or board rules; and

(4) such person first notifies the inspector or proper authority at such slaughter facility prior to such intended movement and, provides that person with the brand, number, description of such livestock, the name of the person owning said livestock; and

(5) provided further the inspector, his deputy, or proper authority shall confirm the information with the person intending to transport such livestock to be slaughtered and shall record that information on a form approved by the board and issue a non-transferable permit number to the person stating the date the livestock will be slaughtered and said permit shall be void after that date; and

(6) upon request by any livestock inspector, the person transporting livestock under a non-transferable permit number, shall reveal such number, the name of the proper authority or inspector issuing the number, and such other information as is necessary to verify the legality of the livestock movement; and

(7) upon receiving any livestock moved or transported under a telephone authorization number the person receiving such livestock to be slaughtered shall maintain them separately and shall notify the livestock inspector that such livestock are available for inspection; such livestock shall remain separate from any other livestock and shall not be slaughtered until such time as an inspector or his deputy has completed an actual inspection as provided in Sections 77-9-41 and 77-10-5, NMSA 1978, and a certificate of inspection has been issued to the owner or his agent; and

(8) should any person receiving a telephone authorization to transport livestock to be slaughtered transport any livestock not in his ownership, said person will be responsible to the rightful owner and will transport livestock back to the point of origin to the rightful owner, under the direction and supervision of the New Mexico livestock board; and

(9) all fees and expenses incurred in returning livestock to the rightful owner will be the responsibility of the shipper or persons who caused the animals to be shipped in error.

E. Fees for inspection of any livestock transported or moved pursuant to a confidential authorization number shall be due and payable at the time of the actual inspection and issuance of inspection certificate. Any unpaid fees shall constitute a lien on all such livestock in accordance with Section 77-9-38, NMSA 1978, until such fees are paid.

F. Consignments of livestock grossing under \$150.00 at auction markets are exempt from service charges.

[21.32.3.9 NMAC - Rp, 21 NMAC 32.3.9, 5/28/2004]

21.32.3.10 EXPORTATION OF SHEEP AND GOATS:

A. All sheep and goats being moved out of the state of New Mexico shall be inspected for brands and marks by an inspector of the New Mexico livestock board.

B. The transportation of New Mexico sheep or goats to points in other states without proper release and inspection provided by law and these regulations may result in the shipper or owner, becoming subject to prosecution and fined upon conviction as provided by law.

C. For the exportation of sheep or goats to other states, inspectors are required to check with the shipper to ascertain his familiarity with import requirements of the state of destination.

D. An inspection fee will be charged to the shipper on all sheep and goats leaving New Mexico, except sheep or goats which are leaving this state directly from a licensed

auction market and upon which the inspection fees have been collected as required for the inspection of sheep and goats passing through such markets.

E. A brand and health certificate issued by the New Mexico livestock board inspector is required for all movements of sheep and goats from the livestock inspection district of origin, except as provided by Subsection C of 21.32.3.9 NMAC above.

[21.32.3.10 NMAC - Rp, 21 NMAC 32.3.10, 5/28/2004]

21.32.3.11 INSPECTION AND TRANSPORTATION OF BABY CALVES:

A. Notwithstanding the provisions of 21.32.3.9 NMAC, any owner of a dairy or feedlot may sell calves born to his or her cows and commit the calves to transportation without prior inspection by a duly authorized livestock inspector of the New Mexico livestock board, provided the conditions of this section (21.32.3.11 NMAC) are met.

B. All calves that are to be sold and moved under the provisions of this section shall be eartagged with an approved eartag, which shall clearly and conspicuously show the owner of the calf prior to sale. The owner may be shown by use of the actual name to which the brand is recorded, brand image or brand master number.

C. All calves that are to be sold and moved under the provisions of this section shall be eartagged and accounted for by eartag number on the approved bill of sale distributed by the New Mexico livestock board for dairy and feedlot calves. The bill of sale shall contain the information required by Section 77-9-22, NMSA 1978, and shall include the eartag number, description of the individual calf by sex, age, and breed (color). The bill of sale shall list the destination to which the calves are to be shipped, the fees charged for the New Mexico livestock board and the beef checkoff, a statement that the calf inspection/bill of sale form is not valid for shipment out of New Mexico, and the form will be serial numbered for accountability. An individual form showing the sale of calves shall be used for no more than one destination. Separate destinations shall not be mixed on one form.

D. The bills of sale used to document the sale of baby calves in accordance with this section, shall be obtained from the New Mexico livestock board inspector.

E. The eartagging of calves in accordance with this section shall occur prior to the calf's departure from the dairy or feedlot of origin.

F. The bill of sale required by this section shall be completed upon change of ownership and in no case after change of possession.

G. The approved eartags used to identify the dairy or feedlot of origin and the individual calf may be procured from any source provided the eartag meets the minimum requirements of information in Subsection B of 21.32.3.11 NMAC above.

H. The dairy or feedlot owner is responsible for maintaining the serial numbered forms and all monies collected for the month. The New Mexico livestock board inspector will meet with the dairy owner monthly to reconcile the month's activities, update the form inventory, and collect all monies accumulated for the preceding month.

I. The New Mexico livestock board inspector shall record the totals to his/her monthly report to the main office of the board and deposit, to the main office in the normal manner, all monies collected.

J. The New Mexico livestock board inspector is responsible for maintaining inventory accountability and ensuring the forms issued to the dairy or feedlot owner are listed by serial number sequence on an issue document signed by that dairy or feedlot owner and the inspector issuing the forms. The original of that issue document will be held by the inspector and a copy supplied to the dairy or feedlot owner.

K. A fee set by the New Mexico livestock board shall be charged for each calf tagged and forms inspected. The fees are payable at the time the inspector inspects the forms and accomplishes the monthly reconciliation with the dairy or feedlot owner.

L. The beef checkoff shall be collected in accordance with state and federal laws and regulations. The amount collected will be the amount set by federal mandate through the Beef Promotion and Research Act and order.

[21.32.3.11 NMAC - Rp, 21 NMAC 32.3.11, 5/28/2004; A, 07/15/2013]

21.32.3.12 RE-SALE OF BABY CALVES:

A. All baby calves identified under the provisions of 21.32.3.11 NMAC, and which are re-sold, must have the original eartag intact and readable. Buyer must maintain a record keeping system approved by the livestock board. This record keeping system must be capable of identifying premise of origin and other owners, (if any), and any corresponding bill of sales in less than 24 hours. The seller must furnish the buyer a copy of the baby calf bill of sale from the original owner, which identifies the calf by eartag number. All subsequent buyers of the calf will maintain the eartag and a copy of the corresponding original bill of sale, provided by the seller.

B. Any sale of calves after being branded and the brands being peeled and healed, will be accomplished in the same manner as described in Section 77-9-21 through 77-9-23, NMSA 1978, and a tag leading to a premise of origin must be retained in the calf's ear.

C. All baby calves that are not part of a cow-calf pair imported into New Mexico from outside the state must be ear tagged from the premise of origin.

[21.32.3.12 NMAC - Rp, 21 NMAC 32.3.12, 5/28/2004; A, 10/30/2008]

21.32.3.13 TRANSPORTATION PERMITS FOR HORSES:

Pursuant to Section 77-9-42 NMSA, 1978 all horses, mules or asses must be accompanied by a brand certificate. Exceptions to the brand certificate may be permitted as follows:

A. form 1-H (permanent hauling permit): an owner's transportation permit issued in lieu of a brand certificate that is valid as long as the horse, mule or ass described in the certificate remains under the ownership of the person to whom the permit was issued;

B. form 1-HA (annual hauling permit): an owner's transportation permit issued in lieu of a brand certificate that is renewable annually and is transferable with the change of ownership subject to issuance of a transfer number issued by the NMLB; the 1-HA will not be valid without a current transfer number, which constitutes a permit when issued by and on file with the NMLB.

[21.32.3.13 NMAC - N, 9/15/2010]

PART 4: IMPORT REQUIREMENTS (TRANSPORTATION OF LIVESTOCK INTO NEW MEXICO)

21.32.4.1 ISSUING AGENCY:

New Mexico Livestock Board, 300 San Mateo, NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone: (505) 841-6161

[3/1/99; 21.32.4.1 NMAC - Rn, 21 NMAC 32.4.1, 12/31/2007]

21.32.4.2 SCOPE:

All owners, transporters or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason. Additional requirements for livestock owners governing livestock business activities can be found in 21 NMAC 30, 33 and 35.

[3/1/99; 21.32.4.2 NMAC - Rn, 21 NMAC 32.4.2, 12/31/2007]

21.32.4.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9 and 12, Section 77-3-1 and Section 77-9-28 NMSA 1978

[3/1/99; 21.32.4.3 NMAC - Rn, 21 NMAC 32.4.3, 12/31/2007]

21.32.4.4 DURATION:

Permanent

[3/1/99; 21.32.4.4 NMAC - Rn, 21 NMAC 32.4.4, 12/31/2007]

21.32.4.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of the section.

[3/1/99; 21.32.4.5 NMAC - Rn & A, 21 NMAC 32.4.5, 12/31/2007]

21.32.4.6 OBJECTIVE:

To establish ownership and health rules governing transportation of livestock within and into New Mexico.

[3/1/99; 21.32.4.6 NMAC - Rn, 21 NMAC 32.4.6, 12/31/2007]

21.32.4.7 DEFINITIONS:

- A. "Board" means the New Mexico livestock board.
- B. "Director" means the executive director of the New Mexico livestock board.
- C. "Holstein cross" means bovines that have some percentage of holstein or other dairy breed in their genetic lineage.
- D. "Inspector" means any duly authorized or commissioned officer of the livestock board.
- E. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.
- F. "New Mexico Livestock" means any livestock raised or pastured or fed within the state of New Mexico.
- G. "Person" means an individual, partnership, association or operation.
- H. "Quarantine" or "quarantined area" means any area within the state of New Mexico whose physical boundaries have been established by order of the board or a duly authorized agent of the board for the purpose of controlling the movement of livestock to prevent the spread of disease.
- I. "Quarantined livestock" means any livestock found by the board or its duly authorized agent to be exposed or affected by a contagious or infectious disease and the order of restricted movement is imposed.
- J. "Sealed vehicle" means a vehicle for transporting livestock that has its gates or doors closed and which gates or doors have an attached strip of metal, which is

numbered for identification. The metal strip is attached to the gates or doors in a manner that would break the "seal" if the vehicle were to be opened.

K. "Telephone permit" means the authorization to transport livestock to an approved New Mexico auction without prior inspection, by use of a confidential number issued to the owner or owner's agent, which identifies the specific animals and shipment to a specific auction.

L. "Transient livestock" means livestock transported through the state of New Mexico from another state or country whose destination is not within the state of New Mexico.

M. "Transient livestock with New Mexico destination" means livestock imported in the state of New Mexico from another state or country or being transported within the state and not having reached the final destination for feed or pasture purpose.

N. "Universal swine earnotch (1-3-9) system" means the system of cutting notches in the ears of swine, at specific locations on the ear, which correspond to number values. The notches' values added together provide identification numbers for the pig. The right ear's value shall be the litter number. The left ear shall be the individual pig number in that litter.

[3/1/99; 21.32.4.7 NMAC - Rn, 21 NMAC 32.4.7, 12/31/2007; A, 10/30/2008]

21.32.4.8 IMPORT REQUIREMENTS FOR CATTLE, INCLUDING BISON:

A. A health certificate or other approved New Mexico livestock board document from the state of origin and a New Mexico entry permit are required on all shipments of cattle entering New Mexico.

B. Upon arrival at destination, the owner or agent must notify the New Mexico livestock board inspector in order to make the arrangements for inspection of the shipments prior to commingling with other cattle or release to pasture.

C. The inspection will be for the purpose of determining that the shipment has met all applicable import requirements including but not necessarily limited to: scabies dipping, brucellosis testing, tuberculosis testing, brand regulations and inspection to confirm the shipment does conform to the description of the animals as stated on the required permit and health certificate.

D. The test charts and dipping certificates, when applicable, shall remain with the shipment upon arrival; otherwise the shipment will be quarantined until evidence has been presented.

E. There will be an import inspection charge to be paid at completion of the inspection, except when there is a waiver of import inspection and/or fees for import

cattle moving in accordance with a commuter agreement as described in Subsection F of 21.32.3.8 NMAC, below.

F. Import inspections and/or fees will be waived upon request of the owner of bona fide and approved Colorado or Arizona and New Mexico commuter cattle when that owner brings commuter cattle to New Mexico as part of his/her normal commuter cattle operation and when the following conditions are met:

(1) the owner notifies the appropriate New Mexico livestock board inspector prior to movement and furnishes the appropriate New Mexico livestock board inspector with a valid copy of the Colorado or Arizona export inspection within forty-eight hours (two days) after arrival in New Mexico; and

(2) the owner understands that the New Mexico livestock board inspector may conduct a spot check inspection of arriving cattle for which no fee will be charged; and

(3) Colorado and Arizona maintain at least "A" status in the brucellosis eradication program; and

(4) the Colorado board of stock inspection or the Arizona livestock board has conducted a visual and complete inspection of the commuter herd owner's cattle departing Colorado or Arizona; and

(5) all of the cattle arriving from Colorado or Arizona are owned by the commuter herd operator and are those cattle and their offspring, which were originally shipped from New Mexico to Colorado or Arizona and are now returning to New Mexico; none of the cattle arriving are cattle which were introduced into the herd in Colorado or Arizona from sources other than the owner's bona fide and approved commuter herd; and

(6) all health requirements for commuter herd operations are met, to include necessary health certificates and permits.

[3/1/99; 21.32.4.8 NMAC - Rn, 21 NMAC 32.4.8, 12/31/2007; A, 10/30/2008; A, 01/31/2014]

21.32.4.9 BRUCELLOSIS TEST REQUIREMENTS FOR CATTLE AND BISON:

A. For all states, regardless of brucellosis class, cattle originating from any "brucellosis certified free" herd may enter New Mexico without an entry test, provided the following information is recorded on the official health certificate:

(1) individual identification of each animal; and

(2) herd certificate number; and

(3) date of the last herd test.

B. There is no brucellosis test required for spayed heifers and steers.

C. Brucellosis free states: All cattle must meet federal interstate regulation requirements for "class free" states, in addition to New Mexico requirements.

D. Class A states: All females and bulls over 18 months of age must be tested and negative within 30 days prior to entry into New Mexico, except heifers that are officially vaccinated for brucellosis and under 24 months of age if beef and under 20 months of age if dairy. All cattle must meet federal interstate requirements for "class A" states, in addition to New Mexico requirements.

E. Class B states: All females and breeding bulls over 8 months of age must be tested and negative within 30 days prior to entry into New Mexico, except heifers that are officially vaccinated for brucellosis and under 24 months of age if beef, and under 20 months of age if dairy. All cattle must meet federal interstate requirements for "class B" states, in addition to New Mexico requirements. Test eligible animals over 8 months of age will be quarantined at destination for a retest for brucellosis at the owner's expense, unless waived by the board, between 60 and 90 days after the entry test date. Untested test eligible animals may go direct to slaughter or direct to a quarantined feedlot provided they are "S" branded and move on an "S brand" permit or they move direct to slaughter in a "sealed" vehicle. No heifer calves can move from infected herds, unless they are "S" branded or spayed. "S" branded heifers from infected herds can go only to slaughter or quarantined feedlot. Spayed heifers will be treated like steers. Special permits may be granted by the state veterinarian to spay heifers on arrival.

F. Testing or vaccination requirements for class A and class B states are not required when going directly from the farm or ranch of origin to a federally approved slaughter plant for slaughter or to a New Mexico quarantined feedlot or when going to an approved market where the qualification for brucellosis will be handled at the market.

G. Class C states: No sexually intact cattle, regardless of age, will be allowed to be moved into New Mexico, except "S" branded animals going to slaughter or quarantined feedlots. The restrictions will not affect spayed heifers or steers. The only cattle exempt from these requirements are cattle from "certified brucellosis free herds," which must have a negative test within 30 days prior to entry. Special permits may be granted by the state veterinarian to spay heifers on arrival.

H. All tests shall be at the owners expense.

[3/1/99; 21.32.4.9 NMAC - Rn, 21 NMAC 32.4.9, 12/31/2007]

21.32.4.10 TUBERCULOSIS TEST REQUIREMENTS FOR CATTLE AND BISON:

All sexually intact import dairy cattle 4 months of age or older **must** have a negative tuberculin test within 30 days prior to entry **regardless** of the status of the state of origin or TB free herd. Exception: May be consigned to a licensed New Mexico auction, where they will be "N" branded, sold for slaughter only and sent directly to slaughter or a licensed New Mexico feedlot.

[3/1/99, 2/29/2000; 21.32.4.10 NMAC - Rn & A, 21 NMAC 32.4.10, 12/31/2007; A, 12/15/2011; A, 01/31/2014]

21.32.4.11 TUBERCULOSIS REQUIREMENTS FOR INTERNATIONAL IMPORTS:

A. All sexually intact cattle, from any foreign country or part thereof, with no recognized comparable tuberculosis status that are to be held for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be under quarantine on the first premises of destination in New Mexico pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival and that test shall be performed at the owner's expense.

B. All sexually intact cattle, from any foreign country or part thereof, with no recognized comparable tuberculosis status that are destined for immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be tested at the port-of-entry into New Mexico under the supervision of the port veterinarian and these cattle shall be moved to the slaughter facility or quarantined feedlot only in sealed trucks with a permit issued by the New Mexico livestock board or USDA personnel and, if destined to a quarantined feedlot, shall be "S" branded upon arrival at the feedlot.

C. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have fully implemented the "control/preparatory" phase of the Mexican tuberculosis eradication program by September 1, 1995, after having been tested negative for tuberculosis in accordance with the *Norma Oficial Mexicana (NOM)* within sixty (60) days prior to entry into the United States and may then move without further restriction within New Mexico.

D. Steers and spayed heifers may not be imported into New Mexico from Mexican states that have not implemented the "control/preparatory" phase of the Mexican tuberculosis eradication program by September 1, 1995.

E. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have fully implemented the "eradication" phase of the Mexican tuberculosis eradication program by March 1, 1997, after having been tested negative for tuberculosis in accordance with the *Norma Oficial Mexicana (NOM)* within sixty (60) days prior to entry into the United States or that originate from herds within those states that are equal to United States accredited TB-free herds and that are moved directly from the herd of origin across the

border as a single group and not co-mingled with other cattle prior to arriving at the border and then may move within New Mexico without further restriction.

F. Steers and spayed heifers from Mexico may enter from Mexican states that have been determined by the New Mexico livestock board, acting on the recommendation of the joint United States and Mexico (bi-national) tuberculosis committee, to have achieved accredited TB-free status and move directly into New Mexico without further testing or restriction provided they are moved as single group and not co-mingled with other cattle prior to arriving at the border.

G. Holstein and Holstein cross steers and Holstein and Holstein cross spayed heifers from Mexico are prohibited from entering New Mexico, regardless of test history.

H. Cattle entering from Mexico for the purpose of feeding and return to Mexico or slaughter, under the federal (United States) in-bond program, are exempt from the requirements above in Subsections A through G of 21.32.4.11 NMAC.

I. Rodeo stock from Mexico shall be tested for tuberculosis by a United States accredited veterinarian or under the supervision of a USDA-APHIS port veterinarian, within twelve (12) months prior to their utilization as rodeo or roping stock and retested for tuberculosis every twelve (12) months thereafter.

J. The provisions of this section are intended solely for cattle born and raised in Mexico or within the United States or Canada and which were exported to Mexico, in accordance with appropriate rules and regulations.

[3/1/99; 21.32.4.11 NMAC - Rn, 21 NMAC 32.4.11, 12/31/2007; A, 10/30/2008]

21.32.4.12 IMPORT REQUIREMENTS FOR SHEEP AND GOATS:

A. All sheep and goats entering the state of New Mexico must be accompanied by a permit previously procured by letter, telegraph, telephone or verbally requested from the office of the New Mexico livestock board in Albuquerque or from an officer of the board specifically authorized to issue entrance permits.

B. Sheep and goats entering the state of New Mexico must be accompanied by an official health certificate issued by a state inspector of the state of origin, an inspector of the United States department of agriculture or by a recognized and accredited veterinarian attesting the animals in the shipment are apparently free from symptoms of infectious or contagious disease. Additionally, all health certificates for sheep shall contain a statement by the certifying official that the sheep are free of scabies, contagious ovine ecthyma (sore mouth) and foot rot. The health certificate shall also certify that the sheep have not been exposed to blue tongue within thirty days of movement and all breeding rams shall be certified as individually examined and free of gross lesions of ram epididymitis.

C. Shippers and owners of sheep or goats imported into the state of New Mexico must notify the livestock inspector at destination upon arrival in order that the shipment can be inspected for health as required by law.

[3/1/99; 2/29/00; 21.32.4.12 NMAC - Rn, 21 NMAC 32.4.12, 12/31/2007]

21.32.4.13 IMPORT REQUIREMENTS FOR EQUIDAE:

A. All equidae, which includes horses, mules and asses, entering New Mexico must be accompanied by an official health certificate attesting the equidae in the shipment are free from symptoms of infectious or contagious disease.

B. All equidae entering the state of New Mexico must be tested and negative, within 12 months prior to entry, for equine infectious anemia (EIA) using the agar gel immunodiffusion (AGID) test, also known as the "Coggins" test or the competitive enzyme-linked immunosorbent assay (CELISA) test or other USDA licensed test approved by the board. The date of the test, the laboratory and the results must be shown on the required health certificate. Individual identification and/or description of the animal(s) must also be provided on the health certificate.

C. Foals, nursing and accompanied in shipment by a negative (EIA) tested dam and equidae consigned directly to slaughter in New Mexico are not required to be tested for EIA. If the dam does not accompany the foal in shipment, the foal must be tested negative prior to entry.

D. All testing for EIA must be performed at laboratories approved by USDA for such testing. All samples must be collected by an accredited veterinarian or full-time state or federal regulatory personnel.

E. The state veterinarian may grant a special permit to enter the state of New Mexico for equidae that have a test pending. This permit must be requested and granted prior to entry.

[3/1/99; 21.32.4.13 NMAC - Rn, 21 NMAC 32.4.13, 12/31/2007]

21.32.4.14 IMPORT REQUIREMENTS FOR SWINE:

A. All swine entering New Mexico must be accompanied by an approved certificate of veterinary inspection showing individual identification and must originate from a herd or area not under quarantine. All swine must have a prior entry permit from the New Mexico livestock board. All certificates must certify that the swine have not been fed raw garbage.

B. All swine, regardless of age, must prove negative to a brucellosis test conducted within 30 days or originate from a brucellosis "validated herd" and have the date of the

last herd test and the herd certificate number indicated on the approved certificate of veterinary inspection.

C. All swine, regardless of age, must prove negative to an official pseudorabies test conducted within 30 days or originate from a "qualified pseudorabies free herd" and have the date of the last herd test and the herd certificate number indicated on the approved certificate of veterinary inspection.

D. All swine must be identified with an official ear notch (1-3-9-27-81 system), metal or plastic tag. These are the only acceptable means of identification. Swine consigned directly to specifically approved feedyards (quarantined feeding facilities) or recognized slaughtering establishments are not required to meet the individual identification requirements.

[3/1/99; 21.32.4.14 NMAC - Rn, 21 NMAC 32.4.14, 12/31/2007]

21.32.4.15 SCABIES REGULATIONS FOR IMPORT CATTLE:

A. All cattle, except those defined in 21 NMAC 32.4.15.2. [now Subsection B of 21.32.4.15 NMAC] below, imported into the state of New Mexico from areas defined as high risk scabies infected areas shall be officially treated with a USDA approved pesticide for scabies. This treatment may be accomplished at origin, en route or at destination.

B. Cattle not required to be treated if entering New Mexico from high risk scabies areas include the following:

- (1) cattle consigned for immediate slaughter and will be slaughtered within seven days after entering New Mexico; or
- (2) dairy cattle used for milk production (these cattle will be inspected only); or
- (3) calves under three weeks of age (these calves will be inspected only); or
- (4) cattle consigned directly to a New Mexico livestock auction market for sale and immediate delivery to slaughter; or
- (5) commuter cattle with a completed and approved "Colorado-New Mexico commuter cattle agreement."

C. The "high risk scabies infected areas" are to be determined by the director and the state veterinarian of the New Mexico livestock board.

D. Scabies treatment of New Mexico cattle moving in commerce will not be initiated by the board until, or unless the incidence of the disease within the state of New Mexico

warrants such action, as determined by the appointed members of the New Mexico livestock board.

[3/1/99; 21.32.4.15 NMAC - Rn, 21 NMAC 32.4.15, 12/31/2007]

21.32.4.16 INTERNATIONAL IMPORTS OF LIVESTOCK:

All livestock entering New Mexico from any foreign country and not originating from that country must have met all of the entry requirements that are in effect for each country through which the livestock have passed en route to the United States and have met the requirements for import as required by the United States department of agriculture that would be imposed upon those livestock had they been imported directly from the country of origin, unless specifically determined otherwise by the appointed members of the livestock board.

[3/1/99; 21.32.4.16 NMAC - Rn, 21 NMAC 32.4.16, 12/31/2007]

21.32.4.17 SCRAPIE REGULATIONS FOR IMPORT SHEEP:

A. The requirements of this section are in addition to the requirements set forth in 21 NMAC 32.4.12 [now 21.32.4.12 NMAC] above and are intended to prevent the spreading of scrapie to New Mexico.

B. In addition to the information required by 21 NMAC 32.4.12 [now 21.32.4.12 NMAC], all breeding sheep (fine wool, medium wool or crossbreeds) entering New Mexico must have the following statement entered on the health certificate:

(1) "The sheep on this certificate originate from a flock in which scrapie has not been diagnosed in the last five years and has not been identified as a trace or source flock and there is no evidence of exposure to scrapie".

(2) The owner or owner's operator or agent shall print and sign his name under this statement attesting to the truthfulness of the statement.

C. Medium wool and crossbred sheep must be individually identified with an ear tag or tattoo (paint and chalk brands are not acceptable) and that ID shall be placed on the health certificate.

D. Commuter sheep imported into New Mexico from a contiguous state, without change of ownership and as part of the normal commuting operation, may enter without meeting the additional scrapie requirements of 21 NMAC 32.4.17.1 through 17.3 [now Subsections A through C of 21.32.4.17 NMAC] above, provided the owner has a prior approved commuter herd permit from the state veterinarian of New Mexico.

E. Sheep entering New Mexico for grazing or feedlot must have a health certificate that includes the following statement:

(1) "The sheep on this certificate originate from a flock in which scrapie has not been diagnosed in the last five years and has not been identified as a trace or source flock and there is no evidence of exposure to scrapie".

(2) The owner or owner's operator or agent shall print and sign his name under this statement attesting to the truthfulness of the statement.

F. Slaughter sheep, consigned directly to slaughter, must only meet the requirements of 21 NMAC 32.4.12 [now 21.32.4.12 NMAC] and are not required to meet the additional scrapie requirements of this section.

[2/29/2000; 21.32.4.17 NMAC - Rn, 21 NMAC 32.4.17, 12/31/2007]

PART 5: EXHIBITION LIVESTOCK [REPEALED]

[This part was repealed on July 15, 2014.]

PART 6: HORSE SHELTER RESCUE FUND

21.32.6.1 ISSUING AGENCY:

New Mexico Livestock Board

[21.32.6.1 NMAC - N, 01/31/14]

21.32.6.2 SCOPE:

This rule establishes procedures for the distribution by the New Mexico Livestock Board of monies from the horse shelter rescue fund.

[21.32.6.2 NMAC - N, 01/31/14]

21.32.6.3 STATUTORY AUTHORITY:

Sections 77-2-1, 77-2-7, 77-2-30 and 77-2-32, NMSA 1978. [21.32.6.3 NMAC - N, 01/31/14]

21.32.6.4 DURATION:

Permanent.

[21.32.6.4 NMAC - N, 01/31/14]

21.32.6.5 EFFECTIVE DATE:

01-31-14 unless a later date is cited at the end of a section.

[21.32.6.5 NMAC - N, 01/31/14]

21.32.6.6 OBJECTIVE:

To establish rules to administer the horse shelter rescue fund and to provide methods and procedures for the distribution by the board of monies in that fund to horse rescue and retirement facilities that are registered by the board pursuant to Section 77-2-30, NMSA 1978, as implemented by 21.30.5 NMAC.

[21.32.6.6 NMAC - N, 01/31/14]

21.32.6.7 DEFINITIONS:

"Registered horse rescue or retirement facility" means such facility that has a current registration issued by the New Mexico livestock board to operate as a horse rescue or retirement facility.

[21.32.6.7 NMAC - N, 01/31/14; A, 07/15/14]

21.32.6.8 DISBURSEMENTS FROM FUND:

A. Subject to the availability of money in the horse shelter rescue fund, monies in the fund may be distributed to reimburse registered horse rescue or retirement facilities to defray the feeding and care expenses incurred by those facilities whenever they provide care and feed to animals that have been placed there in accordance with Chapter 77, Articles 2 through 18, NMSA 1978, after owner surrender, the estray process or court-ordered disposition.

B. Subject to the availability of money in the horse shelter rescue fund, monies in the fund may be distributed to registered horse rescue or retirement facilities, which make application to the board for a grant from the fund, in such amounts as the board determines, in its discretion, are reasonable and appropriate.

(1) The board shall establish a committee to review such grant applications.

(2) A final decision on all grant applications shall be voted on by the board.

C. In no event is the board obligated to distribute monies for the purposes described in Subsections A and B above or beyond such amount that the board determines, in its discretion, is available for expenditure from the horse shelter rescue fund.

[21.32.6.8 NMAC - N, 01/31/14; A, 07/15/14]

PART 7-9: [RESERVED]

PART 10: LIVESTOCK BOARD FEES

21.32.10.1 ISSUING AGENCY:

New Mexico Livestock Board, 300 San Mateo, NE, Suite 1000, Albuquerque, New Mexico 87108, Telephone: (505) 841-6161.

[3/1/1999; 21.32.10.1 NMAC - Rn, 21 NMAC 32.10.1, 7/31/2000]

21.32.10.2 SCOPE:

All owners, transporters, or handlers of livestock in the State of New Mexico and those that apply to bring livestock into the state for any reason that receive inspection and other services of the New Mexico Livestock Board.

[3/1/1999; 21.32.10.2 NMAC - Rn, 21 NMAC 32.10.2, 7/31/2000]

21.32.10.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9, & 12, 77-2-29, 77-8-3, 77-8-7, 77-9-10, 77-9-16, 77-9-29, 77-9-38, 77-9-42, 77-10-4, NMSA 1978.

[3/1/1999; 21.32.10.3 NMAC - Rn 21 NMAC 32.10.3, 7/31/2000]

21.32.10.4 DURATION:

Permanent.

[3/1/1999; 21.32.10.4 NMAC - Rn, 21 NMAC 32.10.4, 7/31/2000]

21.32.10.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of the section.

[3/1/1999; 21.32.10.5 NMAC - Rn 21 NMAC 32.10.5, 7/31/2000; A, 9/15/2010]

21.32.10.6 OBJECTIVE:

To establish fees for the services provided by the New Mexico livestock board.

[3/1/1999; 21.32.10.6 NMAC - Rn, 21 NMAC 32.10.6, 7/31/2000]

21.32.10.7 DEFINITIONS:

A. "Board" means the New Mexico livestock board.

B. "Holding brand" means a brand issued pursuant to Section 77-9-16, NMSA 1978, usually for transient livestock in the state of New Mexico.

C. "Inspector" means any duly authorized or commissioned officer of the livestock board.

D. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

E. "Estray" means livestock of unknown ownership pursuant to Section 77-13-1 through 77-13-10, NMSA 1978.

[3/1/1999; 21.32.10.7 NMAC - Rn 21 NMAC 32.10.7, 7/31/2000]

21.32.10.8 LIVESTOCK INSPECTION FEES:

Effective September 15, 2010, the following are the inspection charges for services of the New Mexico livestock board, pursuant to Sections 77-2-29 and 77-2-7, NMSA 1978:

A. Cattle and bison inspection fee	\$ 0.50 per head
B. Horse inspection fee	\$ 0.50 per head
C. Hide inspection fee	\$ 0.50 per hide
D. Sheep and goat inspection fee	\$ 0.16 per head
E. Pelt inspection fee	\$ 0.12 per pelt
F. Swine inspection fee	\$ 1.00 per head
G. Service charge for field inspection	\$ 10.00 per inspection
H. Youth exhibition animals congregated at a pre-arraigned site	\$5.00 per inspection
I. Service charge at livestock market	\$ 0

J. The payment, in lieu of fees, on the receipt of livestock at an auction market, pursuant to Sections 77-10-4 and 77-2-29, NMSA 1978, shall be the same as the amounts listed in this section.

K. Impoundment fee \$10.00 per head per day, pursuant to Section 7-14-36 and Subsection J of Section 77-2-29 NMSA 1978.

L. Transportation fee not to exceed \$1.75 per loaded mile for the hauling of impounded trespass livestock to a livestock auction market facility or receiving station pursuant to Section 77-14-36 NMSA 1978. In the event a semi-tractor-trailer must be hired to haul livestock, a reasonable fee charged by the company shall be paid. Payment for the transportation fee shall have prior approval of the inspector from the originating district of the impounded livestock.

[3/1/1999; 21.32.10.8 NMAC - Rn & A, 21 NMAC 32.10.8, 7/31/2000; A, 5/15/2001; A, 7/9/2001; A, 10/31/2002; A, 9/15/2010; A, 1/12/2021]

21.32.10.9 TRANSPORTATION PERMITS FOR HORSES:

The charge for issuance of a transportation permit (form 1-H), pursuant to Section 77-9-42, NMSA 1978, is twenty five dollars (\$25.00). The charge for issuance of an annual transportation permit (form 1-HA) will be fifteen dollars (\$15.00), provided however, that no fee is charged for issuance of a transfer number to a subsequent owner, which is valid for the unexpired portion of the year for which an annual fee has been paid when a transfer of ownership occurs during the year for which an annual fee has already been paid. There will be a service charge in the amount set by Subsection A of 21.32.10.8 NMAC, for a field inspection, for each form 1-H or form 1-HA issued, regardless of where the inspection occurs. The fee for 1-H reproduction is ten dollars (\$10.00). The 1-HA cannot be reproduced.

[3/1/1999; 21.32.10.9 NMAC - Rn & A, 21 NMAC 32.10.9, 7/31/2000; A, 6/14/2001; A, 9/15/2010]

21.32.10.10 ESTRAY CHARGES:

A. There will be an administrative charge of ten dollars (\$10.00) for office handling of each estray report.

B. Charges for advertising estrays pursuant to Section 77-13-4 will be computed by dividing the total cost of the advertisement by the individual reports within that advertisement and that resulting amount shall be charged to the proceeds being held for a particular estray.

[3/1/1999; 21.32.10.10 NMAC - Rn, 21 NMAC 32.10.10, 7/31/2000]

21.32.10.11 BRAND RECORDING FEES:

A. The fee for recording, a New Mexico livestock brand, pursuant to Sections 77-2-7.4 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

B. The fee for re-recording a New Mexico livestock brand, pursuant to Sections 77-2-7.12 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

C. The fee for transferring ownership of a recorded brand, pursuant to Sections 77-2-7.1 and 77-2-29, NMSA 1978, is one hundred dollars (\$100.00).

D. The fee for recording, or re-recording, a holding brand, pursuant to Sections 77-2-7.9 and 77-9-29, NMSA 1978, is one hundred dollars (\$100.00).

E. For the purpose of affording convenience and ease to brand owners and to lessen the administrative burden and expense to the board, and recognizing that the board causes brand re-recordings to occur every three years as permitted by Section 77-2-7.12, NMSA 1978, an option is offered to brand owners to re-record in optional periods of three years, six years, nine years or twelve years, according to the following

fee schedule:**(1)** The fee to re-record for a three-year period is one hundred dollars (\$100.00), payable at the commencement of that re-recording period.

(2) If re-record is desired for a six-year period, the fee is two hundred dollars (\$200.00), payable at the commencement of that re-recording period.

(3) If re-record is desired for a nine-year period, the fee is three hundred dollars (\$300.00), payable at the commencement of that re-recording period.

(4) If re-record is desired for a twelve-year period, the fee is four hundred dollars (\$400.00), payable at the commencement of that re-recording period.

F. Brand owners are responsible for updating their current address with the board in order to receive timely communication regarding their re-recording opportunities and obligations.

G. In accordance with Sections 77-2-7.9 and 77-2-29 NMSA 1978, owners of holding brands who desire to extend the duration of a holding brand beyond one year must re-apply annually and must pay the annual renewal fee of one hundred dollars (\$100.00).

H. When owners of dairy cattle and owners of feedlots re-record their brand or register the alternative to branding as permitted by Section 9 and 10 of 21.32.2 NMAC, they must utilize the same re-recording period chosen for brand re-recording. As provided by those rules, the fee for registering the alternative is the same as, and is in addition to, the fee for brand re-recording.

[3/1/1999, 21.32.10.11 NMAC – Rn & A, 21 NMAC 32.10.11, 7/31/2000; A, 7/1/2005; A, 7/1/2011; A, 1/31/2014]

21.32.10.12 COPY SERVICES:

A. The fee for making copies of any documents using the agency's copiers, shall be fifty cents per page, either 8 ½ by 11 or 8 ½ by 14 plus postage.

B. No documents of the livestock board will be surrendered to anyone, other than employees of the board, for the purpose of removing the documents from the office of the board in order to have copies made.

C. The fee for making certified copies shall be three dollars (\$3.00) for certification and fifty cents (\$0.50) per page plus postage.

D. The fee for re-producing 3x5 inch or 4x6 inch photographs shall be ten dollars (\$10.00) for each copy, and larger sizes will be the cost of re-producing plus a ten dollar (\$10.00) office fee per request plus postage.

E. The fee for providing an electronic copy on compact disk of brand owners names and address shall be one hundred dollars (\$100.00) per copy plus postage.

[3/1/1999, 21.32.10.12 NMAC - Rn, 21 NMAC 32.10.12, 7/31/2000; A, 7/9/2001; A, 10/31/2002]

21.32.10.13 ABATTOIRS, MEAT DEALERS AND STORAGE PLANTS:

A. Annual license fee for meat dealers, abattoirs and storage plants - one hundred dollars (\$100.00).

B. Annual licenses are valid from January 1st through December 31st.

C. License fees renewals are due thirty days before the expiration date of the current license.

D. Operating without a current license is prohibited.

[21.32.10.13 NMAC - N, 12/30/2004]

21.32.10.14 DEPOSITS:

A. New Mexico Livestock Board inspectors shall deposit all fees to designated banks no later than 10 days from the date of collection.

B. Designated banks may be proposed by the executive director and confirmed by majority vote of the board.

C. In the event of force majeure, the executive director may direct the use of alternative financial institutions until the next meeting of the board.

[21.32.10.14 NMAC – N, 8/1/2020]

CHAPTER 33: ABATTOIRS, MEAT DEALERS AND STORAGE PLANTS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: FOOD SAFETY, MEAT AND POULTRY INSPECTION

21.33.2.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.33.2.1 NMAC - N., 7/12/2022]

21.33.2.2 SCOPE:

Regulating the states meat and poultry inspection program.

[21.33.2.2 NMAC - N, 7/12/2022]

21.33.2.3 STATUTORY AUTHORITY:

Section 77-2-7 through 77-2-29; NMSA 1978, Section 77-3-9; NMSA 1978, Section 77-3-1 through Section 77-3-17; NMSA 1978, Section 77-9-1 through 77-9-63; NMSA 1978, Section 77-17-1 through Section 77-17-15; NMSA 1978, Section 30-18-1 through Section 30-18-14 NMSA 1978.

[21.33.2.3 NMAC - N, 7/12/2022]

21.33.2.4 DURATION:

Permanent.

21.33.2.4 NMAC - N, 7/12/2022]

21.33.2.5 EFFECTIVE DATE:

July 12, 2022 unless a later date is cited at the end of a section.

[21.33.2.5 NMAC - N, 7/12/2022]

21.33.2.6 OBJECTIVE:

The New Mexico livestock board (NMLB), through its meat and poultry inspection division (MPID), seeks to regulate the production of meat and poultry products under a state meat and poultry inspection (MPI) program with the purpose to protect consumers while encouraging the economic development of New Mexico agricultural businesses and communities.

[21.33.2.6 NMAC - N, 7/12/2022]

21.33.2.7 DEFINITIONS:

A. "MPID" is a division within the NMLB tasked with carrying out the provisions of laws relating to a state meat and poultry inspection (MPI) program.

(1) The MPID director may adopt additional policies and procedures as necessary to define, clarify and maintain agency functions for consistency with 9 CFR and related federal acts (*e.g.*, Meat Inspection Act (21 USCS Section 601 *et seq*); Poultry Products Inspection Act (21 USCS Section 451 *et seq*); Humane Methods of Slaughter Act (7 USC 1901 *et seq*).

(2) The MPID director, with board approval, may enter into agreements with other state, federal, local, tribal and other organizations as needed to further the purpose and provisions of these regulations, and the MPI program at large, to achieve "at least equal to" status.

B. "NMLB" is a political subdivision of the state of New Mexico tasked with protecting the livestock industry from theft and disease and protecting consumers from unwholesome meat products.

C. "Secretary" the term Secretary, when used in 9 CFR, shall mean the MPID director.

D. "Unwholesome" refers to anything that is or could reasonably contribute to a meat or poultry product being injurious to human health.

E. Provided that sufficient authority has been provided under state law as provided by the legislature, any ambiguity or conflict should be interpreted in a matter consistent with federal law.

F. Any regulation herein found to be defective by a court of competent jurisdiction shall be interpreted in a manner to leave remaining regulations intact.

[21.33.2 NMAC – N7/12/2022]

21.33.2.8 REGULATION OF MEAT AND POULTRY PRODUCTS:

The NMLB, through the MPID, adopts by reference the following federal regulations in the Code of Federal Regulations (CFR), as amended:

- A.** 9 CFR, Part 301, terminology; adulteration and misbranding standards;
- B.** 9 CFR, Part 303, exemptions;
- C.** 9 CFR, Part 304, application for inspection; grant of inspection;
- D.** 9 CFR, Part 305, official numbers; inauguration of inspection; withdrawal of inspection; reports of violation;
- E.** 9 CFR, Part 306, assignment and authorities of program employees;
- F.** 9 CFR, Part 307, facilities for inspection;
- G.** 9 CFR, Part 309, ante-mortem inspection;
- H.** 9 CFR, Part 310, post-mortem inspection;

I. 9 CFR, Part 311, disposal of diseased or otherwise adulterated carcasses and parts;

J. 9 CFR, Part 312, official marks, devices and certificates;

K. 9 CFR, Part 313, humane slaughter of livestock;

L. 9 CFR, Part 314, handling and disposal of condemned or other inedible products at official establishments;

M. 9 CFR, Part 315, rendering or other disposal of carcasses and parts passed for cooking;

N. 9 CFR, Part 316, marking products and their containers;

O. 9 CFR, Part 317, labeling, marking devices, and containers;

P. 9 CFR, Part 318, entry into official establishments; reinspection and preparation of products;

Q. 9 CFR, Part 319, definitions and standards of identity or composition. The following requirements shall apply except in the case of restaurant menus and signs.

R. 9 CFR, Part 320, records, registration, and reports;

S. 9 CFR, Part 321, cooperation with states and territories;

T. 9 CFR, Part 322, exports;

U. 9 CFR, Part 325, transportation;

V. 9 CFR, Part 327, imported products;

W. 9 CFR, Part 329, detention; seizure and condemnation; criminal offenses;

X. 9 CFR, Part 331, special provisions for designated states and territories; and for designation of establishments which endanger public health and for such designated establishments;

Y. 9 CFR, Part 335, rules of practice governing proceedings under the federal meat inspection act;

Z. 9 CFR, Part 350, special services relating to meat and other products;

AA. 9 CFR, Part 352, exotic animals and horses; voluntary inspection;

- BB.** 9 CFR, Part 354, voluntary inspection of rabbits and edible products thereof;
- CC.** 9 CFR, Part 355, certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition;
- DD.** 9 CFR, Part 362, voluntary poultry inspection regulations;
- EE.** 9 CFR, Part 381, poultry products inspection regulations;
- FF.** 9 CFR, Part 416, sanitation;
- GG.** 9 CFR, Part 417, hazard analysis and critical control point (HACCP) systems;
- HH.** 9 CFR, Part 418, recalls;
- II.** 9 CFR, Part 424, preparation and processing operations;
- JJ.** 9 CFR, Part 430, requirements for specific classes of product;
- KK.** 9 CFR, Part 441, consumer protection standards: raw products;
- LL.** 9 CFR, Part 442, quantity of contents labeling and procedures and requirements for accurate weights;
- MM.** 9 CFR, Part 500, rules of practice.

[21.33.2.8 NMAC -N, 7/12/2022]

CHAPTER 34: DAIRY AND EGG PRODUCERS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: RETAIL SALE OF RAW MILK

21.34.2.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.34.2.1 NMAC - Rn & A, 21 NMAC 34.2.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.34.2.2 SCOPE:

Part 2 shall apply to any person producing or selling raw milk.

[7/1/97; 21.34.2.2 NMAC - Rn, 21 NMAC 34.2.2, 05/29/09]

21.34.2.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Dairy Product Act, Chapter 25, Article 7A, Sections 1 through 19, New Mexico Statutes Annotated 1978 Compilation.

[7/1/97; 21.34.2.3 NMAC - Rn, 21 NMAC 34.2.3, 05/29/09]

21.34.2.4 DURATION:

Permanent.

[7/1/97; 21.34.2.4 NMAC - Rn, 21 NMAC 34.2.4, 05/29/09]

21.34.2.5 EFFECTIVE DATE:

July 1, 1997.

[7/1/97; 21.34.2.5 NMAC - Rn, 21 NMAC 34.2.5, 05/29/09]

21.34.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 34 is to establish the conditions under which raw milk can be produced and sold in retail establishments, in processed products and to the public.

[7/1/97; 21.34.2.6 NMAC - Rn, 21 NMAC 34.2.6, 05/29/09]

21.34.2.7 DEFINITIONS:

A. "Adulterated raw milk or raw milk or raw milk products" means any packaged raw milk or raw milk products:

(1) if it fails to conform in physical or chemical composition to the definition adopted by the board of regents of New Mexico state university;

(2) if it fails to conform to the chemical, bacteriological and temperature standards in 21.34.2.13 NMAC;

(3) if it has not been produced, packaged and held according to the sanitation standards in 21.34.2.13 NMAC; or if it contains any unwholesome substance.

B. "Department" means the New Mexico department of agriculture.

C. "Dairy farm" means any place or premises where one or more cows or goats are kept and from which a part or all of the raw milk or raw milk product(s) is sold or offered for sale.

D. "Director" means the director of the New Mexico department of agriculture or his designated representative.

E. "Goat milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of healthy goats, which contains not less than 8-1/4 percent milk solids not-fat and not less than 3-1/4 percent milkfat (milkfat or butterfat is the fat of milk). All standards and requirements applicable to cow milk shall apply to goat milk.

F. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, which contains not less than 8-1/4 percent milk solids not-fat and not less than 3-1/4 percent milkfat. (Milkfat or butterfat is the fat of milk).

G. "Misbranded raw milk and raw milk products" means any raw milk or raw milk products when:

(1) their containers bear or accompany any false or misleading written, printed or graphic matter;

(2) such raw milk or raw milk products do not conform to their definitions as contained in Chapter 34, Part 2;

(3) such products are not labeled in accordance with 21.34.2.12 NMAC.

H. "Official laboratory" means biological, chemical or physical laboratory which is under the direct supervision of the state scientific laboratory system; or the state department of agriculture, state chemist laboratory.

I. "Person" means any individual, partnership, corporation, company, firm, trustee or association.

J. "Raw milk" means any milk which has not been treated or manipulated in any manner to destroy pathogens.

K. "Raw milk product" means any of the following products which have been derived from raw milk and have not been treated or manipulated in any manner to destroy pathogens: cream, flavored milk and half and half.

[7/1/97; 21.34.2.7 NMAC - Rn, 21 NMAC 34.2.7, 05/29/09]

21.34.2.8 ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS PROHIBITED:

A. No person shall, within the state of New Mexico, sell, offer or expose for sale or have in possession with intent to sell, any raw milk or raw milk products which are adulterated or misbranded.

B. No person, elsewhere than in a private home, shall have in his possession any adulterated or misbranded raw milk or raw milk products.

C. Any adulterated, misbranded or improperly labeled raw milk or raw milk products may be embargoed by the department in accordance with the Dairy Product Act, Laws of 1993.

[7/1/97; 21.34.2.8 NMAC - Rn, 21 NMAC 34.2.8, 05/29/09]

21.34.2.9 PERMITS:

A. No person shall sell or offer for sale in the state of New Mexico raw milk or raw milk products without a permit issued by the department to use grade A labeling in advertising, representing or labeling such raw milk or raw milk products.

B. Any person desiring a grade A permit shall make a written application to the department. The application shall:

- (1) be made on forms furnished by the department;
 - (2) state the applicant's name and address;
 - (3) state the date of the application;
 - (4) be accompanied by plans and specifications for the applicant's facilities;
 - (5) contain such other information as the department may reasonably require;
- and
- (6) be signed by the applicant.

C. Within fifteen (15) days after the filing of an application for a permit, the department shall either grant the permit, grant the permit subject to conditions or deny the permit. The department shall notify the applicant by certified mail of the decision and the reasons therefor.

D. The department may grant a permit pursuant to this section only if it finds that all the conditions in Sections 16, 17 and 18 of Chapter 34, Part 2 will be met.

E. Any permit issued hereunder shall be conditioned upon the applicant allowing inspections to be made pursuant to 21.34.2.13 NMAC.

F. The issuance of a permit does not relieve any person from responsibility for complying with all applicable laws, ordinances and regulations.

G. If the applicant is dissatisfied with the action taken by the department, he may request a hearing before the director. The request must be made in writing to the director within fifteen (15) days after notice of the department's action has been received by the applicant. Unless a timely request for hearing is made, the decision of the department shall be final. A reapplication for a permit may not be filed within thirty (30) days following a final determination on a permit application.

[7/1/97; 21.34.2.9 NMAC - Rn, 21 NMAC 34.2.9, 05/29/09]

21.34.2.10 PERMIT REVOCATION:

A. The department may, after opportunity for hearing, revoke a permit issued pursuant to Section 10 for serious or repeated violations of Chapter 34, Part 2.

B. Not less than fifteen (15) days prior to the revocation of a permit, the department shall notify the permittee by certified mail of the impending revocation and the reasons therefor. The notice shall also state the date, time and place where a hearing on the revocation will take place.

C. The department may suspend or temporarily revoke a permit whenever the department determines that a serious threat to public health exists. A permit may not be suspended or temporarily revoked for longer than thirty (30) days or until the threat is abated, whichever is sooner.

[7/1/97; 21.34.2.10 NMAC - Rn, 21 NMAC 34.2.10, 05/29/09]

21.34.2.11 PERMIT REINSTATEMENT:

A. Any distributor of raw milk or raw milk products, whose permit has been suspended or temporarily revoked, at any time may make application for the reinstatement of his permit.

B. Upon receipt of a satisfactory application for reinstatement of a permit based on correction of the violations of Chapter 34, Part 2, the department shall reinstate the permit. The said application must be accompanied by a statement, signed by the applicant, that the violated item(s) has (have) been corrected. Within seven (7) days of the receipt of such application and statement, the department shall make a reinspection

of the applicant's establishment, and thereafter as many additional reinspections as it may deem necessary, to assure that the applicant is again complying with the requirements of Chapter 34, Part 2, and in the case the findings justify, shall reinstate the permit.

[7/1/97; 21.34.2.11 NMAC - Rn, 21 NMAC 34.2.11, 05/29/09]

21.34.2.12 LABELING:

A. All retail containers of raw milk or raw milk products shall be conspicuously labeled or marked in accordance with the New Mexico Food Act and in addition shall contain:

(1) the name of the contents given in the definitions of these of Chapter 34, Part 2;

(2) the identity of the permit holder and distributor;

(3) the word "raw";

(4) the statement "raw milk is not pasteurized and may contain organisms that cause human disease";

(5) the labeling required by 21.34.2.12 NMAC shall be conspicuously displayed on the label and in letters of at least 1/8 inch size; the other labeling requirements of 21.34.2.12 NMAC shall be conspicuously displayed on the label and be of a letter size, kind and color acceptable to the department; and

(6) no marks or words which are misleading.

B. All vehicles transporting raw milk shall be legibly marked with the name and address of the distributor.

C. All retail outlets shall have a placard conspicuously displayed next to self service display cases for raw milk. The placard shall display the following statement: "raw milk is not pasteurized and may contain organisms that cause human disease." Labeling requirements shall be of a letter size at least 1/2 inch and be of a kind and color acceptable to the department.

D. Raw milk and raw milk products shall be displayed separately from and shall not be commingled with pasteurized dairy products. In retail situations, such as at driveup outlets at the dairy, where the consumer does not have direct access to self service display cases, the placard shall be prominently displayed next to the service window.

[7/1/97; 21.34.2.12 NMAC - Rn, 21 NMAC 34.2.12, 05/29/09]

21.34.2.13 INSPECTIONS:

A. Every raw milk distributor shall, upon request of the department, permit access by officially designated persons during reasonable hours to all parts of his establishment or facilities to determine compliance with the provisions of Chapter 34, Part 2. A distributor shall furnish the department, upon request, for official use only, a true statement of the actual quantities of raw milk or raw milk products produced and sold.

B. The original copy of the inspection report shall be handed to the operator or other responsible person or be posted in a conspicuous place on an inside wall of the establishment. Said inspection report shall not be defaced and shall be made available to the department upon request. An identical copy of the inspection report shall be filed with the records of the department.

C. Following the issuance of a permit, each dairy farm and packaging operation shall be inspected at least twice every six (6) months. Should a violation of any requirement set forth in Sections 16 and 17 be found to exist, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. The reinspection shall be used to determine compliance with the requirements of Sections 16 and 17.

D. Any person whose raw milk or raw milk products are intended for sale within New Mexico shall be inspected by the department prior to the issuance of a permit.

E. It shall be unlawful for any person who in an official capacity obtains any information under the provisions of this section which is entitled to protection as a trade secret (including information as to quality, quantity or disposition of raw milk products or results of inspections or tests thereof) to use such information to his own advantage or reveal it to unauthorized persons.

[7/1/97; 21.34.2.13 NMAC - Rn, 21 NMAC 34.2.13, 05/29/09]

21.34.2.14 EXAMINATION OF RAW MILK AND RAW MILK PRODUCTS:

A. During each six (6) month period, at least six (6) samples of raw milk and raw milk products from each distributor shall be taken on separate days and examined by the department. Samples may be taken at any time before it reaches the consumer. All samples shall be examined in accordance with the most current edition of *standard methods for the examination of raw milk and raw milk products* published by the United States public health service, food and drug administration.

B. All proprietors of retail outlets shall furnish the department, upon request, the names of all distributors from whom they obtain raw milk and raw milk products.

C. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphates tests, efficiency of bactericidal treatment and other laboratory and

screening tests shall conform to the latest procedures of *standard methods for the examination of dairy products* recommended by the American public health association. Examinations may include such other chemical and physical determinations as the department may deem necessary for the detection of adulteration.

D. If a bacterial count, somatic cell count, coliform determination or cooling temperature exceeds the limit of the standard for raw milk and/or raw milk products, the department shall furnish a written warning of impending permit suspension or court action to the permittee within forty-eight (48) hours of the department receiving notice of the violative sample result. In addition, a "check" sample shall be taken by the department not less than three (3) days nor more than ten (10) days after furnishing the permittee with a written warning of the sample that exceeded the limit. If the check sample or the next consecutive regularly taken sample exceeds the limit for any of four (4) parameters for which there is a standard, the permit shall be suspended immediately in accordance with Section 10, and court action may be instituted by the department. If the check sample and the next consecutive sample do not exceed the limit, the warning notice shall no longer be in effect.

[7/1/97; 21.34.2.14 NMAC - Rn, 21 NMAC 34.2.14, 05/29/09]

21.34.2.15 SUBMISSION OF PLANS AND SPECIFICATIONS:

All dairies and raw milk bottling operations within New Mexico from which graded raw milk and raw milk products are sold which are hereafter constructed, reconstructed or extensively altered, shall conform in their construction to the grade A requirements of Chapter 34, Part 2. Properly prepared plans for all dairies and raw milk bottling operations which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the department for approval before work is begun. The department shall return a copy of the plans to the applicant with approval or recommended changes within fifteen (15) days of receipt. A copy of the approved plans pertaining to a raw milk dairy and bottling operation shall remain on file with the department.

[7/1/97; 21.34.2.15 NMAC - Rn, 21 NMAC 34.2.15, 05/29/09]

21.34.2.16 SUBMISSION OF PLANS AND SPECIFICATIONS:

All dairies and raw milk bottling operations within New Mexico from which graded raw milk and raw milk products are sold which are hereafter constructed, reconstructed or extensively altered, shall conform in their construction to the grade A requirements of Chapter 34, Part 2. Properly prepared plans for all dairies and raw milk bottling operations which are hereafter constructed, reconstructed or extensively altered, shall be submitted to the department for approval before work is begun. The department shall return a copy of the plans to the applicant with approval or recommended changes within fifteen (15) days of receipt. A copy of the approved plans pertaining to a raw milk dairy and bottling operation shall remain on file with the department.

[7/1/97; 21.34.2.16 NMAC - Rn, 21 NMAC 34.2.16, 05/29/09]

21.34.2.17 CHEMICAL, BACTERIOLOGICAL AND TEMPERATURE STANDARDS FOR GRADE A RAW MILK AND RAW MILK PRODUCTS:

All raw milk or raw milk products sold at retail shall meet the following requirements:

A. temperature cooled to between 45 degrees F (7 degrees C) and 32 degrees F (0 degrees C) within two hours after completion of milking and maintained at that temperature until sold;

B. bacterial limits 20,000/ml (standard plate count);

C. coliform limits 50/ml;

D. WMT 20 mm;

E. DMSCC 1 ,000,000/ml;

F. freezing point -0.530 degrees C;

G. antibiotics no detectable residue;

H. pesticides no detectable residue.

[7/1/97; 21.34.2.17 NMAC - Rn, 21 NMAC 34.2.17, 05/29/09]

21.34.2.18 SANITATION STANDARDS:

A. Cows health.

(1) A tuberculin test of all herds and additions thereto shall be made before any milk therefrom is sold, and at least once every twelve (12) months thereafter, by a veterinarian recognized by the state livestock board and the United States department of agriculture, animal disease eradication branch. Said tests shall be made and any reactors disposed of in accordance with the requirements approved by the U.S. department of agriculture, animal disease eradication branch. A certificate identifying each animal, by number, signed by the veterinarian or attested to by the department and filed as directed by the department, shall be evidence of the above test.

(2) Cows which show a complete induration of one quarter or extensive induration in one or more quarters of the udder upon physical examination, whether secreting abnormal milk or not, shall be permanently excluded from the milking herd: provided that this shall not apply in case of a quarter that is completely dry. Cows giving bloody, stringy or otherwise abnormal milk, but without entire or extensive induration of

the udder, shall be excluded from the herd until reexamination shows that the milk has become normal.

(3) Results of all brucella ring tests performed in New Mexico by the U.S. department of agriculture laboratories and the scientific laboratory division shall be filed with the department. When the results of brucella ring test are positive, the herd must be individually tested and any reactors disposed of in accordance with the requirements approved by the U.S. department of agriculture, animal disease eradication branch.

(4) Cows which show evidence of the secretion of abnormal milk in one or more quarters, based upon bacteriological, chemical or physical amination, shall be milked last or with separate equipment; and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the department, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the department may direct.

(5) For diseases other than brucellosis and tuberculosis, the department shall require such physical, chemical or bacteriological tests as it deems necessary to protect public health.

B. Milking barns.

(1) Milking barn lighting. A milking barn, stable or parlor shall be provided. It shall be provided with adequate light, properly distributed, for both day and night milking.

(2) Milking barn air space and ventilation. Such sections of the milking barn or parlor where cows are milked, shall be well ventilated with either normal or artificial means.

(3) Milking barn floors. The floors and gutters of that portion of the barn or parlor in which cows are milked shall be constructed of concrete or other approved, impervious and easily cleaned material. Floors and gutters shall be graded so as to drain properly and shall be kept clean and in good repair. No swine or fowl shall be permitted in the milking barn or parlor.

(4) Milking barn walls and ceilings. The interior walls and ceilings of the milking barn or parlor shall be painted as often as may be necessary, or finished in an approved manner and shall be kept clean and in good repair. A tight ceiling is required. If feed should be ground or mixed or sweet feed should be stored, in a feed room or feed storage space which adjoins the milking area, it shall be separated therefrom by a dust-tight door.

C. Manure disposal. All manure shall be removed or disposed of in such a manner as best to prevent the breeding of flies therein and shall be inaccessible to cows.

D. Milk house and milk washroom construction and equipment. There shall be provided a milk house or milk room for the cooling, storing of raw milk and raw milk products and packaging. There shall be a washroom for the washing, bactericidal treatment and storing of milk containers and utensils.

(1) The milk house or room and the washroom shall be provided with a smooth floor, constructed of concrete or other impervious material maintained in good repair and graded to provide proper drainage.

(2) Both rooms shall have walls and ceilings of such construction as to permit easy cleaning and shall be well painted or finished in an approved manner.

(3) They shall be well lighted and well ventilated.

(4) They shall have all openings effectively screened, including outward opening self-closing doors unless other effective means are provided to prevent the entrance of flies and insects.

(5) They shall not be used for any purpose other than those specified above, except as may be approved by the department; they shall not open directly into a milking barn, parlor or room used for domestic purposes; provided that a direct opening between the milk house and milking barn or parlor is permitted when a tight-fitting, self-closing solid door(s) hinged to be single or double acting is provided.

(6) The washroom shall have water piped into it and shall have adequate facilities for heating water to clean utensils and milking equipment; and it shall be equipped with a three-compartment stationary sink, wash, rinse and sanitizing vats.

(7) The milk house or room shall have convenient handwashing facilities, soap and towels.

(8) Calf bottles, medicinals and pesticides shall not be stored in the milk room.

E. Milk house and washroom and flies. The floors, walls, ceilings, windows and equipment of the milk room or washroom shall be kept clean at all times and all approved means for the elimination of flies shall be used.

F. Toilet. Each dairy farm shall be provided with one or more sanitary toilets, conveniently located and properly constructed, operated and maintained, so that waste is inaccessible to flies and does not contaminate surface or ground water.

G. Water supply. Water for all dairy purposes shall be from a supply in conformance with environmental improvement board water supply regulations. Water samples for bacteria analysis shall be obtained and comply with drinking water standards before a

permit is issued. It shall be sampled after all work is completed, after breaking the seal on the plate and routinely sampled once a year for coliform bacteria.

H. Utensils.

(1) All multi-use containers and equipment, pipeline milking systems and other equipment in the handling, storage, bottling, capping or transportation of raw milk or raw milk products shall be made of smooth, nonabsorbent, non-corrodible, non-toxic material, shall be fabricated and installed as to be easily cleaned and shall be self draining and kept in good repair, as recommended in the *3-A sanitary standards*. Woven wire cloth shall not be used and shall not be reused. All milk pails shall be of the seamless hooded type. All single-service articles shall have been manufactured, packaged, transported, stored and handled in a sanitary method.

(2) All multi-use containers, equipment and other utensils used in the handling, storage, filling, capping or transportation of raw milk and raw milk products shall be thoroughly cleaned immediately after each usage.

(3) All multi-use containers, equipment, pipelines and other utensils used in milking, packaging, capping of raw milk and raw milk products shall, before each usage, be subjected effectively to an approved bactericidal process using steam, hot water, chemicals or hot air.

(4) All containers, strainer pads and other milking equipment used in the production, transportation of raw milk and raw milk products unless stored in bactericidal solutions, shall be stored as to drain dry and so as not to be contaminated before being used. All ports and openings shall be covered on bulk milk utensils which contain milk. Crates in which clean bottles are stored shall be kept clean and bottles inverted and elevated above the floor to prevent contamination.

(5) After bactericidal treatment, containers and other raw milk and raw milk product utensils and equipment shall be handled in such a manner as to prevent contamination of any surface with which raw milk and raw milk products come into contact.

I. Milking udders and tests.

(1) Milking shall be done in the milking barn or parlor.

(2) The udders and teats of each milking cow shall be washed until clean with a bactericidal solution approved by the department using one or more single service towels and completely dried with one or more different single service towels. If an iodine bactericidal agent is used, the minimum concentration of iodine shall be 25 ppm. Other bactericidal agents and concentrations may be used as approved by the director of the department. The bactericidal solution shall be maintained at approved strength throughout the entire milking process.

(3) Abnormal milk shall be kept out of the raw milk supply and be so handled and disposed of as to preclude the infection of the healthy cows and the contamination of milking utensils.

(4) Cows giving abnormal milk shall be milked last.

J. Milking-flanks. The flanks and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences.

K. Milkers' hands.

(1) Milkers' hands shall be washed clean, rinsed with an effective bactericidal solution and dried with a single service towel, immediately before milking and immediately after any interruption in the milking operation.

(2) Wet hand milking is prohibited.

(3) Convenient hand washing facilities shall be provided for washing of milkers' hands.

(4) No person with an infected cut or lesion on hands or arms shall milk cows, or handle milking utensils or other equipment.

L. Clean clothing. All personnel shall wear clean outer garments while milking or handling milk, milk products, containers, utensils or equipment.

M. Removal of milk.

(1) Each pail or can of milk shall be removed immediately to the milk house or milk room.

(2) No milk shall be strained or poured in the milking barn or parlor, unless it is protected from flies and other contamination.

N. Bottling and capping.

(1) Raw milk and raw milk products shall be bottled on the farm where produced.

(2) Bottling and capping shall be done in a sanitary method by means of approved mechanical filler and capper and these operations shall be integral in one machine.

(3) Caps or cap stock shall be purchased in sanitary containers and shall be stored in such a manner that will preclude contamination.

O. Vehicles and surroundings.

(1) All vehicles used for the transportation of raw milk or raw milk products shall be constructed and operated so as to protect their contents from the sun, from freezing and from contamination.

(2) All vehicles used for the distribution of raw milk and raw milk products shall have the distributor's name and address prominently displayed thereon.

P. The immediate surroundings of the dairy shall be kept in a clean, neat condition to prevent breeding of flies and rodents.

[7/1/97; 21.34.2.18 NMAC - Rn, 21 NMAC 34.2.18, 05/29/09]

PART 3: PASTEURIZED MILK ORDINANCE

21.34.3.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

[7/1/97; 21.34.3.1 NMAC - Rn & A, 21 NMAC 34.3.1, 05/29/09]

21.34.3.2 SCOPE:

Part 3 shall apply to any person producing or shipping milk. [7/1/97; 21.34.3.2 NMAC - Rn, 21 NMAC 34.3.2, 05/29/09]

21.34.3.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Dairy Product Act, Chapter 25, Article 7A, Sections 1 through 19, New Mexico Statutes Annotated 1978 Compilation.

[7/1/97; 21.34.3.3 NMAC - Rn, 21 NMAC 34.3.3, 05/29/09]

21.34.3.4 DURATION:

Permanent.

[7/1/97; 21.34.3.4 NMAC - Rn, 21 NMAC 34.3.4, 05/29/09]

21.34.3.5 EFFECTIVE DATE:

July 1, 1997 [7/1/97; 21.34.3.5 NMAC - Rn, 21 NMAC 34.3.5, 05/29/09]

21.34.3.6 OBJECTIVE:

The objective of Part 3 of Chapter 34 is to establish the procedure for inspecting dairies to insure the production of safe, wholesome milk and to govern the intrastate and the interstate shipment of pasteurized milk.

[7/1/97; 21.34.3.6 NMAC - Rn, 21 NMAC 34.3.6, 05/29/09]

21.34.3.7 DEFINITIONS:

[RESERVED]

21.34.3.8 PASTEURIZED MILK:

The procedures for compliance testing, sampling, and checking dairy establishments shall be those contained in the latest editions of the United States department of health and human services, public health service, food and drug administration, *grade A pasteurized milk ordinance*, the *Methods of Making Sanitation Ratings of Milk Shippers*, the *Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shippers*, and the *Evaluation of Milk Laboratories* provided that out-of-state producers of milk and milk products may be sampled at dairy retail stores, food service establishments, grocery stores and other places where milk and milk products are sold for purposes of quality examination to determine compliance with Sections 2, 4, 7 and 10 of the *grade A pasteurized milk ordinance*.

[7/1/97; 21.34.3.8 NMAC - Rn, 21 NMAC 34.3.8, 05/29/09; A, 1/1/2018]

PART 4: ANIMAL DRUG RESIDUE ENFORCEMENT PROCEDURES

21.34.4.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.34.4.1 NMAC - Rn & A, 21 NMAC 34.4.1, 05/29/09]

[MSC 3189, Box 30005, Las Cruces, New Mexico 88003-8005, Telephone No. (575) 646-3007]

21.34.4.2 SCOPE:

Part 4 shall apply to any person producing raw milk.

[7/1/97; 21.34.4.2 NMAC - Rn, 21 NMAC 34.4.2, 05/29/09]

21.34.4.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the New Mexico Dairy Product Act, Chapter 25, Article 7A, Sections 1 through 19, New Mexico Statutes Annotated 1978 Compilation.

[7/1/97; 21.34.4.3 NMAC - Rn, 21 NMAC 34.4.3, 05/29/09]

21.34.4.4 DURATION:

Permanent.

[7/1/97; 21.34.4.4 NMAC - Rn, 21 NMAC 34.4.4, 05/29/09]

21.34.4.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.34.4.5 NMAC - Rn, 21 NMAC 34.4.5, 05/29/09]

21.34.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 34 is to establish the procedure for assessing penalties for any dairy farm that has violative drug residue in their raw milk when the penalty assessed against the dairy farm by any marketing cooperative does not meet the requirements of Appendix N of 21.34.2 NMAC, the pasteurized milk ordinance.

[7/1/97; 21.34.4.6 NMAC - Rn, 21 NMAC 34.4.6, 05/29/09]

21.34.4.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Dairy farm" means any place or premises where one or more cows or goats are kept, and from which a part or all of the raw milk or raw milk product(s) is sold or offered for sale.
- C. "Dairy producer" means any person offering for sale raw milk or raw milk products.
- D. "Director" means the director of the New Mexico department of agriculture or his designated representative.
- E. "PMO" means the grade A pasteurized milk ordinance, U. S. department of health and human services, public health service, food and drug administration publication No. 229 as adopted by 21.34.3 NMAC.

[7/1/97; 21.34.4.7 NMAC - Rn, 21 NMAC 34.4.7, 05/29/09]

21.34.4.8 DETECTION OF DRUG RESIDUES:

A. When a bulk milk pickup tanker is found to be positive for drug residues, the department shall be immediately notified. The ultimate disposition of the raw milk must be approved by the department. The disposition of the contaminated milk must preclude entry into the animal or human food chain.

B. The producer samples from the bulk milk pickup tanker found to be positive for drug residues shall be individually tested to determine the farm of origin. The samples shall be tested as directed by the department. Further pickups of the violative individual producer shall be immediately discontinued until tests are no longer positive for drug residues.

[7/1/97; 21.34.4.8 NMAC - Rn, 21 NMAC 34.4.8, 05/29/09]

21.34.4.9 PENALTIES:

A. When the dairy producer responsible for a violative drug residue in a sample from a bulk milk pickup tanker is determined, the department shall immediately suspend the grade A permit of the dairy producer for a minimum of two days and assess a penalty to be determined as set forth in Subsection A of 21.34.4.9 NMAC, provided the department shall accept the penalty assessment imposed by any marketing cooperative unless the penalty assessed does not meet the minimum requirements of Appendix N of the PMO, 21.34.3 NMAC. The department may grant a temporary grade A permit following a negative milk sample. The temporary grade A permit shall remain in effect until the equivalent penalty is assessed and the "milk and dairy beef residue prevention protocol" has been implemented under the supervision of a licensed veterinarian. After the assessment and payment of the equivalent penalty and the completion of the "milk and dairy beef residue prevention protocol", the grade A permit shall be reinstated, provided the violation was not the third violation in a twelve month period.

(1) Determine the difference between the blend price and the class III price of milk at the time of the violation.

(2) Determine if this is the first, second, or third time the dairy producer has offered for sale milk containing a violative drug residue in the past twelve months.

(3) Assess a penalty of the volume of two days production for the first violation, or four days production for a second violation, as stated in Appendix N, regulatory responsibilities, part B, enforcement, of the pasteurized milk ordinance. The penalty shall be calculated according to the formula: volume in hundredweight (cwt) times penalty days times difference in price between dairy producer blend price and class III price for milk in the month the residue occurred, less any penalty already assessed by a marketing cooperative for this particular violation.

(4) The responsible dairy producer and a licensed veterinarian shall complete and sign a quality assurance certificate, for display in the milkhouse, which state that the "milk and dairy beef residue prevention protocol", is in place and being implemented for the dairy herd(s) from which the adulterated milk containing the violative drugs residue was shipped. This must be completed within 30 days of the drug residue violation. If this program is not completed within 30 days of the drug residue violation, the dairy producers grade A permit shall be suspended by the department.

B. All moneys collected under 21.34.4 NMAC shall be deposited in an account the expenditures of which shall be determined by a board appointed by the director. All expenditures shall be for education or research having a direct affiliation with the dairy industry. The board shall consist of the director or his designee, three dairy producers and one public member.

[7/1/97; 21.34.4.9 NMAC - Rn, 21 NMAC 34.4.9, 05/29/09]

PART 5: OPEN DATE LABELING FOR DAIRY PRODUCTS

21.34.5.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[1/1/98; 21.34.5.1 NMAC - Rn & A, 21 NMAC 34.5.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.34.5.2 SCOPE:

All producers, processors and retailers of dairy products.

[7/15/97; 21.34.5.2 NMAC - Rn, 21 NMAC 34.5.2, 05/29/09]

21.34.5.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university, under the Dairy Act, Chapter 25, Article 7, Sections 1 through 8, New Mexico Statutes Annotated, 1978 Compilation.

[7/15/97; 21.34.5.3 NMAC - Rn, 21 NMAC 34.5.3, 05/29/09]

21.34.5.4 DURATION:

Permanent.

[1/1/98; 21.34.5.4 NMAC - Rn, 21 NMAC 34.5.4, 05/29/09]

21.34.5.5 EFFECTIVE DATE:

January 1, 1998, unless a different date is cited at the end of a section or paragraph.

[1/1/98; 21.34.5.5 NMAC - Rn, 21 NMAC 34.5.5, 05/29/09]

21.34.5.6 OBJECTIVE:

This rule establishes the open date labeling requirements for fresh, fluid dairy products sold or offered for sale.

[1/1/98; 21.34.5.6 NMAC - Rn, 21 NMAC 34.5.6, 05/29/09]

21.34.5.7 DEFINITIONS:

A. "Cultured product" means the product resulting from the souring by lactic acid producing bacteria or similar culture of a milk product.

B. "Dairy dessert mixes" means a product in fluid form intended to be used for dessert purposes and shall include, but not be limited to ice cream mix, mellorine mix, yogurt mix, eggnog or other product of similar nature.

C. "Director" means the director of the New Mexico department of agriculture.

D. "Hermetically sealed product" means a product packaged in such a way as to be impervious to air and gasses, thus preventing microbial spoilage.

E. "Pull date" means the last day on which a product is to be sold or offered for sale for human consumption.

F. "Sterilized product" means a product that has been heated to a temperature of two hundred twelve (212) degrees fahrenheit or higher for a length of time sufficient to kill all organisms present.

G. "Ultra-pasteurized" means a product thermally processed at two hundred eighty (280) degrees fahrenheit or higher for at least two (2) seconds so as to produce a product which has an extended shelf life under refrigerated conditions.

[7/15/97; 1/1/98; 1/1/98; 21.34.5.7 NMAC - Rn, 21 NMAC 34.5.7, 05/29/09]

21.34.5.8 [RESERVED]

21.34.5.9 LABELING REQUIREMENTS FOR DATING:

A. In addition to other labeling requirements, except as otherwise exempted in this rule, all processors and producer distributors shall label each container of one-half (1/2)

pint or larger of milk, lowfat milk, non-fat milk, flavored milk, skim milk, half and half and creams sold or offered for sale with a legible pull date.

B. The length of pull date for pasteurized products shall be determined by the processor.

C. The length of pull date for raw products shall not exceed five (5) days including the date of packaging.

D. No product required to have a pull date may be sold or offered for sale by any person if it does not meet all pull date requirements of this rule.

[7/15/97; 1/1/98; 21.34.5.9 NMAC - Rn, 21 NMAC 34.5.9, 05/29/09]

21.34.5.10 DATING EXPRESSION:

A. The pull date shall be expressed numerically or by the first three (3) letters of the month followed by the numeral or numerals constituting the appropriate calendar date.

B. A space, slash or dash shall appear between the month and day.

[1/1/98; 21.34.5.10 NMAC - Rn, 21 NMAC 34.5.10, 05/29/09]

21.34.5.11 DATING LOCATION:

The pull date shall appear in such a location on the container so as to be easily located and seen by the purchaser. The method of dating shall not interfere with the legibility of other mandatory labeling requirements of the container.

[1/1/98; 21.34.5.11 NMAC - Rn, 21 NMAC 34.5.11, 05/29/09]

21.34.5.12 EXEMPT PRODUCTS:

A. Those products sold directly to the consumer by a processor or producer distributor and all cultured, sterilized, ultra-pasteurized or hermetically sealed products and dairy dessert mixes shall be exempt from the pull date requirements.

B. At the option of the processor, exempt products may be labeled with a pull date determined by the processor.

[1/1/98; 21.34.5.12 NMAC - Rn, 21 NMAC 34.5.12, 05/29/09]

21.34.5.13-21.34.5.15 [RESERVED]

21.34.5.16 COMPLIANCE:

Dairy products required to be labeled with a pull date and those dairy products labeled with an optional pull date, except frozen, dried, condensed or evaporated products, may not be sold or offered for sale for human consumption by any person after the pull date.

[1/1/98; 21.34.5.16 NMAC - Rn, 21 NMAC 34.5.16, 05/29/09]

21.34.5.17 EMERGENCY WAIVER:

Any or all of the provisions of this rule may be temporarily waived by the director when he determines, in his discretion, that an emergency warrants such waiver.

[1/1/98; 21.34.5.17 NMAC - Rn, 21 NMAC 34.5.17, 05/29/09]

PART 6: STANDARDS OF IDENTITY FOR FROZEN DAIRY DESSERTS

21.34.6.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[1/1/98; 21.34.6.1 NMAC - Rn & A, 21 NMAC 34.6.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.34.6.2 SCOPE:

All processors of frozen dairy desserts.

[1/1/98; 21.34.6.2 NMAC - Rn, 21 NMAC 34.6.2, 05/29/09]

21.34.6.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university, under the Dairy Act, Chapter 25, Article 7, Sections 1 through 8, New Mexico Statutes Annotated, 1978 Compilation.

[1/1/98; 21.34.6.3 NMAC - Rn, 21 NMAC 34.6.3, 05/29/09]

21.34.6.4 DURATION:

Permanent

[1/1/98; 21.34.6.4 NMAC - Rn, 21 NMAC 34.6.4, 05/29/09]

21.34.6.5 EFFECTIVE DATE:

January 1, 1998

[1/1/98; 21.34.6.5 NMAC - Rn, 21 NMAC 34.6.5, 05/29/09]

21.34.6.6 OBJECTIVE:

This rule establishes the standards of identity for frozen dairy desserts.

[1/1/98; 21.34.6.6 NMAC - Rn, 21 NMAC 34.6.6, 05/29/09]

21.34.6.7 DEFINITIONS:

- A. "Board" means the board of regents of New Mexico state university.
- B. "Director" means the director of the New Mexico department of agriculture.

[1/1/98; 21.34.6.7 NMAC - Rn, 21 NMAC 34.6.7, 05/29/09]

21.34.6.8 [RESERVED]

21.34.6.9 COMPOSITION STANDARDS OF IDENTITY:

The standards of identity for the composition of frozen dairy desserts shall be the same as those set forth in Title 21 of the Code of Federal Regulations, as revised.

[1/1/98; 21.34.6.9 NMAC - Rn, 21 NMAC 34.6.9, 05/29/09]

21.34.6.10 WEIGHT STANDARDS OF IDENTITY:

- A. Ice cream shall weigh not less than four and one-half (4.5) pounds net to the gallon.
- B. Reduced fat ice cream, light ice cream, lowfat ice cream, nonfat or fat free ice cream or other lower fat ice cream products shall weigh not less than four (4.0) pounds net to the gallon.
- C. Mellorine shall weigh not less than four and one-half (4.5) pounds net to the gallon.
- D. Sherbet shall weigh not less than six (6.0) pounds net to the gallon.

[1/1/98; 21.34.6.10 NMAC - Rn, 21 NMAC 34.6.10, 05/29/09]

21.34.6.11-21.34.6.15 [RESERVED]

21.34.6.16 NONSTANDARD PRODUCTS:

Frozen dairy dessert products for which neither the board nor the federal food and drug administration have not established standards of identity may be sold in New Mexico until such time as standards of identity are established only if the products are properly labeled as to composition.

[1/1/98; 21.34.6.16 NMAC - Rn, 21 NMAC 34.6.16, 05/29/09]

21.34.6.17 EMERGENCY WAIVER:

Any or all of the provisions of this rule may be temporarily waived by the director when he determines, in his discretion, that an emergency warrants such waiver.

[1/1/98; 21.34.6.17 NMAC - Rn, 21 NMAC 34.6.17, 05/29/09]

PART 7: EGG INSPECTION FEES

21.34.7.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97; 21.34.7.1 NMAC - Rn & A, 21 NMAC 34.7.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.34.7.2 SCOPE:

All producers, dealers and retailers of shell eggs sold or offered for sale in New Mexico.

[7/1/97; 21.34.7.2 NMAC - Rn, 21 NMAC 34.7.2, 05/29/09]

21.34.7.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university, under the Egg Grading Act, Chapter 25, Article 6, Sections 1 through 16, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.34.7.3 NMAC - Rn, 21 NMAC 34.7.3, 05/29/09]

21.34.7.4 DURATION:

Permanent

[7/1/97; 21.34.7.4 NMAC - Rn, 21 NMAC 34.7.4, 05/29/09]

21.34.7.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.34.7.5 NMAC - Rn, 21 NMAC 34.7.5, 05/29/09]

21.34.7.6 OBJECTIVE:

This part establishes the inspection fee on eggs sold to the retailer or to the consumer.

[7/1/97; 21.34.7.6 NMAC - Rn, 21 NMAC 34.7.6, 05/29/09]

21.34.7.7 DEFINITIONS:

"Egg dealer" means any person, firm, partnership or corporation that buys eggs directly from the farmers or from any other source for the purpose of reselling them at wholesale.

[7/1/97; 21.34.7.7 NMAC - Rn, 21 NMAC 34.7.7, 05/29/09]

21.34.7.8 [RESERVED]

21.34.7.9 EGG INSPECTION FEE:

A. The inspection fee on eggs sold in New Mexico to the retailer or to the consumer shall be twelve cents (.12) per case of thirty (30) dozen.

B. The fee shall be paid by the egg dealer or producer who packages the eggs for sale to the retailer or consumer.

[7/1/97; 21.34.7.9 NMAC - Rn, 21 NMAC 34.7.9, 05/29/09]

21.34.7.10 [RESERVED]

PART 8: GRADES, STANDARDS, AND REPORTS FOR SHELL EGGS

21.34.8.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[7/1/97. 21.34.8.1 NMAC - Rn & A, 21 NMAC 34.8.1, 05/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.34.8.2 SCOPE:

All producers, dealers and retailers of shell eggs sold or offered for sale in New Mexico.

[7/1/97; 21.34.8.2 NMAC - Rn, 21 NMAC 34.8.2, 05/29/09]

21.34.8.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university, under the Egg Grading Act, Chapter 25, Article 6, Sections 1 through 16, New Mexico Statutes Annotated, 1978 Compilation.

[7/1/97; 21.34.8.3 NMAC - Rn, 21 NMAC 34.8.3, 05/29/09]

21.34.8.4 DURATION:

Permanent

[7/1/97; 21.34.8.4 NMAC - Rn, 21 NMAC 34.8.4, 05/29/09]

21.34.8.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 21.34.8.5 NMAC - Rn, 21 NMAC 34.8.5, 05/29/09]

21.34.8.6 OBJECTIVE:

This part establishes the grades and standards for shell eggs and reports covering information on eggs sold in New Mexico.

[7/1/97; 21.34.8.6 NMAC - Rn, 21 NMAC 34.8.6, 05/29/09]

21.34.8.7 DEFINITIONS:

- A. "Board of regents" means the board of regents of New Mexico state university.
- B. "Department" means the New Mexico department of agriculture.
- C. "Ungraded eggs" means eggs as they come from the production facility without having been washed, sized and/or candled for quality.

[7/1/97; 21.34.8.7 NMAC - Rn, 21 NMAC 34.8.7, 05/29/09]

21.34.8.8 [RESERVED]

21.34.8.9 GRADES AND STANDARDS FOR SHELL EGGS SOLD IN NEW MEXICO:

A. All eggs sold or offered for sale under 25-6-5, NMSA 1978, shall be graded and properly labeled as to size and standards of quality.

B. All sizes and standards shall conform with United States department of agriculture standards for consumer grades of shell eggs, excepting those sold as ungraded. Ungraded eggs shall be conspicuously labeled as "ungraded eggs," and shall conform with the provisions pertaining thereto set forth in 25-6-7, NMSA 1978.

[7/1/97; 21.34.8.9 NMAC - Rn, 21 NMAC 34.8.9, 05/29/09]

21.34.8.10 REPORTS COVERING INFORMATION ON EGGS SOLD IN NEW MEXICO:

A. The board of regents may require any person who purchases, receives or sells eggs from any source, to file with the department a statement giving the name and address of the party from whom such eggs were obtained, the quantity of each shipment, the date of purchase and any other information deemed essential.

B. Any person may be required to notify an inspector of the department immediately upon receipt of shipment of eggs or before sale of eggs.

[7/1/97; 21.34.8.10 NMAC - Rn, 21 NMAC 34.8.10, 05/29/09]

21.34.8.11 [RESERVED]

PART 9-12: [RESERVED]

PART 13: APPLYING ADMINISTRATIVE PENALTIES: EGG GRADING ACT

21.34.13.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[21.34.13.1 NMAC - N, 3/14/2008; A, 5/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (575) 646-3007.]

21.34.13.2 SCOPE:

All parties regulated under the Egg Grading Act.

[21.34.13.2 NMAC - N, 3/14/2008]

21.34.13.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Egg Grading Act, Chapter 25, Article 6, Sections 1 through 16, New Mexico Statutes Annotated, 1978 Compilation.

[21.34.13.3 NMAC - N, 3/14/2008]

21.34.13.4 DURATION:

Permanent

[21.34.13.4 NMAC - N, 3/14/2008]

21.34.13.5 EFFECTIVE DATE:

March 14, 2008, unless a later date is cited at the end of a section.

[21.34.13.5 NMAC - N, 3/14/2008]

21.34.13.6 OBJECTIVE:

This part provides for assessment of administrative penalties for violations of the Egg Grading Act or rules adopted under the act and specifies the appeal process.

[21.34.13.6 NMAC - N, 3/14/2008]

21.34.13.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Director" means the director/secretary of the New Mexico department of agriculture.
- C. "Division director" means the director of the division of standards and consumer services within the New Mexico department of agriculture.
- D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for the administration of the Egg Grading Act and associated rules.
- E. "Violation /offense" means disregard of field enforcement actions or the law.
- F. "Routine inspection" means inspections conducted within the prescribed guidelines for frequency.
- G. "Testing and inspection procedures" means procedures adopted from various handbooks, rules and reference materials which include, but are not limited, to the

following: *the United States department of agriculture standards for consumer grades of shell eggs, excepting those sold as ungraded.*

[21.34.13.7 NMAC - N, 3/14/2008]

21.34.13.8 [RESERVED]

21.34.13.9 ASSESSING PENALTIES:

The assessment of administrative penalties will be used as an intermediate step between field enforcement actions and court action, or when stop sale orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. All monies derived from administrative penalties to be deposited in the state general fund after all expenses. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, with concurrence of the supervisor, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions, such as stop sale orders. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. Violations/offenses are per business location not per company and will be based on offenses per routine inspection. All inspections will be based on adopted testing and inspection procedures. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, and 14 of this part.

[21.34.13.9 NMAC - N, 3/14/2008]

21.34.13.10 GRAVITY OF VIOLATION:

A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.

- (2) Degree of inconvenience or deception to a buyer or prospective buyer.
- (3) Degree of disregard for the law.

B. COLUMN A: Minimal gravity -- When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.

C. COLUMN B: Moderate gravity -- When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.

D. COLUMN C: Great gravity -- When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.

[21.34.13.10 NMAC - N, 3/14/2008]

21.34.13.11 FREQUENCY OF VIOLATION:

The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

A. When a person commits the same violation more than three (3) times in a twelve (12) month period, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be twelve a (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.34.13.11 NMAC - N, 3/14/2008]

21.34.13.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the

extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.34.13.12 NMAC - N, 3/14/2008]

21.34.13.13 PAYMENT OF PENALTY:

If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.34.13.13 NMAC - N, 3/14/2008]

21.34.13.14 PENALTY TABLE:

TABLE I

	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE	
Gravity	A	B	C	A	B	C	A	B
C								
	\$250	\$1000.	\$1500.	\$2000.	\$2500.			
	\$3000.	\$3500.	\$4000.	\$5000.				

[21.34.13.14 NMAC - N, 3/14/2008]

PART 14: APPLYING ADMINISTRATIVE PENALTIES: DAIRY ACT

21.34.14.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture

[21.34.14.1 NMAC - N, 3/14/2008; A, 5/29/09]

[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone: (575) 646-3007]

21.34.14.2 SCOPE:

All parties regulated under the Dairy Act.

[21.34.14.2 NMAC - N, 3/14/2008]

21.34.14.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Dairy Act, Chapter 25, Article 7, Sections 1 through 8, New Mexico Statutes Annotated, 1978 Compilation.

[21.34.14.3 NMAC - N, 3/14/2008]

21.34.14.4 DURATION:

Permanent

[21.34.14.4 NMAC - N, 3/14/2008]

21.34.14.5 EFFECTIVE DATE:

March 14, 2008, unless a later date is cited at the end of a section.

[21.34.14.5 NMAC - N, 3/14/2008]

21.34.14.6 OBJECTIVE:

This part provides for assessment of administrative penalties for violations of the Dairy Act or rules adopted under the act and specifies the appeal process.

[21.34.14.6 NMAC - N, 3/14/2008]

21.34.14.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Director" means the director/secretary of the New Mexico department of agriculture.
- C. "Division director" means the director of the division of standards and consumer services and/or the director of the dairy division within the New Mexico department of agriculture.
- D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the director for the administration of the Dairy Act and associated rules.
- E. "Violation /offense" means disregard of field enforcement actions or the law.
- F. "Routine inspection" means inspections conducted within the prescribed guidelines for frequency.

G. "Testing and inspection procedures" means procedures adopted from various handbooks, rules and reference materials which include, but are not limited, to the following: *NIST handbook 133, checking the net contents of packaged goods.*

[21.34.14.7 NMAC - N, 3/14/2008]

21.34.14.8 [RESERVED]

21.34.14.9 ASSESSING PENALTIES:

The assessment of administrative penalties will be used as an intermediate step between field enforcement actions and court action, or when Stop Sale orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. All monies derived from administrative penalties to be deposited in the state general fund after all expenses. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, with concurrence of the supervisor, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions, such as stop sale orders. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. Violations/offenses are per business location not per company and will be based on offenses per routine inspection. All inspections will be based on adopted testing and inspection procedures. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, and 14 of this part.

[21.34.14.9 NMAC - N, 3/14/2008]

21.34.14.10 GRAVITY OF VIOLATION:

A. Factors: Any one or all of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.
- (2) Degree of inconvenience or deception to a buyer or prospective buyer.
- (3) Degree of disregard for the law.

B. COLUMN A: Minimal gravity -- When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 14.

C. COLUMN B: Moderate gravity -- When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 14.

D. COLUMN C: Great gravity -- When the violation has a great gravity, the penalty shall be determined from Column C, Section 14.

[21.34.14.10 NMAC - N, 3/14/2008]

21.34.14.11 FREQUENCY OF VIOLATION:

The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the table in Section 14.

A. When a person commits the same violation three (3) or more times in a twelve (12) month period, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be a twelve (12) month period. If a person has not committed the same offense in a twelve (12) month period, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[21.34.14.11 NMAC - N, 3/14/2008]

21.34.14.12 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district

court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 13.

[21.34.14.12 NMAC - N, 3/14/2008]

21.34.14.13 PAYMENT OF PENALTY:

If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[21.34.14.13 NMAC - N, 3/14/2008]

21.34.14.14 PENALTY TABLE:

TABLE I

Gravity	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE	
	A	B	C	A	B	C	A	B
C	\$250.	\$1000.	\$1500.	\$2000.	\$2500.			
	\$3000.	\$3500.	\$4000.	\$5000.				

[21.34.14.14 NMAC - N, 3/14/2008]

PART 15: [RESERVED]

**PART 16: ORGANIC PRODUCTION METHODS AND MATERIALS
[REPEALED]**

[This part was repealed effective 2/29/2012]

PART 17-19: [RESERVED]

PART 20: NEW MEXICO PULLORUM-TYPHOID CONTROL PROGRAM

21.34.20.1 ISSUING AGENCY:

New Mexico Livestock Board, 300 San Mateo, NE; Albuquerque, New Mexico 87108;
Telephone (505) 841-6161

[3-1-99; Recomplied 12/31/01]

21.34.20.2 SCOPE:

All owners, raisers, and handlers of poultry in the State of New Mexico and those that apply to bring poultry into the state for any reason.

[3-1-99; Recompiled 12/31/01]

21.34.20.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9, and 12 and 77-3-1, NMSA 1978.

[3-1-99; Recompiled 12/31/01]

21.34.20.4 DURATION:

Permanent

[3-1-99; Recompiled 12/31/01]

21.34.20.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of a section or paragraph.

[3-1-99; Recompiled 12/31/01]

21.34.20.6 OBJECTIVE:

To establish rules governing poultry industry in New Mexico concerning control of Pullorum-Typhoid.

[3-1-99; Recompiled 12/31/01]

21.34.20.7 DEFINITIONS:

A. "Authorized Field Testing Agent" means any person who has received appropriate training and has been certified as an official state Pullorum-Typhoid testing agent by the Official Agency of the National Poultry Improvement Plan (NPIP).

B. "National Poultry Improvement Plan (NPIP) " means the cooperative state-federal program through which new technology can be effectively applied to the improvement of poultry breeding stock and hatchery products through the control of certain hatchery disseminated diseases.

C. "Official State Agency" means the New Mexico Livestock Board. In New Mexico, the New Mexico Livestock Board is the "Official State Agency" of the NPIP and, by

memorandum of understanding with the board, the New Mexico Cooperative Extension Service.

D. "Poultry" means domesticated fowl, including chickens, turkeys, waterfowl, game birds, guinea fowl, and other species which are bred for the purpose of producing eggs or meat, except doves, pigeons, and ratites.

E. "Pullorum" means a disease of poultry caused by *Salmonella pullorum*.

F. "Typhoid" means a disease of poultry caused by *Salmonella gallinarum*.

G. "VS Form 9-2" means the Flock Selecting and Testing Report provided by the NPIP. Forms are available from the Official State Agency.

H. "VS Form 9-3" means the Report of Sales of Hatching Eggs, Chicks, and Pullets provided by the NPIP. Forms are available from the Official State Agency.

I. "VS Form 17-6" means the Certificate for Poultry or Hatching Eggs for Export. The forms are available from USDA-APHIS-VS, or the Official State Agency.

[3-1-99; Recompiled 12/31/01]

21.34.20.8 GENERAL:

A. Persons authorized to perform pullorum-typhoid tests in New Mexico include authorized field testing agents approved by the Official State Agency and veterinarians licensed to practice veterinary medicine in the state.

B. All persons performing poultry disease diagnostic services or field tests within the state are required to report to either the Official State Agency or the State Veterinarian within 48 hours the source of all poultry specimens from which *S. gallinarum* is isolated, or from which positive field tests are obtained.

[3-1-99; Recompiled 12/31/01]

21.34.20.9 INTERSTATE MOVEMENT:

A. Poultry shipped into the state of New Mexico shall be accompanied by either an official health certificate issued by an accredited veterinarian within ten (10) days of shipment, or a VS Form 9-2, indicating the flock of origin is actively enrolled in the state NPIP program and is negative or clean for pullorum-typhoid.

B. The required health certificate shall state the poultry have been inspected and are free of evidence of infectious or contagious disease and have tested negative for pullorum-typhoid within ninety (90) days prior to shipment, or they originated from flocks or hatcheries which have met the pullorum-typhoid requirements of the NPIP.

C. Poultry under four (4) months of age and hatching eggs will be exempt from this section if from a NPIP, or equivalent, hatchery and accompanied by a VS Form 9-3, or USDA-APHIS-VS Form 17-6.

[3-1-99; Recompiled 12/31/01]

21.34.20.10 EXHIBITION POULTRY:

A. Poultry entered in shows that are determined to be intrastate are exempt from 21 NMAC 34.16.10.2 through 10.6 [now Subsection B through F of 21.34.16.10 NMAC] below if the number of poultry in the show is less than 50 total birds. Shows with 50, or more, total birds will be required to follow 21 NMAC 34.16.10.2 through 10.6 [now Subsection B through F of 21.34.16.10 NMAC] below in the succeeding year. All poultry imported from out of state for exhibiting purposes must comply with rules 10.2 through 10.6 [now Subsection B through F of 21.34.20.10 NMAC] below regardless of the size of the show entered.

B. All poultry being exhibited in New Mexico shall be free of visible evidence of disease.

C. All exhibition poultry shall have tested negative for pullorum-typhoid within ninety (90) days prior to exhibition and have the results recorded on VS Form 9-2, or official form from the state of origin certifying that the testing was done by an authorized agent of that state.

D. The testing required in 21 NMAC 34.16.10.3 [now Subsection C of 21.34.20.10 NMAC] above is not necessary if, the poultry have originated from flocks which have met the pullorum-typhoid requirements of the NPIP and have originated from flocks not known to be infected with or have any evidence of infectious or contagious diseases.

E. Poultry qualifying under 21 NMAC 34.16.10.3 or 10.4 [now Subsections C and D of 21.34.20.10 NMAC] above may be imported for exhibition purposes without an official health certificate if accompanied by an approved state form or NPIP Form 9-2.

[3-1-99; Recompiled 12/31/01]

CHAPTER 35: LIVESTOCK MARKETING

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: SHEEP AND GOAT ASSESSMENT

21.35.2.1 ISSUING AGENCY:

New Mexico Sheep and Goat Council.

[8/15/97; 21.35.2.1 NMAC - Rn & A, 21 NMAC 35.2.1, 12/30/2011]

[MSC 5600, P.O. Box 30005, Las Cruces, NM 88005, Telephone (575) 646-4929]

21.35.2.2 SCOPE:

This rule establishes the council assessment to be paid by owners/producers of New Mexico sheep and haired goats.

[8/15/97; 21.35.2.2 NMAC - Rn, 21 NMAC 35.2.2, 12/30/2011]

21.35.2.3 STATUTORY AUTHORITY:

Granted to the New Mexico sheep and goat council under the New Mexico Sheep and Goat Council Act, Chapter 77, Article 8A, Section 1-11, NMSA 1978 Compilation.

[8/15/97; 21.35.2.3 NMAC - Rn, 21 NMAC 35.2.3, 12/30/2011]

21.35.2.4 DURATION:

Permanent

[8/15/97; 21.35.2.4 NMAC - Rn, 21 NMAC 35.2.4, 12/30/2011]

21.35.2.5 EFFECTIVE DATE:

August 15, 1997

[8/15/97; 21.35.2.5 NMAC - Rn, 21 NMAC 35.2.5, 12/30/2011]

21.35.2.6 OBJECTIVE:

To establish the council assessment for sheep and haired goats and provision for a refund.

[8/15/97; 21.35.2.6 NMAC - Rn, 21 NMAC 35.2.6, 12/30/2011]

21.35.2.7 DEFINITIONS:

- A. "Board" means the New Mexico livestock board.
- B. "Council" means the New Mexico sheep and goat council.
- C. "Producer" means any person engaged in the business of raising, breeding, feeding or growing sheep or haired goats.

[8/15/97; 21.35.2.7 NMAC - Rn, 21 NMAC 35.2.7, 12/30/2011]

21.35.2.8 ASSESSMENT:

A. The council assessment rate is set at fifty cents (\$.50) per head for all sheep and haired goats in New Mexico.

B. The council assessment will be collected by the board at the time ownership of the animals is transferred.

C. Any producer who has paid a council assessment is entitled to a refund of the amount paid by making written application to the council. Refunds shall be made within thirty (30) days of the date of request.

D. The refund application will be provided by the board.

[8/15/97; 21.35.2.8 NMAC - Rn & A, 21 NMAC 35.2.8, 12/30/2011]

PART 3: HUMANE HANDLING OF LIVESTOCK BY LIVESTOCK MARKETS AND FACILITIES

21.35.3.1 ISSUING AGENCY:

New Mexico Livestock Board; 300 San Mateo, NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505)841-6161.

[21.35.3.1 NMAC - N, 10/30/2008]

21.35.3.2 SCOPE:

All owners and operators of livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants.

[21.35.3.2 NMAC - N, 10/30/2008]

21.35.3.3 STATUTORY AUTHORITY:

Sections 77-2-7, 77-2-22, 77-9A-3, 77-9A-4, 77-10-2, 77-10-3, 77-10-8, 77-10-10 and such other regulatory authority as provided in Chapter 77 NMSA 1978.

[21.35.3.3 NMAC - N, 10/30/2008]

21.35.3.4 DURATION:

Permanent.

[21.35.3.4 NMAC - N, 10/30/2008]

21.35.3.5 EFFECTIVE DATE:

October 30, 2008, unless a later date is cited at the end of a section.

[21.35.3.5 NMAC - N, 10/30/2008]

21.35.3.6 OBJECTIVE:

To establish rules governing the humane handling of livestock.

[21.35.3.6 NMAC - N, 10/30/2008]

21.35.3.7 DEFINITIONS:

A. "Animal" means livestock including cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

B. "Board" means the New Mexico livestock board.

C. "Facilities" means livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants.

D. "Humanely euthanized" means to kill by mechanical method (gunshot or captive bolt) or chemical method that rapidly and effectively renders the animal insensitive to pain.

E. "Livestock market" means any facility in the state of New Mexico, which is used for the purpose of holding consignment sales of livestock.

F. "Non-ambulatory animal" means an animal that is unable to stand and walk without assistance.

G. "Operator" means a person in control of the management or operation of a livestock auction market, including a licensee under Article 10 of Chapter 77.

[21.35.3.7 NMAC - N, 10/30/2008]

21.35.3.8 REQUIRED CONDUCT BY LIVESTOCK AUCTION MARKET:

A. An operator shall not buy, sell or receive a non-ambulatory animal.

B. An operator shall not process, butcher or sell meat or products of non-ambulatory animals.

C. An operator shall not hold a non-ambulatory animal without taking immediate action to humanely euthanize the animal or to provide immediate veterinary treatment.

D. An operator shall not, at any time, either while the animal is on the premises or in transit, drag or push with equipment a non-ambulatory animal. Such animal must be moved with a sling, a stoneboat or other sled-like or wheeled conveyance, a soft-lay rope, a padded cable or chain or a web type belt (no bare chains). Once a vehicle has entered the official premises of the establishment, it is considered to be within the operator's premises.

E. An operator shall not consign, ship or accept any non-ambulatory animal for transporting or delivering.

F. An operator is responsible for the wrongful acts or omissions of agents and employees.

G. An operator must adequately train and supervise agents and employees to assure that such agents and employees do not engage in wrongful conduct.

H. Any violation of this rule or any other rule of the board will subject the licensee to criminal penalties and license revocation.

[21.35.3.8 NMAC - N, 10/30/2008]

21.35.3.9 REQUIRED CONDUCT BY FACILITIES:

A. Livestock markets, stockyards, market agencies, dealers, rest stations and rendering plants are subject to the requirements of 21.35.3.8 NMAC and must adhere to those requirements; provided, however, that rendering plants may process, butcher and sell meat or products of non-ambulatory animals so long as they do not engage in those activities for purpose of human consumption.

B. Any violation of this rule or any rules of the board or of the Chapter 77 NMSA 1978 will subject the offender to criminal penalties as provided in Chapter 77 NMSA 1978.

[21.35.3.9 NMAC - N, 10/30/2008]

PART 4: LIVESTOCK MARKETS AND FACILITIES

21.35.4.1 ISSUING AGENCY:

New Mexico Livestock Board; 300 San Mateo, NE, Suite 1000; Albuquerque, New Mexico 87108; Telephone (505) 841-6161.

[3/1/99; 21.35.4.1 NMAC - Rn, 21 NMAC 35.4.1, 10/30/2008]

21.35.4.2 SCOPE:

All owners and operators of livestock markets in New Mexico and all owners, transporters or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for the purpose of selling or buying livestock at any New Mexico livestock market. Additional requirements for livestock owners governing livestock business activities can be found in 21 NMAC 30, 32, 33 and 34.

[3/1/99; 21.35.4.2 NMAC - Rn, 21 NMAC 35.4.2, 10/30/2008]

21.35.4.3 STATUTORY AUTHORITY:

Section 77-2-7, A. 6, 7, 8, 9 and 12 and 77-13 NMSA 1978.

[3/1/99; 21.35.4.3 NMAC - Rn, 21 NMAC 35.4.3, 10/30/2008]

21.35.4.4 DURATION:

Permanent

[3/1/99; 21.35.4.4 NMAC - Rn, 21 NMAC 35.4.4, 10/30/2008]

21.35.4.5 EFFECTIVE DATE:

March 1, 1999, unless a later date is cited at the end of a section.

[3/1/99; 21.35.4.5 NMAC - Rn & A, 21 NMAC 35.4.5, 10/30/2008]

21.35.4.6 OBJECTIVE:

To establish rules governing licensing, inspection services, testing and handling of livestock at livestock auction markets in New Mexico.

[3/1/99; 21.35.4.6 NMAC - Rn, 21 NMAC 35.4.6, 10/30/2008]

21.35.4.7 DEFINITIONS:

- A. "Board" means the New Mexico livestock board.
- B. "Director" means the executive director of the New Mexico livestock board.
- C. "Inspector" means any duly authorized or commissioned officer of the livestock board.
- D. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

E. Livestock market owner means any person, persons, corporation or organization operating for business or charity a facility for the purpose of consignment sales of livestock.

F. Livestock market means any facility in the state of New Mexico, which is used for the purpose of holding consignment sales of livestock.

G. "New Mexico livestock" means any livestock raised or pastured or fed within the state of New Mexico.

H. "Official Identification" means an electronic or visual ear tag with a 15-digit number beginning with "840", a USDA silver metal identification tag, a USDA orange metal calfhood brucellosis vaccination tag, a breed registry tattoo with proof of registration, or other identification as approved by the New Mexico state veterinarian.

I. "Person" means an individual, partnership, association or operation.

[3/1/99; 21.35.4.7 NMAC - Rn, 21 NMAC 35.4.7, 10/30/2008; A/E, 12/07/2009]

21.35.4.8 LIVESTOCK MARKET LICENSE AND LICENSEE:

A. Any person desiring to operate a livestock market in New Mexico shall file an application for a license with the director on such form or forms as the director shall prescribe, which application shall be signed by the applicant.

B. Every license issued by the director to a livestock market operator shall expire one year from the date of issuance. Renewal of such license shall be made on renewal forms as prescribed by the board.

C. The director may extend licenses for a portion of a calendar year, in order to synchronize the periods of all licenses, so that the one year period of issue coincides with the calendar year.

D. The license issued by the director to any livestock market owner for the operation of a livestock market, shall specify the day or days of the week on which the sale or sales will be conducted at that market.

E. The board will cooperate with the United States department of agriculture, packers and stockyards administration, to insure that the livestock market owner has met the requirements for bonding and approval under the federal codes, prior to issuing the license.

F. Special sales may be held on days or dates not specified in said license upon written application being submitted to the director, at least fifteen days prior to the scheduled date of the special sale.

G. The market owner shall display the license in a prominent place visible to the public.

H. Violation of any rule or statute on livestock market property by owner, agent, operator or employee may result in suspension or revocation of license.

[3/1/99; 21.35.4.8 NMAC - Rn & A, 21 NMAC 35.4.8, 10/30/2008]

21.35.4.9 INSPECTION AND TESTS AT LIVESTOCK MARKETS:

A. All livestock received at a livestock market may be inspected for health by a veterinarian of the board, or its authorized agent.

B. In conducting such inspections of any livestock in the possession of the livestock market operator, such board veterinarian, or its agent, is authorized to make such tests and to require the administration of such preventative or curative treatment, as the veterinarian shall deem necessary to prevent the spread of livestock disease.

C. The tests and treatments which are required as part of this section shall be accomplished at the owner's expense.

[3/1/99; 21.35.4.9 NMAC - Rn, 21 NMAC 35.4.9, 10/30/2008; A/E, 12/07/2009]

21.35.4.10 TRANSPORTING LIVESTOCK EXPOSED OR AFFECTED BY CONTAGIOUS AND INFECTIOUS DISEASE:

A. Any livestock exposed or affected by a contagious and infectious disease and so certified by the veterinarian of the board, or its authorized agent, shall be immediately quarantined.

B. It shall be unlawful for anyone to move or transport any livestock from the livestock market or quarantined area.

C. The veterinarian of the board, or its authorized agent, shall notify the operator of the market in writing that no movement or transporting of the quarantined livestock is permitted.

[3/1/99; 21.35.4.10 NMAC - Rn, 21 NMAC 35.4.10, 10/30/2008]

21.35.4.11 BRUCELLOSIS TESTS OF CATTLE AT LIVESTOCK MARKETS:

A. Test eligible cattle originating from any zone, area, county or state determined by the USDA or the New Mexico state veterinarian to be high-risk for bovine brucellosis and entering New Mexico through specifically approved livestock markets may be required to be tested for brucellosis.

B. Reactors to the presumptive brucellosis test shall be quarantined at the market pending completion of confirmatory testing and final determination of brucellosis status.

C. Reactors as determined by confirmatory testing, shall either be B branded, or sealed by metal seal in the truck transporting them to slaughter and documented correctly on a USDA veterinary services form 127.

D. After the reactors are removed, the remaining cattle in the shipment may be returned to premises of origin under quarantine, or be S branded and sent directly to an approved feedlot or slaughter.

[3/1/99; 21.35.4.11 NMAC - Rn, 21 NMAC 35.4.11, 10/30/2008; A/E, 12/07/2009]

21.35.4.12 INSPECTION OF CATTLE AND TAGGING AT LIVESTOCK MARKETS:

A. All livestock entering a livestock market shall be inspected by a livestock inspector or authorized agent of the board, for brands and ownership and that inspection shall be documented upon the certificate prescribed by the board.

B. The livestock board shall provide tags of identification to be applied as directed by the New Mexico livestock board. The tag shall be placed on the upper section of the shoulder area of all cattle tagged at such markets. The tag number and the brand identification data for animals shall be properly entered on the certificate prescribed by the board. All sexually intact dairy cattle four months of age or older, sexually intact beef cattle 18 months of age or older and all Mexican-origin (M-branded) cattle shall be individually identified by official identification, with such identification recorded on the certificate.

C. For the inspections conducted at markets, the board shall charge the fees prescribed by law and board rules for inspection of livestock.

[3/1/99; 21.35.4.12 NMAC - Rn, 21 NMAC 35.4.12, 10/30/2008; A/E, 12/07/2009]

PART 5: CATTLE AND SHEEP REST STATIONS

21.35.5.1 ISSUING AGENCY:

New Mexico Livestock Board, 300 San Mateo, NE, Suite 1000, Albuquerque, New Mexico 87108, Telephone: (505) 841-6161

[21.35.5.1 NMAC – Rp, 21, NMAC 35.5.1, 11-30-2001]

21.35.5.2 SCOPE:

All owners and operators of livestock rest stations and facilities used as rest stations and all owners, transporters, or handlers of livestock in the State of New Mexico and

those that bring livestock into the state for any reason and utilize the services provided by rest stations. Additional requirements for livestock owners governing livestock business activities can be found in Title 21, Chapters 30, 32, 33, & 34 of the NMAC.

[21.35.5.2 NMAC – Rp, 21 NMAC 35.5.2, 11-30-2001]

21.35.5.3 STATUTORY AUTHORITY:

Section 77-2-7, and Article 3 of Chapter 77 and 77-9A-1 through 77-9A-5 NMSA 1978.

[21.35.5.3 NMAC – Rp, 21 NMAC 35.5.3, 11-30-2001]

21.35.5.4 DURATION:

Permanent.

[21.35.5.4 NMAC – Rp, 21 NMAC 35.5.4, 11-30-2001]

21.35.5.5 EFFECTIVE DATE:

November 30, 2001, unless a later date is cited at the end of a section.

[21.35.5.5 NMAC – Rp, 21 NMAC 35.5.5, 11-30-2001]

21.35.5.6 OBJECTIVE:

To establish rules governing the operation, inspection services, and licensing of cattle and sheep rest stations in New Mexico.

[21.35.5.6 NMAC – Rp 21 NMAC 35.5.6, 11-30-2001]

21.35.5.7 DEFINITIONS:

- A. "Board" means the New Mexico Livestock Board.
- B. "Director" means the executive director of the New Mexico Livestock Board.
- C. "Inspector" means any duly authorized or commissioned officer of the Livestock Board.
- D. "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.
- E. "Cattle or Sheep Rest Station Owner" means any person, persons, corporation, or organization operating a cattle rest station.

F. "Cattle Rest Station" means any facility in the state of New Mexico, which is used for the purpose of receiving and holding for rest, feeding, watering cattle, which are in transit within or through New Mexico.

G. "Sheep Rest Station" means any facility in the state of New Mexico, which is used for the purpose of receiving and holding for rest, feeding, or watering sheep or goats, which are in transit within or through New Mexico.

H. "New Mexico Livestock" means any livestock raised or pastured or fed within the State of New Mexico.

I. "Person" means an individual, partnership, association, or operation.

J. "Bond" means cash or an insurance agreement from a New Mexico Licensed surety or insurance corporation pledging surety for financial loss caused to another, including certificate of deposit, irrevocable letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board

[21.35.5.7 NMAC – Rp 21 NMAC 35.5.7, 11-30-2001]

21.35.5.8 LICENSING OF REST STATIONS:

A. Cattle and sheep rest stations shall be licensed and bonded in accordance with Section 77-9A-2, NMSA 1978. The license shall be renewed annually. The bond shall be in an amount of \$10,000.00.

B. The NM Livestock Board or its inspector shall be notified upon arrival of all shipments entering a cattle or sheep rest station. An inspection of the cattle, sheep or goats may be conducted by a livestock inspector, or his authorized agent.

C. All cattle, sheep or goats entering a cattle or sheep rest station on direct shipment from outside the continental United States, must be accompanied by an official form issued by a federal official of the U.S.D.A. showing the current health status of the shipment, indicating the type of inspection and treatment administered prior to entry, and indicating the destination of the shipment. If the cattle, sheep or goats crossed at Santa Teresa or Columbus, they must also be accompanied by the New Mexico Livestock Board Inspection Certificate issued at the port of entry.

D. All cattle, sheep or goats entering a cattle or sheep rest station from a state within the continental United States shall be accompanied by an official certificate issued by an accredited veterinarian, state, or federal official of the that state of origin, which certificate shall indicate the current health status, the place of origin, and the destination of the shipment.

E. The owner or operator of the cattle or sheep rest station shall provide a book to be used expressly by him or his agent for the purpose of recording the following information for each consignment of cattle or sheep entering the rest station:

- (1) Date and time of arrival;
- (2) Origin of the shipment;
- (3) Name and address of the importer, consignor, or shipper;
- (4) Name of the carrier upon arrival and departure;
- (5) Number and class of livestock;
- (6) Livestock identification (brands, eartags, etc);
- (7) Name and address of consignee;
- (8) Place of destination (city and state); and date and time of departure from the cattle or sheep rest station.

F. The record book shall be available at any time, day or night, to a representative of the New Mexico Livestock Board.

G. Cattle, sheep or goat shipments entering a New Mexico cattle or sheep rest station, with a predetermined destination within, or out of the state of New Mexico, may depart without inspection, provided the shipment is not altered, sorted, reconfigured, or diverted from the destination indicated on the accompanying certificate.

H. Cattle, sheep or goat shipments entering without a predetermined destination, or shipments diverted from the predetermined destination, shall be subject to inspection at the prescribed fee, by a representative of the New Mexico Livestock Board.

I. Cattle, sheep or goats remaining in a cattle or sheep rest station for a period of more than twelve hours, are subject to inspection at the prescribed fee, at the discretion of the New Mexico Livestock Board.

J. No cattle, sheep or goats may be allowed to enter a cattle or sheep rest station without the required official certificate prescribed in 8.3 or 8.4 above until prior permission is obtained from the livestock inspector, or other official of the New Mexico Livestock Board.

K. The penalty for violating any of the regulations of this section shall be as provided by Section 77-9A-4, NMSA 1978, and, at the discretion of the appointed board, may result in revocation of the rest station license and forfeiture of the bond.

[21.35.5.8 NMAC – Rp, 21 NMAC 35.5.8, 11-30-2001]

PART 6: ANIMAL ENTERPRISE PROTECTION

21.35.6.1 ISSUING AGENCY:

New Mexico Livestock Board.

[21.35.6.1 NMAC - N, 12/31/2012]

21.35.6.2 SCOPE:

The protections accorded by these regulations extend to livestock enterprises in the State of New Mexico.

[21.35.6.2 NMAC - N, 12/31/2012]

21.35.6.3 STATUTORY AUTHORITY:

Sections 77-2-1, 77-2-7, 77-2-22 and such other regulatory authority as provided in Chapter 77 NMSA 1978. Additional authority is the federal Animal Enterprise Terrorism Act, 18 U.S.C. Section 43 and decisional authority under that penal statute and its predecessor Animal Enterprise Protection Act. See *United States v. Fullmer*, 584 F.3d 132 (3d Cir.), cert denied, *Kjonaas v. United States*, 2011 U.S. LEXIS 1930 (2011); *United States v. Buddenberg*, 2009 U.S. Dist. LEXIS 100477 (N.D. Cal. 2009).

[21.35.6.3 NMAC - N, 12/31/2012]

21.35.6.4 DURATION:

Permanent.

[21.35.6.4 NMAC - N, 12/31/2012]

21.35.6.5 EFFECTIVE DATE:

December 31, 2012, unless a later date is cited at the end of a section.

[21.35.6.5 NMAC - N, 12/31/2012]

21.35.6.6 OBJECTIVE:

To afford livestock animal enterprises in New Mexico protection against animal enterprise terrorism. These regulations do not, nor could they, undermine or detract in any manner from the force and effect of federal law, which provides protection to animal enterprises under 18 U.S.C. Section 43, together with any other applicable federal penal

laws, such as stalking, conspiracy, and the use of telecommunications devices to abuse, threaten and harass. These regulations do not, nor could they, undermine or detract in any manner from the force and effect of applicable state law.

[21.35.6.6 NMAC - N, 12/31/2012]

21.35.6.7 DEFINITIONS:

A. "Animal" means livestock including cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

B. "Board" means the New Mexico livestock board.

C. "Immediate family member" means the spouse, parent, brother or sister, child or person to whom he stands in loco parentis, or any other person living in his household and related to him by blood or marriage.

D. "Livestock animal enterprise" means a commercial or academic enterprise that uses or sells livestock animals or livestock animal products for profit, food or fiber production, agriculture, education, research, testing, breeding; rodeo or other lawful competitive animal event; or a fair or similar event intended to advance agricultural arts and sciences. The term "livestock animal enterprise" also includes persons, firms and entities licensed by the New Mexico livestock board, including licensed horse rescues, licensed meat dealers, licensed slaughterers, and licensed livestock auction markets.

E. "Serious bodily injury" means injury posing a substantial risk of death; extreme physical pain; protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

[21.35.6.7 NMAC - N, 12/31/2012]

21.35.6.8 PROHIBITION AGAINST FORCE, VIOLENCE AND THREATS INVOLVING LIVESTOCK ANIMAL ENTERPRISES:

A. Whoever, for the purpose of damaging or interfering with the operations of a livestock animal enterprise, and in connection with such purpose:

(1) intentionally damages any real or personal property, intentionally causes to suffer or contributes to the suffering or prolonged suffering of any livestock animal or intentionally causes the loss of any real or personal property (including livestock animals or records) used by a livestock animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with a livestock animal enterprise;

(2) intentionally places a person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family of that person, or a

spouse or intimate partner of that person by conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or

(3) violates the criminal laws of this state, including, without limitation, the criminal trespass statute at NMSA 1978, Section 30-28-1; the harassment and stalking statutes at NMSA 1978, Sections 30-3A-2, -3 and -3.1; and the computer abuse statute at NMSA 1978, Section 30-45-4; shall be punished as provided in NMSA 1978, Section 77-2-22 (providing a misdemeanor penalty, unless otherwise provided by law, for persons who violate board rules).

B. Exemption for government: These regulations do not apply to governmental conduct, state or federal. Law enforcement and regulatory activities of the New Mexico livestock board and its inspectors, of the USDA, of other peace officers and prosecutorial; officers are not impaired or affected by these regulations.

[21.35.6.8 NMAC - N, 12/31/2012]

PART 7: NM BEEF COUNCIL STATE ASSESSMENT COLLECTION PROCEDURES

21.35.7.1 ISSUING AGENCY:

New Mexico Beef Council, 1209 Mountain Road Pl. NE, Suite C, Albuquerque, NM 87110, (505) 841- 9407.

[21.35.7.1 NMAC – N, 7/16/2019]

21.35.7.2 SCOPE:

This rule establishes the council assessment to be paid by owners/producers of New Mexico cattle upon the transfer of ownership.

[21.35.7.2 NMAC – N, 7/16/2019]

21.35.7.3 STATUTORY AUTHORITY:

Granted to the New Mexico Beef Council under the New Mexico Beef Council Act, Chapter 77, Article 2A, Section 1-9 NMSA 1978 Compilation.

[21.35.7.3 NMAC – N, 7/16/2019]

21.35.7.4 DURATION:

Permanent.

[21.35.7.4 NMAC – N, 7/16/2019]

21.35.7.5 EFFECTIVE DATE:

July 16, 2019, unless a later date is cited at the end of the section.

[21.35.7.5 NMAC – N, 7/16/2019]

21.35.7.6 OBJECTIVE:

To establish the council assessment for cattle.

[21.35.7.6 NMAC – N, 7/16/2019]

21.35.7.7 DEFINITIONS:

"**Council assessment**" means an assessment levied and imposed upon all cattle involved in a transfer of ownership in New Mexico.

[21.35.7.7 NMAC – N, 7/16/2019]

21.35.7.8 ASSESSMENT:

A. The council assessment rate is set at one dollar (\$1.00) per head.

B. The council assessment will be collected in accordance with Subsection A of Section 77-2A-7.1 NMSA 1978.

C. Any producer who elects to not participate in the council assessment shall do so by opting out in accordance with Subsection B of Section 77-2A-7.1 NMSA 1978.

D. Refunds of the council assessment shall be conducted in accordance with Section 77-2A-7.3 NMSA 1978

[21.35.7.8 NMAC – N, 7/16/2019]

**CHAPTER 36: MEAT MARKETING BOARDS
[RESERVED]**